

# Memo

To: City Commission  
From: Paul Briseno, Assistant City Manager  
Date: 8-29-13  
Re: September 5, 2013 Work Session

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Please find the attached agenda and supporting documentation for the September 5, 2013 Work Session.

Item 2 – 2013 Uniform Public Offense Code/2013 Standard Traffic Ordinance

Please refer to the memorandum from Police Chief Don Scheibler. This item is a housekeeping item updating the Uniform Public Offense Code and Standard Traffic Ordinance.

Item 3 – Vehicle Abatement at 3312 Country Lane

Staff has identified and followed proper procedure to abate an inoperable vehicle. Photos and details are provided. The property owner requested a public hearing before a judge. However, our process requires Commission attention. Staff is seeking a public hearing on September 12, 2013 with approval to abate the nuisance at the property owner's expense.

Items 4 & 5 – Golden Belt Estates 5<sup>th</sup> Addition (Resolution for Benefit District & Engineering Services Agreement)

This item contains two requests. The first is a request to establish a benefit district for 18 lots adjacent to west 45<sup>th</sup> Street at a cost of \$473,093. This is consistent with previous adjacent developments. The second item is for engineering services of this area at a not to exceed cost of \$28,200.

Item 6 – Levee Improvements – Engineering Design Services Agreement

A safety report was given by Wilson and Co. in May that outlined many deficiencies within the levee system. Staff is recommending an engineering agreement that provides for surveying, engineering design and construction documents for repairs or improvements to most of the identified problems.

#### Item 7 – Bike Hays – On-street Bike Route and Levee Trail Engineering Design Agreements

The Bike Hays Plan was presented in January, grant submitted in February and notification of award in June. The next step in the Bike Hays Plan implementation is to select an engineer to provide bid documents and work with KDOT to ensure their standards are met. The memo details the current evolution/requirements of KDOT as this item has developed since its original presentation. Clarification, timeline and process will be given at the work session.

#### Item 8 – Refuse Trucks Lease/Purchase Buyout

Over the years, Solid Waste funds have been transferred to buy out the lease of refuse trucks early. October is the first available call date and funds are available. If authorized, a savings of \$16,236 can be realized. The Solid Waste reserve expenditure is \$207,735.

**CITY OF HAYS  
CITY COMMISSION WORK SESSION  
THURSDAY, SEPTEMBER 5, 2013 – 6:30 P.M.  
AGENDA**

1. **ITEM FOR REVIEW: [August 15, 2013 Work Session Notes \(PAGE 1\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: Kim Rupp, Director of Finance
2. **ITEM FOR REVIEW: [2013 Uniform Public Offense Code/2013 Standard Traffic Ordinance \(PAGE 5\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: Don Scheibler, Chief of Police
3. **ITEM FOR REVIEW: [Vehicle Abatement at 3312 Country Lane \(PAGE 53\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: I.D. Creech, Director of Public Works
4. **ITEM FOR REVIEW: [Golden Belt Estates 5<sup>th</sup> Addition – Resolution to Establish Benefit District \(Danby Lane\) \(PAGE 63\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: I.D. Creech, Director of Public Works
5. **ITEM FOR REVIEW: [Golden Belt Estates 5<sup>th</sup> Addition – Engineering Services Agreement \(Danby Lane\) \(PAGE 69\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: I.D. Creech, Director of Public Works
6. **ITEM FOR REVIEW: [Levee Improvements – Engineering Design Services Agreement \(PAGE 77\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: I.D. Creech, Director of Public Works
7. **ITEM FOR REVIEW: [Bike Hays – On-street Bike Route and Levee Trail Engineering Design Agreements \(PAGE 101\)](#)**  
STAFF MEMBER RESPONSIBLE: Paul Briseno, Assistant City Manager
8. **ITEM FOR REVIEW: [Refuse Trucks Lease/Purchase Buyout \(PAGE 137\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: Kim Rupp, Director of Finance
9. **OTHER ITEMS FOR DISCUSSION**
10. **EXECUTIVE SESSION (IF REQUIRED)**
11. **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  
August 15, 2013

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

Absent: Kent Steward

**August 1, 2013 Work Session Notes**

There were no corrections or additions to the minutes of the Work Session held on August 1, 2013; the minutes stand approved as presented.

**Discussion of Larks Park Recognition Plaques**

Two years ago, the City had budgeted \$10,000 for backstop improvements at Larks Park. The City was contacted by Fort Hays State University about the possibility of replacing the entire backstop. As this would require more than the \$10,000 budgeted, the City indicated to the University that it would pledge the budgeted \$10,000 for the project if the University came up with the rest of the money. The total project to replace the backstop was \$18,350.

Sometime this year, a plaque appeared on the east side of the Larks Park grand stand identifying The Meckenstock Group for its financial contribution to this project. City staff was contacted by Fort Hays State University and advised the plaque would be small and unobtrusive.

Commissioner Mellick was thinking about the historical nature of the baseball park, which was constructed in 1940, and is afraid there will be more plaques, more holes drilled, and more recognition. He would like to see the plaque removed, and the holes not fixed, but restored.

Commissioner Schwaller stated any city property should be reviewed by the City Commission before a plaque is put up.

City Manager Toby Dougherty stated City staff would draft a policy and present it to the Commissioners for their consideration.

**Update on Lease with North Central Kansas Technical College**

In May of 2009, the City entered into a lease with North Central Kansas Technical College (NCKTC) for space at the former Army Reserve facility. In lieu of monetary compensation for space in the facility, the Technical College and the City agreed that the Technical College would assist the City with various projects that would not only save the City money, but would also provide the Technical College students with valuable on-the-job experience.

The Technical College has worked on a number of projects for the city, but from a staff perspective, the arrangement has not worked out as well as anticipated. The City has experienced issues with the quality of work on two of the projects.

City Manager Toby Dougherty stated we have had issues trying to identify projects that fit the Technical College's curriculum.

Eric Burks, North Central Kansas Technical College President, responded to these concerns stating NCKTC recently was named the No. 6, two-year college in the nation. He stated they are not used to issues dealing with quality, or lack thereof, because they have typically done very well in that area. Mr. Burks also pointed out the students enrolled at the college also provide an economic impact for the City.

Commissioner Schwaller asked for better communication, and would like the Commission to be better informed, with regular updates.

**Other Items for Discussion**

Finance Director Kim Rupp gave an update on the Home Depot TDD/TIF.

City Manager Toby Dougherty talked to the Commissioners about the expenses which were submitted to Union Pacific Railroad for reimbursement from the train derailment.

The work session was adjourned at 7:14 p.m.

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

Brenda Kitchen – City Clerk



# Commission Work Session Agenda

## Memo

**From:** Don Scheibler, Police Chief

**Work Session:** September 5, 2013

**Subject:** 2013 Uniform Public Offense Code  
2013 Standard Traffic Ordinance

**Person(s)** Don Scheibler, Police Chief

**Responsible:** Toby Dougherty, City Manager

### Summary

The Hays City Commission is being asked to adopt by ordinance, the updated 2013 Uniform Public Offense Code for Kansas Cities (UPOC) and the updated 2013 Standard Traffic Ordinance for Kansas Cities (STO) for use within the City of Hays. The ordinances and any changes to the UPOC and the STO are presented to the Commission annually. It is the recommendation of city staff that the Commission approve the ordinances adopting the 2013 revised UPOC and STO.

### Background

The League of Kansas Municipalities publishes a revised version of Uniform Public Offense Code for Kansas Cities (UPOC) and the Standard Traffic Ordinance for Kansas Cities (STO) on a yearly basis. These publications are made available for purchase by municipalities. The municipalities may adopt these two sets of ordinances for their use. These ordinances contain the most current legislative changes and updates put into place annually by the Kansas Legislature.

### Discussion

The majority of the UPOC and STO remain the same from year to year, with only a few changes being made. Changes to the UPOC and STO are noted on the last page of each publication. A handout has been prepared by staff, listing the ordinances that have been changed with a brief outline of the changes.

While there are very few changes to the 2013 STO, I did want to bring to your attention one addition that I feel will help simplify the lives of our citizens, save our community money, and will make traffic stops safer for our police officers.

**Sec. 200 – Motor Vehicle Liability Insurance** includes an amendment to the law that will help law enforcement keep pace with modern technology by allowing drivers to show proof of insurance using their cell phones, tablets, or even laptops instead of traditional paper. This will be a more convenient way for our citizens to maintain their insurance information.

In 2012 the Hays Police Department issued 918 citations because drivers were unable to show proof of liability insurance at the time of the traffic stop . 800 of these tickets were dismissed when the driver was later able to provide the court a current insurance card. This amendment to the law should save the court time and money in processing the citations, and will also save our citizens money in time away from work.

This addition to the law will make it safer for our police officers during traffic stops by allowing them to spend less time on the side of the road and not requiring the drivers to search through the vehicle for the traditional paper insurance card.

Law enforcement will still accept the traditional paper insurance card, and are prohibited from looking at anything other than the insurance information when viewing the electronic version.

Two of the most concerning changes for law enforcement in the 2013 UPOC are found in **Sec. 10.1 – Criminal Use of Weapons** and **Sec. 10.1.1 – Criminal Carrying of a Weapon**.

The changes to **Sec. 10.1** removes a switchblade knife from the list of weapons which are prohibited from being carried, concealed or unconcealed. **Sec. 10.1.1** also removes the dagger, dirk, dangerous knife, straight edge razor, and stiletto from the list of dangerous weapons which are prohibited from being carried concealed. Both of these changes increase the possibility of a police officer coming in contact with a person armed with a lethal weapon. The City of Hays is prohibited from having an ordinance that further restricts the possession, carrying or use of a knife.

An amendment to **Sec. 6.1 - Theft** should help to improve the safety of our community and our police officers. Previously, those accused of stealing guns were charged with a misdemeanor, unless the value of the gun was over \$1,000. Under the new law, anyone who steals a gun or possesses a stolen gun can be charged with a felony.

### **Legal Consideration**

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

### **Financial Consideration**

There are no financial considerations other than staff hours incurred drafting these ordinances.

## **Options**

The Commission has the following options for consideration.

1. Approve the ordinances adopting the 2013 revised UPOC and STO.
2. Not approve the ordinances adopting the 2013 revisions, with the continuation of the 2012/current UPOC and STO.

## **Recommendation**

It is the recommendation of city staff that Commission approve the ordinances adopting the 2013 revised versions of the Uniformed Public Offense Code and Standard Traffic Ordinances.

## **Action Requested**

Approve the ordinances adopting the 2013 revised UPOC and STO

## **Supporting Documentation**

List of additions or changes made in the 2013 UPOC and STO.

Draft ordinances adopting the 2013 UPOC and STO for use in the City of Hays

CHANGES IN UNIFORM PUBLIC OFFENSE CODE  
FOR 2013

Brief outline of changes made to ordinance

Words Added

~~Words Deleted~~

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4.3 SELLING SEXUAL RELATIONS

(pages 31-32) Title was changed from PROSTITUTION to SELLING SEXUAL RELATIONS. Changed section (c) and added sub-section (d).

**4.3 ~~PROSTITUTION~~ SELLING SEXUAL RELATIONS.**

~~Prostitution~~ Selling Sexual Relations is performing for hire, or offering or agreeing to perform for hire where there is an exchange of value, any of the following acts:

- (a) Sexual intercourse;
- (b) Sodomy; or
- (c) Manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another. (~~K.S.A. Supp. 21-6419~~)
- (d) It shall be an affirmative defense to any prosecution under this section that the defendant committed the violation of this section because such defendant was subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child. (K.S.A. Supp. 21-6419)

~~Prostitution~~ Selling Sexual Relations is a Class B violation.

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4.4 PROMOTING PROSTITUTION

(page 32) Deleted section 4.4.

~~4.4 PROMOTING PROSTITUTION. Promoting prostitution is:~~

- ~~(a) Establishing, owning, maintaining or managing a house of prostitution, or participating in the establishment, ownership, maintenance, or management thereof;~~
- ~~(b) Permitting any place partially or wholly owned or controlled by the defendant to be used as a house of prostitution;~~
- ~~(c) Procuring a prostitute for a house of prostitution;~~
- ~~(d) Inducing another to become a prostitute;~~
- ~~(e) Soliciting a patron for a prostitute or for a house of prostitution;~~
- ~~(f) Procuring a prostitute for a patron;~~
- ~~(g) Procuring transportation or paying for the transportation of, or transporting a person within this city with the intention of assisting or promoting that person's engaging in prostitution; or~~
- ~~(h) Being employed to perform any act which is prohibited by this section. (K.S.A. Supp. 21-6420)~~

~~Promoting prostitution is a Class A violation except as provided by K.S.A. Supp. 21-6420, as amended, where promoting prostitution is a felony when the prostitute is under 16 years of age or the person promoting prostitution has, prior to the commission of the crime, been convicted of promoting prostitution.~~

#### 4.5 BUYING SEXUAL RELATIONS

**(pages 33-33) Title was changed from PATRONIZING A PROSTITUTE to BUYING SEXUAL RELATIONS. Definition was changed. Changed language in section (a), section (b) and changed violation information.**

**4.5 ~~PATRONIZING A PROSTITUTE.~~ Patronizing a prostitute is either: **BUYING SEXUAL RELATIONS.** Buying sexual relations is knowingly:**

- ~~(a) Knowingly entering or remaining in a house of prostitution with intent to engage in sexual intercourse, sodomy or any unlawful sexual act with a prostitute; or~~
- ~~(b) Knowingly hiring a prostitute to engage in sexual intercourse, sodomy or any unlawful sexual act. (K.S.A. Supp. 21-6421)~~

~~Patronizing a prostitute is a Class C violation.~~

- (a) Entering or remaining in a place where sexual relations are being sold or offered for sale with intent to engage in manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another, sexual intercourse, sodomy or any unlawful sexual act with a person selling sexual relations who is 18 years of age or older; or
- (b) hiring a person selling sexual relations who is 18 years of age or older to engage in manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another, sexual intercourse, sodomy or an unlawful sexual act. (K.S.A. Supp. 21-6421)

Buying Sexual Relations is a Class A violation on conviction of a first offense. In addition to any other sentence imposed, a person convicted under this section shall be fined \$2,500. All fines collected pursuant to this subsection shall be remitted to the human trafficking victim assistance fund.

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6.1            **THEFT**

**(pages 39-40) Deleted language in the paragraph after section (e) and added sub-sections (a), (b) and (c).**

- 6.1        THEFT.** Theft is any of the following acts done with the intent to deprive the owner permanently of the possession, use or benefit of the owner's property or services:
- (a) Obtaining or exerting unauthorized control over property or services;
  - (b) Obtaining control over property or services by deception;
  - (c) Obtaining control over property or services by threat; or
  - (d) Obtaining control over stolen property or services knowing the property or services to have been stolen by another.

- (e) Knowingly dispensing motor fuel into a storage container or the fuel tank of a motor vehicle at an establishment in which motor fuel is offered for retail sale and leaving the premises of the establishment without making payment for the motor fuel. (K.S.A. Supp. 21-5801)

Theft of property of the value of less than \$1,000 is a Class A violation ~~except: (1) when the person has been convicted of theft two or more times; or (2) theft of property regardless of the value from three separate mercantile establishments within a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct, in which case it is a felony under state statute.~~ , except as provided below.

(a) Property of the value of less than \$1,000 from three separate mercantile establishments within a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct;

(b) Property of the value of less than \$1,000 if committed by a person who has been convicted of theft two or more times; and

(c) Property which is a firearm of the value of less than \$25,000.

As used in this section:

(a) **Conviction** or **convicted** includes being convicted of a violation of K.S.A. 21-3701, prior to its repeal, this section or a municipal ordinance which prohibits the acts that this section prohibits;

(b) **regulated scrap metal** means the same as in K.S.A. 2011 Supp. 50-6, 109, and amendments thereto; and

(c) **value** means the value of the property or, if the property is regulated scrap metal, the cost to restore the site of the theft of such regulated scrap metal to its condition at the time immediately prior to the theft of such regulated scrap metal, whichever is greater.

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6.5 **CRIMINAL DEPRIVATION OF PROPERTY.**

(page 43) Added language to paragraph (3)

6.5 **CRIMINAL DEPRIVATION OF PROPERTY.**

Criminal deprivation of property is obtaining or exerting unauthorized control over property, with intent to deprive the owner of temporary use thereof, without the owner's consent but not with the intent of depriving the owner permanently of the possession, use or benefit of such owner's property. (K.S.A. Supp. 21-5803)

Criminal deprivation of property that is a motor vehicle upon a first or second conviction is a Class A violation. Upon a first conviction of this paragraph, a person shall be sentenced to not less than 30 days nor more than one year's imprisonment and fined not less than \$100. Upon a second conviction of this paragraph, a person shall be sentenced to not less than 60 days nor more than one year's imprisonment and fined not less than \$200. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein. The mandatory provisions of this subsection shall not apply to any person where such application would result in a manifest injustice.

Criminal deprivation of property other than a motor vehicle or a firearm is a Class A violation. Upon a second or subsequent conviction of this subsection, a person shall be sentenced to not less than 30 days imprisonment and fined not less than \$100, except that the provisions of this subsection relating to second or subsequent conviction shall not apply to any person where such application would result in a manifest injustice.

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6.7                    **CRIMINAL TRESPASS.**

**(pages 44-45) Deleted and added language to section (1)(B).**

**6.7                    CRIMINAL TRESPASS.**

(a) Criminal trespass is:

- (1) Entering or remaining upon or in any land, nonnavigable body of water, structure, vehicle, aircraft or watercraft other than railroad property by a person with knowledge that such person is not authorized or privileged to do so, and:
  - (A) Such person enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to

such person by the owner thereof or other authorized person; or

(B) Such premises or property are posted ~~in a manner~~ as provided in K.S.A. 32-1013, and amendments thereto, or in any other manner reasonably likely to come to the attention of intruders, or are locked or fenced or otherwise enclosed, or shut or secured against passage or entry; or

(C) Such person enters or remains therein in defiance of a restraining order issued by a court of competent jurisdiction and the restraining order has been personally served upon the person so restrained.

- (2) Entering or remaining upon or in any public or private land or structure in a manner that interferes with access to or from any health care facility by a person who knows such person is not authorized or privileged to do so and such person enters or remains thereon or therein in defiance of an order not to enter or to leave such land or structure personally communicated to such person by the owner of the health care facility or other authorized person.

(b) As used in this section:

- (1) **Health Care Facility** means any licensed medical care facility, certificated health maintenance organization, licensed mental health center, or mental health clinic, licensed psychiatric hospital or other facility or office where services of a health care provider are provided directly to patients.
- (2) **Health Care Provider** means any person:
- (A) Licensed to practice a branch of the healing arts;
  - (B) Licensed to practice psychology;
  - (C) Licensed to practice professional or practical nursing;
  - (D) Licensed to practice dentistry;
  - (E) Licensed to practice optometry;
  - (F) Licensed to practice pharmacy;
  - (G) Registered to practice podiatry;
  - (H) Licensed as a social worker; or
  - (I) Registered to practice physical therapy. (K.S.A. Supp. 21-5808)

- (c) This section shall not apply to a land surveyor, licensed pursuant to article 70 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, and such surveyor's authorized agents and employees who enter upon lands, waters, and other premises in the making of a survey.

Criminal trespass is a Class B violation.

Upon a conviction of a violation of subsection (a)(1)(C), a person shall be sentenced to not less than 48 consecutive hours of imprisonment which must be served either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

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**7.2 INTERFERENCE WITH A LAW ENFORCEMENT OFFICER.**

**(pages 64-65) Deleted language to section (a)(2), added language to section (a)(3) and added language to the last paragraph.**

**7.2 INTERFERENCE WITH A LAW ENFORCEMENT OFFICER.**

Interference with a law enforcement officer is:

- (a) Falsely reporting to a law enforcement officer, law enforcement agency, or state investigative agency:
  - (1) That a particular person has committed a crime, knowing that such information is false and intending that the officer or agency shall act in reliance upon such information; ~~or~~
  - (2) Any information, knowing that such information is false and intending to influence, impede or obstruct such officer's or agency's duty; ~~or~~
  - ~~(2) concealing, destroying or materially altering evidence with the intent to prevent or hinder the apprehension or prosecution of any person; or~~
  - (3) That a crime has been committed or any information concerning a crime or suspected crime, knowing that such information is false and intending that the officer or agency shall act in reliance upon such information; or

- (b) Knowingly obstructing, resisting or opposing any person authorized by law to serve process in the service or execution or in the attempt to serve or execute any writ, warrant, process or order of a court, or in the discharge of any official duty. (K.S.A. Supp. 21-5904)

Interference with a law enforcement officer is a Class A violation if the underlining offence is a code violation or a civil case.

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7.5                    **FALSELY REPORTING AN OFFENSE.**

**(page 67) Deleted section 7.5.**

~~**7.5 — FALSELY REPORTING AN OFFENSE.** Falsely reporting an offense in informing a law enforcement officer that an offense has been committed, knowing that such information is false and intending that the officer shall act in reliance upon such false information. (K.S.A. Supp. 21-5904)~~

~~Falsely reporting an offense is a Class A violation.~~

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10.1                    **CRIMINAL USE OF WEAPONS.**

**(pages 76-80) Deleted language from section (a)(1) & (a)(2), deleted language from section (d)(5), deleted language from section (e), deleted and added language from (f)(7) and deleted section (g).**

**10.1                    CRIMINAL USE OF WEAPONS.**

(a) Criminal use of weapons is knowingly:

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

- (2) Possessing with intent to use the same unlawfully against another, ~~a dagger, dirk,~~ billy, blackjack, slungshot, ~~dangerous knife, straight edged razor, stiletto~~ or any other dangerous or deadly weapon or instrument of like character; ~~except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife, or a dangerous or deadly weapon or instrument;~~
- (3) setting a spring gun;
- (4) selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age whether the person knows or has reason to know the length of the barrel;
- (5) selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of a controlled substance; or
- (6) selling, giving or otherwise transferring any firearm to any person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto;
- (7) possession of any firearm by a person who is both addicted to and unlawful user of a controlled substance;
- (8) possession of any firearm by any person, other than a law enforcement officer, in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades 1 through 12 or at any regularly scheduled school sponsored activity or event whether the person knows or has reason to know that such person was in or on any such property or grounds;
- (9) refusal to surrender or immediately remove from school property or grounds or at any regularly scheduled school sponsored activity or event any firearm in the possession of any person, other than a law enforcement officer, when so requested or directed by any duly authorized school employee or any law enforcement officer;

(10) possessing a firearm with a barrel less than 12 inches long by any person less than 18 years of age whether the person knows or has reason to know the length of the barrel.

(b) Criminal use of weapons as defined in:

- (1) Subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6) or (a)(9) is a class A violation;
- (2) subsection (a)(7) or (a)(8) is a class B violation;
- (3) subsection (a)(10) is a class A violation on a first offense.

(c) Subsections (a)(1), (a)(2) shall not apply to:

- (1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;
- (2) Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;
- (3) Members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or
- (4) The manufacture of, transportation to, or sale of weapons to a person authorized under subsections (c)(1), (c)(2) and (c)(3) to possess such weapons.

(d) Subsection (a)(8) shall not apply to:

- (1) Possession of any firearm in connection with a firearms safety course of instruction or firearms education course and approved and authorized by the school;
- (2) any possession of any firearm specifically authorized in writing by the superintendent of any unified school district or the chief administrator of any accredited nonpublic school;
- (3) possession of a firearm secured in a motor vehicle by a parent, guardian, custodian or someone authorized to act in such person's behalf who is delivering or collecting a student;
- (4) possession of a firearm secured in a motor vehicle by a registered voter who is on the school grounds,

which contain a polling place for the purpose of voting during polling hours on an election day; or  
(5) possession of a handgun by an individual who is licensed by the attorney general to carry a concealed handgun under K.S.A. ~~2011~~ Supp. 75-7c01 et seq., and amendments thereto.

(e) Subsection (a)(6) shall not apply to a person who has received a certificate of restoration pursuant to K.S.A. ~~2011~~ Supp. 75-7c26, and amendments thereto.

(f) Subsection (a)(10) shall not apply if such person, less than 18 years of age, was:

- (1) In attendance at a hunter's safety course or a firearms safety course;
- (2) engaging in practice in the use of such firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located;
- (3) engaging in an organized competition involving the use of such firearm, or participating in or practicing for a performance by an organization exempt from federal income tax pursuant to section 501(c)(3) of the internal revenue code of 1986 which uses firearms as a part of such performance;
- (4) hunting or trapping pursuant to a valid license issued to such person pursuant to article 9 or chapter 32 of the Kansas Statutes Annotated, and amendments thereto;
- (5) traveling with any such firearm in such person's possession being unloaded to or from any activity described in subsections (k)(1) through (k)(4), only if such firearm is secured, unloaded and outside the immediate access of such person;
- (6) on real property under the control of such person's parent, legal guardian or grandparent and who has the permission of such parent, legal guardian or grandparent to possess such firearm; or
- (7) at such person's residence and who, with the permission of such person's parent or legal guardian, possesses such firearm for the purpose of exercising the rights contained in the K.S.A. ~~2011~~ Supp. 21-5222, 21-5223, 21-5225, and amendments thereto. (K.S.A. Supp. 21-6301)

~~(g) Subsection (a)(1) shall not apply to any ordinary pocket knife which has a spring, detent or other device which creates a~~

~~bias towards closure of the blade and which requires hand pressure applied to such spring, detent or device through the blade of the knife to overcome the bias towards closure to assist in the opening of the knife. (K.S.A. Supp. 21-6301)~~

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#### 10.1.1 CRIMINAL CARRYING OF A WEAPON.

**(pages 80-83) Deleted language from section (a)(1), deleted and added language to section (a)(2), added section (a)(5), added language to section (b), added language to section (d), added new section (d)(8), deleted language from section (d)(9), deleted old section (e) and deleted language from new section (e).**

#### 10.1.1 CRIMINAL CARRYING OF A WEAPON.

- (a) Criminal carrying of a weapon is knowingly carrying:
- (1) Any bludgeon, sandclub, metal knuckles or throwing star; ~~or any knife, commonly referred to as a switch blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement;~~
  - (2) concealed on one's person, ~~a dagger, dirk,~~ a billy, blackjack, slungshot, ~~dangerous knife, straight edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife, or a~~ or any other dangerous or deadly weapon or instrument of like character;
  - (3) on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance;
  - (4) any pistol, revolver or other firearm concealed on one's person except when on the person's land or in the person's abode or fixed place of business; or
  - (5) **Transporting any firearm in an occupied motor vehicle, unless such firearm is unloaded and encased in a container which completely encloses the firearm.**

(b) Criminal carrying of a weapon as defined in Subsections (a)(1), (a)(2), (a)(3), (a)(4) or (a)(5) is a class A violation.

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

- (1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;
- (2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;
- (3) members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or
- (4) the manufacture of, transportation to, or sale of weapons to a person authorized under subsections (c)(1), (c)(2) and (c)(3) to possess such weapons.

(d) Subsections (a)(4) and (a)(5) shall not apply to:

- (1) Watchmen, while actually engaged in the performance of the duties of their employment;
- (2) Licensed hunters or fishermen, while engaged in hunting or fishing;
- (3) Private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;
- (4) Detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;
- (5) the state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto;
- (6) special deputy sheriffs described in K.S.A. 19-827, and amendments thereto, who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a, and amendments thereto;

- (7) the United States attorney for the district of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if authorized by the United States attorney for the district of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed. The provisions of this paragraph shall not apply to any person not in compliance with K.S.A. 75-7c19, and amendments thereto; ~~or~~
  - (8) law enforcement officers from another state or retired law enforcement officer meeting the requirements of the federal law enforcement officers safety act, 18 U.S.C 926B and 926C; or
  - (9) any person carrying a concealed handgun as authorized by K.S.A. ~~2011~~ Supp. 75-7c01 through 75-7c17, and amendments thereto.
- (e) ~~Subsectoin (a)(1) shall not apply to any ordinary pocket knife which has a spring, detent or other device which creates a bias towards closure of the blade and which requires hand pressure applied to such spring, detent or device through the blade of the knife to overcome the bias towards closure to assist in the opening of the knife.~~
- (e) It shall not be a violation of this section if a person violates the provisions of K.S.A. ~~2011~~ Supp. 75-7c03, and amendments thereto, but has an otherwise valid license to carry a concealed handgun which is issued or recognized by this state. (K.S.A. Supp. 21-6302)

10.5 UNLAWFUL DISCHARGE OF A FIREARM.

(pages 86-83) Changed title from UNLAWFUL DISCHARGE OF FIREARMS to UNLAWFUL DISCHARGE OF A FIREARM, changed language of all sections.

10.5 UNLAWFUL DISCHARGE OF A FIREARMS.

~~Unlawful discharge of firearms is the discharging or firing of any gun, rifle, pistol, revolver or other firearm within the city. This section shall not be construed to apply.~~

- ~~(a) To the discharge of firearms by any duly authorized law enforcement officer when necessary in the discharge of his or her official duties;~~
- ~~(b) To the discharge of firearms in any licensed shooting gallery;~~
- ~~(c) To firing squads for ceremonials; nor~~
- ~~(d) To a legitimate gunsmith in pursuit of his or her trade.~~

~~It shall be a defense that the defendant was acting within the scope of K.S.A. Supp. 21-5222, K.S.A. 21-5223, K.S.A. Supp. 21-5225, K.S.A. Supp. 21-5227, K.S.A. Supp. 21-5228.~~

~~Unlawful discharge of firearms is a Class B violation.~~

- (a) Unlawful discharge of a firearm is the reckless discharge of a firearm within or into the corporate limits of any city.
- (b) This section shall not apply to the discharge of any firearm within or into the corporate limits of any city if:
  - (1) The firearm is discharged in the lawful defense of one's person, another person or one's property;
  - (2) the firearm is discharged at a private or public shooting range;
  - (3) the firearm is discharged to lawfully take wildlife unless prohibited by the department of wildlife, parks and tourism or the governing body of the city;
  - (4) the firearm is discharged by authorized law enforcement officers, animal control officers or a person who has a wildlife control permit issued by the Kansas department of wildlife, parks and tourism;
  - (5) The firearm is discharged by special permit of the chief of police or by the sheriff when the city has no police department
  - (6) the firearm is discharged using blanks; or
  - (7) the firearm is discharged in lawful self-defense or defense of another person against an animal attack.

(2013 Session Laws of Kansas, Chapter 105)

Unlawful discharge of firearms is a Class B violation.

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**10.15 OPERATING A VESSEL UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PENALTIES.**

(pages 90-92) Changed language in section (a)(1), changed language in section (a)(2), added new section (3), added new language to new section (4), deleted old section (b) and changed language to new section (b),

**10.15 OPERATING A VESSEL UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PENALTIES.**

- (a) No person shall operate or attempt to operate any vessel within this city while:
- (1) The alcohol concentration in the person's blood or breath, ~~at the time or within two hours after the person operated or attempted to operate the vessel is .08 or more;~~ as shown by any competent evidence, including other competent evidence, defined in paragraph (1) of subsection (b) of K.S.A. 32-1130, and amendments thereto, is .08 or more;
  - (2) The alcohol concentration in the person's blood or breath, at the time or within ~~two~~ three hours after the person operated or attempted to operate the vessel is ~~.02 or more and the person is less than 21 years of age;~~ .08 or more;
  - (3) The alcohol concentration in the person's blood or breath, at the time or within three hours after the person operated or attempted to operate the vessel is .02 or more and the person is less than 21 years of age;
  - (4) Under the influence of alcohol to a degree that renders the person incapable of safely operating a vessel;
  - (5) Under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely operating a vessel; or
  - (6) Under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely operating a vessel.
- (b) ~~No person shall operate or attempt to operate any vessel within this city if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.~~
- (b) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

- (c) No person shall operate or attempt to operate any vessel within this state for three months after the date of refusal of submitting to a test if such person refuses to submit to a test pursuant to K.S.A. 32-1132, and amendments thereto.
- (d) Except as provided by subsection ~~(f)~~ (e), violation of this section is a violation punishable:
  - (1) On the first conviction, by imprisonment of not more than one year or a fine of not less than \$100 nor more than \$500, or both; and
  - (2) On the second or a subsequent conviction, by imprisonment for not less than 90 days nor more than one year and, in the court's discretion, a fine of not less than \$100 nor more than \$500.
- (e) Subsection ~~(e)~~ (d) shall not apply to or affect a person less than 21 years of age who submits to a breath or blood alcohol test requested pursuant to K.S.A. 32-1132 and amendments thereto and produces a test result of an alcohol concentration of .02 or greater but less than .08. Such person's boating privileges upon the first occurrence shall be suspended for 30 days and upon a second or subsequent occurrence shall be suspended for 90 days.
- (f) In addition to any other penalties prescribed by law or rule and regulation, any person convicted of a violation of this section shall be required to satisfactorily complete a boater safety education course of instruction before such person subsequently operates or attempts to operate any vessel. (K.S.A. Supp. 31-1131)

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE REGULATING PUBLIC OFFENSES WITHIN THE CORPORATE LIMITS OF THE CITY OF HAYS, KANSAS, INCORPORATING BY REFERENCE "THE UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES," EDITION OF 2013, AND REPEALING ORDINANCE NO. 3853, §§ 1, 2, OF THE CODE OF ORDINANCES OF THE CITY OF HAYS, KANSAS, AS PASSED ON SEPTEMBER 13, 2012, AND AS PUBLISHED ON SEPTEMBER \_\_\_\_, 2012.

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

Section 1. INCORPORATING UNIFORM PUBLIC OFFENSE CODE. There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Hays, Kansas, that certain code known as "The Uniform Public Offenses Code," Edition of 2013, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas. No fewer than three copies of said Uniform Public Offense Code shall be marked or stamped "Official Copy as Adopted by Ordinance No. \_\_\_\_\_," and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

Section 2. Ordinance No. 3853, §§ 1, 2, adopted September 13, 2012, and as published September \_\_\_\_, 2012, is hereby repealed.

Section 3. This ordinance shall take effect and be in force from and after its publication in The Hays Daily News, the official city newspaper.

PASSED by the Commission the \_\_\_\_\_ day of September, 2013.

APPROVED AND SIGNED by the Mayor this \_\_\_\_\_ day of September, 2013.

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KENT L. STEWARD  
Mayor

ATTEST:

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BRENDA KITCHEN  
City Clerk

(SEAL)

OVERVIEW OF CHANGES TO THE 2013 STANDARD  
TRAFFIC ORDINANCE FOR KANSAS CITIES

Brief outline of changes made to ordinance

Words Added

~~Words Deleted~~

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Sec. 1. Definitions.

(pages 6, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 ) Language added to the definition of All-Terrain Vehicle Definition. Definition of Commission changed to Commission or state highway commission and language added. Definition of Department changed to Department or motor vehicle department or vehicle department and language added. Added Electronic Certificate of Title to definitions. Added Electric Vehicle to definitions. Deleted and added new language to the definition of Farm Tractor. Added Farm Trailer to definitions. Added language to the definition of highway. Deleted and added language to the definition of Implement of Husbandry. Added language to the definition of Micro Utility Truck. Language deleted from the definition of Motor Vehicle. Language changed to the definition of Motorcycle. Language added to the definition of Motorized Wheelchair. Added Oil Well Servicing, Oil Well Clean-out or Oil Well Drilling Machinery or Equipment to definitions. Deleted and added language to the definition of Owner. Changed Passenger Car to Passenger Vehicle and added language to the definition. Deleted and added language to the definition of Pole Trailer. Added Road Tractor to the definitions. Added Self-propelled Farm Implement to the definitions. Deleted and added language to the definition of Semitrailer. Deleted and added language to the definition of Specially Constructed Vehicles. Deleted and added language to the definition of Trailer. Deleted and added language to the definition of Truck.

**All-Terrain Vehicle.** Any motorized non-highway vehicle 50 inches or less in width, having a dry weight of 1,500 pounds or less, traveling on three or more nonhighway tires, and having a seat **designed** to be straddled by the operator. As used in this subsection, **nonhighway tire** means any pneumatic tire six inches or more in width, designed for use on wheels with rim diameter of 14 inches or less.

**Commission or state highway commission.** ~~The Secretary of Transportation~~ means the director of vehicles of the department of revenue.

**Department or motor vehicle department or vehicle department** ~~Department of Transportation.~~ means the division of vehicles of the department of revenue, acting directly or through its duly authorized officers and agents. When acting on behalf of the department of revenue pursuant to this act, a county treasurer shall be deemed to be an agent of the state of Kansas.

**Electronic Certificate of Title.** Any electronic record of ownership, including any lien or liens that may be recorded, retained by the division in accordance with K.S.A. Supp. 8-135d, and amendments thereto.

**Electric Vehicle.** A vehicle that is powered by an electric motor drawing current from rechargeable storage batteries or other portable electric energy storage devices, provided the recharge energy must be drawn from a source off the vehicle, such as, but not limited to:

- (1) Residential electric service;
- (2) an electric vehicle charging station, also called an EV charging station, an electric recharging point, a charging point, EVSE (Electric Vehicle Supply Equipment) or a public charging station.

**Farm Tractor.** Every motor vehicle designed and used ~~primarily~~ as a farm implement ~~for drawing plows, mowing machines and other implements of husbandry and such term shall include every self-propelled implement of husbandry~~ power unit operated with or without other attached farm implements in any manner consistent with the structural design of such power unit.

**Farm Trailer.** Every trailer and semitrailer as those terms are defined in this section, designed and used primarily as a farm vehicle.

**Highway.** ~~See Street or Highway.~~ Every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel. The term **highway** shall not be deemed to include a roadway or driveway upon grounds owned by private owners, colleges, universities or other institutions. See also **Street or Highway**.

**Implement of Husbandry.** Every vehicle designed or adapted and used exclusively for agricultural operations ~~and only incidentally moved or operated upon the highways. Such term shall include, but not be limited to, a fertilizer spreader or nurse tank used exclusively for dispensing or spreading water, dust or liquid~~

~~fertilizers or agricultural chemicals, as defined in K.S.A. 2-2202, and amendments thereto, regardless of ownership. Implement of husbandry shall not include:~~ including feedlots, and only incidentally moved or operated upon the highways. Such term shall include, but not be limited to:

- ~~(a) a truck mounted with a fertilizer spreader used or manufactured principally to spread animal dung;~~
- ~~(b) A mixer feed truck owned and used by a feedlot, as defined by K.S.A. 47-1501, and amendments thereto, and specially designed and used exclusively for dispensing feed to livestock in such feedlot; or~~
- ~~(c) A truck permanently mounted with a spreader used exclusively for dispensing or spreading water, dust or liquid fertilizers or agricultural chemicals, as defined in K.S.A. 2-2202, and amendments thereto, regardless of ownership.~~

- (1) A farm tractor;
- (2) a self-propelled farm implement;
- (3) a fertilizer spreader, nurse tank or truck permanently mounted with a spreader used exclusively for dispensing or spreading water, dust or liquid fertilizers or agricultural chemicals, as defined in K.S.A. 2-2202, and amendments thereto, regardless of ownership;
- (4) A truck mounted with a fertilizer spreader used or manufactured principally to spread animal dung; or
- (5) A mixer-feed truck owned and used by a feedlot, as defined by K.S.A. 47-1501, and amendments thereto, and specially designed and used exclusively for dispensing feed to livestock in such feedlot.

**Micro Utility Truck.** Any motor vehicle which is not less than 48 inches in width, has an overall length, including the bumper, of not more than 160 inches, has an unladen weight, including fuel and fluids, of more than 1,500 pounds, can exceed 40 miles per hour as originally manufactured and is manufactured with a metal cab. **Micro utility truck** does not include a work-site utility vehicle or recreational off-highway vehicle.

**Motor Vehicle.** Every vehicle, other than a motorized bicycle or a motorized wheelchair, which is self-propelled. ~~And every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.~~

**Motorcycle.** Every motor vehicle ~~having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor~~ designed to travel on not more than three wheels in contact with the ground, except any such vehicle as may be included within the term **tractor** as defined in this section.

**Motorized Wheelchair.** Any self-propelled vehicle designed specifically for use by a physically disabled person ~~that is~~ and such vehicle is incapable of a speed in excess of 15 miles per hour.

**Oil Well Servicing, Oil Well Clean-out or Oil Well Drilling Machinery or Equipment.** A vehicle constructed as a machine used exclusively for servicing, cleaning-out or drilling an oil well and consisting in general of a mast, an engine for power, a draw works and a chassis permanently constructed or assembled for one or more of those purposes. The passenger capacity of the cab of a vehicle shall not be considered in determining whether such vehicle is oil well servicing, oil well clean-out or oil well drilling machinery or equipment.

**Owner.** ~~A person, other than a lienholder, having the property in or title to a vehicle; and such term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security.~~ A person who holds the legal title of the vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with the immediate right of possession vested in the conditional vendee or in the event a vehicle is subject to a lease of 30 days or more with an immediate right of possession vested in the lessee; or in the event a party having a security interest in a vehicle is entitled to possession, then such conditional vendee or lessee or secured party shall be deemed the owner for the purpose of this code.

**Passenger ~~Car~~ Vehicle.** Every motor vehicle, ~~except motorcycles and motor-driven cycles, designed for carrying 10 passengers or less and used for the transportation of persons.~~ as defined in this section, which is designed primarily to carry 10 or fewer passengers, and which is not used as a truck.

**Pole Trailer.** ~~Every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregular shaped loads such as poles, pipes or structural members capable, generally, of sustaining themselves as beams between the supporting connections.~~ Any two-wheel vehicle used as a trailer with bolsters that support the load, and do not have a rack or body extending to the tractor drawing the load.

**Road Tractor.** Every motor vehicle designed and used for drawing other vehicles, and not so constructed as to carry any load thereon independently, or any part of the weight of a vehicle or load so drawn.

**Self-propelled Farm Implement.** Every farm implement designed for specific use applications with its motive power unit permanently incorporated in its structural design.

**Semitrailer.** Every vehicle, ~~with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle~~ of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another vehicle.

**Specially Constructed Vehicle.** ~~Every vehicle of a type required to be registered in this state, not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.~~ Any vehicle which shall not have been originally constructed under a distinctive name, make, model or type, or which, if originally otherwise constructed shall have been materially altered by the removal of essential parts, or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles.

**Trailer.** Every vehicle ~~with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that no part of its weight rests upon the towing vehicle~~ designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle.

**Truck.** ~~Every motor vehicle designed, used, or maintained primarily for the transportation of property.~~ A motor vehicle which is used for the transportation or delivery of freight and merchandise or more than 10 passengers.

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**Sec. 25. Duty to Give Information and Render Aid.**

**(pages 32-34) Added language to section (c).**

- (a) (1) The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any attended vehicle or other property shall give such driver's name, address, and the registration number of the vehicle such driver is driving, and upon request shall exhibit such driver's license or permit to drive, the name of the company with which there is in effect a policy of motor vehicle liability insurance covering the vehicle involved in the accident and the policy number of such policy to any person injured in such accident or to the driver or occupant of or person attending any vehicle or other property damaged in such accident, and shall give such information and upon request exhibit such license or permit and the name of the insurer and policy number to any police officer at the scene of the accident.  
(2) Such driver, insofar as possible, shall immediately make efforts to determine whether any person involved in such accident was injured or killed, and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.
- (b) If no police officer is present, the driver of any vehicle involved in such accident, or any occupant of such vehicle 18 years of age or older, shall immediately report such accident, by the quickest available means of communication, to the nearest office of a duly authorized police authority if:
  - (1) There is apparently property damage of \$1,000 or more;
  - (2) Any person involved in the accident is injured or killed; or
  - (3) The persons specified in subsection (a) are not present or in condition to receive such information.
- (c) Unless the insurance company subsequently submits an insurance verification form indicating that insurance was not in force, no

person charged with failing to provide the name of such person's insurance company and policy number as required in subsection (a), shall be convicted if such person produces in court, within 20 days of the date of arrest or of issuance of the citation, evidence of financial security for the motor vehicle operated, which was valid at the time of arrest or of issuance of the citation. For the purpose of this subsection, evidence of financial security shall be provided by a policy of motor vehicle liability insurance, an identification card or certificate of insurance issued to the policyholder by the insurer which provides the name of the insurer, the policy number and the effective and expiration dates of the policy, or a certificate of self-insurance signed by the commissioner of insurance. Such evidence also may be produced by displaying on a cellular phone or other type of portable electronic device evidence of financial security required by this subsection. Any person to whom such evidence of financial security is displayed shall view only such evidence of financial security. Such person shall be prohibited from viewing any other content or information stored on such cellular phone or other portable electronic devices. (K.S.A. Supp. 8-1604.)

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**Sec. 30 Driving Under the Influence of Intoxicating Liquor or Drugs; Penalties.**

**(pages 37-42) Deleted and added language to section (h)(2)(A). Deleted language from section (h)(2)(D). Deleted and added language to section (h)(2)(E). Added section (h)(2)(F).**

- (a) Driving under the influence is operating or attempting to operate any vehicle within this city while:
- (1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, is .08 or more;
  - (2) The alcohol concentration in the person's blood or breath, as measured within three hours of the time of operating or attempting to operate a vehicle, is .08 or more;
  - (3) Under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;
  - (4) Under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or

- (5) Under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.
- (b) (1) Driving under the influence is:
  - (A) An ordinance violation. On a first conviction of a violation of this section, the person convicted shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$750 nor more than \$1,000. The person convicted shall serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. The court may place the person convicted under a house arrest program to serve the remainder of the sentence only after such person has served 48 consecutive hours' imprisonment;
  - (B) On a second conviction of a violation of this section the person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,250 nor more than \$1,750. The person convicted shall serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program to serve the five days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of 120 hours;

- (2) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.
- (c) Any person convicted of violating this section who had one or more children under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other minimum mandatory penalty imposed for a violation of this section. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.
- (d) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.
- (e) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.
- (f) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.
- (g) The court shall electronically report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive

from the division a record or all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

- (h) For the purpose of determining whether a conviction is a first or second conviction in sentencing under this section:

(1) Convictions for a violation of this section, K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 2001. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offense;

(2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account:

(A) Refusing to submit to a test to determine the presence of alcohol or drugs, as provided in ~~the 2012 Session Laws of Kansas, Chapter 172, Section 2 or Section 30.2.1; K.S.A. Supp. 8-1025 or Section 30.2.1;~~

(B) driving a commercial motor vehicle under the influence, K.S.A. 8-2, 144, and amendments thereto;

(C) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto;

(D) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. Supp. 21-5405, and amendments thereto; ~~and~~

(E) aggravated ~~vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;~~ battery as described in subsection (b)(3) of K.S.A. Supp. 21-5413, and amendments thereto; and

(F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

(3) **conviction** includes:

(A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (h)(2);

(B) conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another state which would constitute a crime described in subsection (h)(1) or (h)(2); and

(C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection (h)(1) or (h)(2) if committed off a military reservation in this state;

(4) multiple convictions of any crime described in subsection (h)(1) or (h)(2) arising from the same arrest shall only be counted as one conviction;

(5) It is irrelevant whether an offense occurred before or after conviction for a previous offense; and

(6) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section and amendments thereto, only once during the person's lifetime.

(i) Upon conviction of a person of a violation of this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

(j) Upon conviction of a person of a violation of this section, the court may order the convicted person to pay restitution to any victim who suffered loss due to the violation for which the person was convicted.

(k) Upon the filing of a complaint, citation, or notice to appear alleging a person has violated the acts prohibited by this section, and prior to conviction thereof, a city attorney shall request and shall receive from the:

(1) Division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and

(2) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(l) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section to avoid the mandatory penalties established by this section. For the purpose of the subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 et seq., or K.S.A. 22-2906

et seq. and amendments thereto, shall not constitute plea bargaining.

(m) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may be pleaded in the alternative, and the city may, but shall not be required to, elect one or two of the three prior to submission of the case to the fact finder.

(n) As used in this section:

(1) **Alcohol Concentration** means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(2) **Imprisonment** shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city.

(2) **Drug** includes toxic vapors as such term is defined in K.S.A. Supp. 21-36a12. (K.S.A. Supp. 8-1567)

**Ref.:** For persons under 21 years of age, see also K.S.A. 8-1567a.

**{Editor’s Note:** Since 2007 the Kansas Legislature has acted to give municipal courts jurisdiction over the felony level offences of Third, Fourth, and Subsequent Driving Under the Influence (DUI), K.S.A. Supp. 8-1567(k)(1) and (k)(3). However, K.S.A. Supp. 8-1567(l)(2) appears to remove this authority from municipal courts. Because of this apparent conflict, and concerns about sentencing issues and cost, the Editor has determined that Third, Fourth, and Subsequent Driving Under the Influence (DUI) would not be included in this Code. Should a city wish to implement these provisions concerning prosecuting felony level DUI in municipal court, a separate ordinance will need to be adopted. }

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### **Sec. 30.1. Driving Commercial Motor Vehicle Under the Influence of Intoxicating Liquor or Drugs; Penalties.**

**(pages 42-47) Deleted and added language to section (1)(2)(B). Deleted language from section (1)(2)(D). Deleted and added language to section (1)(2)(E). Added section (1)(2)(F).**

(a) Driving a commercial motor vehicle under the influence is operating or attempting to operate any commercial motor vehicle within this city while:

- (1) The alcohol concentration in the person's blood or breath, as shown by any competent evidence, including other competent evidence, is .04 or more;
  - (2) The alcohol concentration in the person's blood or breath, as measured within three hours of the time of driving a commercial motor vehicle, is .04 or more; or
  - (3) Committing a violation of subsection (a) of Section 30 of this ordinance.
- (b) (1) Driving a commercial motor vehicle under the influence is:
- (A) An ordinance violation. On a first conviction, the person convicted shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion, 100 hours of public service, and fined not less than \$750 nor more than \$1,000. The person convicted shall serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation, suspension or reduction of sentence or parole or other release;
  - (B) On a second conviction, the person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,250 nor more than \$1,750. The person convicted shall serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program to serve the five days' imprisonment mandated by this section only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence

provided for in the house arrest agreement shall not be counted as part of the 120 hours; and

- (2) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.
- (c) Any person convicted of a violation of this subsection who had one or more children under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment shall be served consecutively to any other minimum mandatory penalty imposed for a violation of this section. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.
- (d) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.
- (e) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.
- (f) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.
- (g) The court shall electronically report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation

of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the:

(1) Division a record of all prior convictions obtained against such person for any violation of any of the motor vehicle laws of this state; and

(2) Kansas bureau of investigation central repository all criminal history record information concerning such person.

- (h) The court is authorized to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted.
- (i) Upon the filing of a complaint, citation or notice to appear alleging a violation of this section, and prior to conviction thereof, a city attorney shall request and shall receive from the: (A) Division of vehicles a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and (B) Kansas bureau of investigation central repository all criminal history record information concerning such person.
- (j) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section.
- (k) The alternatives set out in subsections (a)(1), (1)(2) and (a)(3) may be pleaded in the alternative, and the city may, but shall not be required to, elect one or two of the three prior to submission of the case to the fact finder.
- (l) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

(1) Convictions for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that such section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 2001. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining

- the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offense;
- (2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account:
- (A) This section or K.S.A. 8-2, 144, and amendments thereto;
  - (B) refusing to submit to a test to determine the presence of alcohol or drugs, as provided in ~~the 2012 Session Laws of Kansas, Chapter 172, Section 2, or Section 30.2.1;~~ K.S.A. Supp. 8-1025, Section 30.2.1;
  - (C) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto;
  - (D) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. Supp. 21-5405, and amendments thereto; ~~and~~
  - (E) ~~aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;~~ aggravated battery as described in subsection (b)(3) of K.S.A. Supp. 21-5413, and amendments thereto; and
  - (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;
- (3) **conviction** includes:
- (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (1)(2);
  - (B) conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another state which would constitute a crime described in subsection (1)(1) or (1)(2); and
  - (C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection (1)(1) or (1)(2) if committed off a military reservation in this state;
- (4) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and
- (5) multiple convictions of any crime described in subsection (1)(1) or (1)(2) arising from the same arrest shall only be counted as one conviction.

(m) For the purpose of this section:

(1) **Alcohol concentration** means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath;

(2) **Imprisonment** shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city; and

(3) **Drug** includes toxic vapors as such term is defined in K.S.A. Supp. 21-36a12, and amendments thereto. (K.S.A. Supp. 8-2, 144)

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### Sec. 30.2.1. Refusal to Submit to Alcohol or Drug Test.

**(pages 48-53) Deleted and added language to section (g)(2)(A). Deleted language from section (g)(2)(D). Deleted and added language to section (g)(2)(E). Added section (g)(2)(F). Deleted and added language to (g)(3)(I).**

(a) Refusing to submit to a test to determine the presence of alcohol or drugs is refusing to submit to or complete a test or tests deemed consented to under subsection (a) of K.S.A. 8-1001, and amendments thereto, if such person has:

(1) Any prior test refusal as defined in K.S.A. 8-1013, and amendments thereto, which occurred:

(A) On or after July 1, 2001; and

(B) when such person was 18 years of age or older; or

(2) any prior conviction for a violation of K.S.A. 8-1567 or 8-2, 144, and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that such section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, which occurred:

(A) On or after July 1, 2001; and

(B) when such person was 18 years of age or older.

(b) (1) Refusing to submit to a test to determine the presence of alcohol or drugs is:

On a first conviction a code violation. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,250 nor more than \$1,750. The person convicted shall serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five

days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. Supp. 21-6609, and amendments thereto, to serve the five days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 120 hours;

(2) In addition, prior to sentencing for any conviction, the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

- (c) Any person convicted of violating this section who had one or more children under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other minimum mandatory penalty imposed for a violation of this section. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.
- (d) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessments and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to then final release of the defendant by the court.
- (e) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service

specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

(f) The court shall electronically report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(g) For the purpose of determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under this section:

(1) Convictions for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that such section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring:

(A) On or after July 1, 2001; and

(B) when such person was 18 years of age or older. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offense;

(2) any convictions for a violation of the following sections which occurred during a person's lifetime shall be taken into account, but only convictions occurring when such person was 18 years of age or older:

(A) This section or ~~the 2012 Session Laws of Kansas, Chapter 172, Section 2;~~ K.S.A. Supp. 8-1025;

(B) driving a commercial motor vehicle under the influence, K.S.A. 8-2, 144, and amendments thereto;

(C) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto;

(D) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. Supp. 21-5405, and amendments thereto; ~~and~~

~~(E) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;~~

aggravated battery as described in subsection (b)(3) of K.S.A. Supp. 21-5413 and amendments thereto; and

(F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

(3) **conviction** includes:

(A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (g)(2);

(B) conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another state which would constitute a crime described in subsection (g)(1) or (g)(2); and

(C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection (g)(1) or (g)(2) if committed off a military reservation in this state;

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense;

(5) multiple convictions of any crime described in subsection (g)(1) or (g)(2) arising from the same arrest shall only be counted as one conviction;

(6) the prior conviction that is an element of the crime of refusing to submit to a test to determine the presence of alcohol or drugs shall not be used for the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section and shall not be considered in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offense; and

(7) a person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, or an ordinance which prohibits the acts of this section, only once during the person's lifetime.

(h) Upon conviction of a person of a violation of this section, the division, upon receiving a report of conviction, shall suspend,

restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

- (i) Upon conviction of a person of a violation of this section, the court may order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted.
- (j) Upon the filing of a complaint, citation or notice to appear alleging a person has violated the acts prohibited by this section, and prior to conviction thereof, a city attorney shall request and shall receive from the:
  - (1) Division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and
  - (2) Kansas bureau of investigation central repository all criminal history record information concerning such person.
- (k) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not constitute plea bargaining.
- (l) As used in this section, **imprisonment** shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city. ~~(2012 Session Laws of Kansas, Chapter 172, Section 2)~~ (K.S.A. Supp. 8-1025)

**{Editor's Note:** Due to concerns about sentencing issues and cost, the Editor has determined that Second, Third, or Subsequent Refusal to Submit to Alcohol or Drug Test offenses would not be included in this Code. Should a city wish to implement these provisions concerning prosecuting felony level Refusal to Submit to Alcohol or Drug Test offenses in municipal court, a separate ordinance will need to be adopted. }

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### Sec. 30.3 Ignition Interlock Devices; Tampering.

**(pages 53-54) Added the Editors Note.**

- (a) No person shall:
- (1) Tamper with an ignition interlock device, circumvent it or render it inaccurate or inoperative;
  - (2) Request or solicit another to blow into an ignition interlock device, or start a motor vehicle equipped with such device, providing an operable motor vehicle to a person whose driving privileges have been restricted to driving a motor vehicle equipped with such device;
  - (3) Blow into an ignition interlock device, or start a motor vehicle equipped with such device, providing an operable motor vehicle to a person whose driving privileges have been restricted to driving a motor vehicle equipped with such device; or
  - (4) Operate a vehicle not equipped with an ignition interlock device while such person's driving privileges have been restricted to driving a motor vehicle equipped with such device.
- (b) Violation of this section shall be punished by a fine of not more than \$2,500 or by imprisonment for not more than one year or by both such fine and imprisonment. (K.S.A. Supp. 8-1017)

**{Editors Note: K.S.A. 8-1015 (e) seems to provide an exception to K.S.A. 8-1017 (a)(4) as replicated in STO section 30.3 (a)(4) with regard to driving an employer's vehicle. However, there are also exceptions to this exception. Please see K.S.A. 8-1015 for further guidance.}**

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**Sec. 183. Head Lamps**

**(page 133) Deleted language from section (b). Added section (c).**

- (a) Every motorcycle and every motor-driven cycle shall be equipped with at least one head lamp which shall comply with the requirements and limitations of this article.
- (b) Every head lamp upon every motorcycle and motor-driven cycle shall be located at a height of not more than 54 inches nor less than 24 inches to be measured as set forth in subsection (b) of Section 145. ~~(K.S.A. 8-1801)~~
- (c) Any headlamp, required by this section, may be wired with a headlamp modulation system provided the headlamp modulation

system complies with federal standards established by 49 C.F.R. 571.108. (K.S.A. Supp. 8-1801)

**Ref.:** Sec. 35.

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**Sec. 186. Stop Lamps.**

**(page 134) Deleted language from section (b). Added section (c).**

- (a) Every motorcycle and motor-driven cycle shall be equipped with at least one stop lamp meeting the requirements of subsection (a) of Section 161.
- (b) Every motorcycle manufactured after January 1, 1973, shall be equipped with electric turn signals meeting the requirements of subsection (b) of Section 161. Motor-driven cycles may, but need not, be equipped with electric turn signals.
- (c) In addition to the lamps otherwise permitted by this article, a motorcycle may be equipped with lamps on the sides thereof, visible from the side of the motorcycle but not from the front or the rear thereof, which lamps, together with mountings or receptacles, shall be set into depressions or recesses in the body or wheel of the motorcycle and shall not protrude beyond or outside the body or the wheel of the motorcycle. The light source may emit only white, amber or red light without glare. (K.S.A. Supp. 8-1804)

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**Sec. 200. Motor Vehicle Liability Insurance.**

**(pages 143-144) Deleted and added language to section (d). Added language to section (e).**

- (a) Every owner of a motor vehicle shall provide motor vehicle liability insurance coverage in accordance with the Kansas Automobile Injury Reparations Act, K.S.A. 40-3101 et seq., for every motor vehicle owned by such person, unless such motor vehicle is included under an approved self-insurance plan as provided in K.S.A. 40-3104 (f) or is otherwise expressly exempted under the laws of this state.
- (b) An owner of an uninsured motor vehicle shall not permit the operation thereof upon a highway or upon property open to use by

the public, unless such motor vehicle is expressly exempted from said requirements pursuant to the laws of this state.

- (c) No person shall knowingly drive an uninsured motor vehicle upon a highway or upon property open to use by the public, unless such motor vehicle is expressly exempted from said requirements pursuant to the laws of this state.
- (d) (1) Any person operating a motor vehicle upon a highway or upon property open to use by the public shall display, upon demand, evidence of financial security to a law enforcement officer. ~~The law enforcement officer shall issue a citation to any person who fails to display evidence of financial security upon such demand. The law enforcement officer shall attach a copy of the insurance verification form prescribed by the secretary of revenue to the copy of the citation forwarded to the court.~~ Such evidence of financial security which meets the requirements of subsection (e) may be displayed on a cellular phone or any other type of portable electronic device. The law enforcement officer to whom such evidence of financial security is displayed shall view only such evidence of financial responsibility. Such law enforcement officer shall be prohibited from viewing any other content or information stored on such cellular phone or other type of portable electronic device. The law enforcement officer shall issue a citation to any person who fails to display evidence of financial security upon such demand. The law enforcement officer shall attach a copy of the insurance verification form prescribed by the secretary of revenue to the copy of the citation forwarded to the court.

(2) No citation shall be issued to any person for failure to provide proof of financial security when evidence of financial security meeting the standards of subsection (e) is displayed upon demand of a law enforcement officer. Whenever the authenticity of such evidence is questionable, the law enforcement officer may initiate the preparation of the insurance verification form prescribed by the secretary of revenue by recording information from the evidence of financial security displayed. The officer shall immediately forward the form to the department of revenue, and the department shall proceed with verification in the manner prescribed in the following paragraph. Upon return of a form indicating that insurance was not in force on the date indicated on the form, the department shall immediately forward a copy of the form to the law enforcement officer initiating preparation of the form.
- (e) Unless the insurance company subsequently submits an insurance verification form indicating that insurance was not in force, no

person charged with violating subsections (b), (c) or (d) shall be convicted if such person produces in court, within 10 days of the date of arrest or of issuance of the citation, evidence of financial security for the motor vehicle operated, which was valid at the time of arrest or of issuance of the citation. Such evidence of financial security may be produced by displaying such information on a cellular phone or any other type of portable electronic device. Any person to whom such evidence of financial security is displayed on a cellular phone or any other type of portable electronic device shall be prohibited from viewing any other content or information stored on such cellular phone or other type of portable electronic device. For the purpose of this subsection evidence of financial security shall be provided by a policy of motor vehicle liability insurance, an identification card or certificate of insurance issued to the policyholder by the insurer which provides the name of the insurer, the policy number and the effective and expiration dates of the policy, or a certificate of self-insurance signed by the commissioner of insurance.

- (f) Any person violating any provision of this section shall be guilty of a violation of this ordinance and subject to a fine of not less than \$300 nor more than \$1,000 or by imprisonment for a term of not more than six months, or both such fine and imprisonment, except that any person convicted of violating any provision of this section within three years of any such prior conviction shall be guilty of a violation of this ordinance and subject to a fine of not less than \$800 nor more than \$2,500 or by imprisonment for a term not to exceed one year, or both such fine and imprisonment. (K.S.A. Supp. 40-3104)

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE REGULATING TRAFFIC WITHIN THE CORPORATE LIMITS OF THE CITY OF HAYS, KANSAS, INCORPORATING BY REFERENCE "THE STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES," EDITION OF 2013, PROVIDING CERTAIN PENALTIES AND REPEALING ORDINANCE NO. 3854, OF THE CODE OF ORDINANCES OF THE CITY OF HAYS, KANSAS, AS PASSED ON SEPTEMBER 13, 2012, AND AS PUBLISHED ON SEPTEMBER \_\_\_, 2012.

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

Section 1. INCORPORATING STANDARD TRAFFIC ORDINANCE. There is hereby incorporated by reference for the purpose of regulating traffic within the corporate limits of the City of Hays, Kansas, that certain standard traffic ordinance known as "The Standard Traffic Ordinance for Kansas Cities," Edition of 2013, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts of portions as are hereafter omitted, deleted, modified or changed. No fewer than three copies of said Standard Traffic Ordinance shall be marked or stamped "Official Copy as Adopted By Ordinance No. \_\_\_\_\_", with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. The police department, municipal judge and all administrative departments of the city charged with enforcement of the ordinance shall be supplied, at the cost of the city, such number of official copies of such Standard Traffic Ordinance similarly marked, as may be deemed expedient.

Section 2. TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES.

(a) An ordinance traffic infraction is a violation of any section of this ordinance that prescribes or requires the same behavior as that prescribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. 8-2118.

(b) All traffic violations which are included within this ordinance and which are not ordinance traffic infractions, as defined in subsection (a) of this section, shall be considered traffic offenses.

Section 3. PENALTY FOR SCHEDULED FINES. The fine for violation of an ordinance traffic infraction or any other traffic offense for which the municipal judge establishes a fine in a fine schedule shall not be less than -0- nor more than \$2,500.00. A person tried and convicted for violation of an ordinance traffic infraction or other traffic offense for which a fine has been

ORDINANCE NO. \_\_\_\_\_

Page 2

established in a schedule of fines shall pay a fine fixed by the Court not to exceed \$2,500.00.

Section 4. Ordinance No. 3854, as passed on September 13, 2012, and as published on September \_\_\_\_, 2012, is hereby repealed.

Section 5. This ordinance shall take effect and be in force from and after its publication in The Hays Daily News, the official city newspaper.

PASSED by the Commission the \_\_\_\_\_ day of September, 2013.

APPROVED AND SIGNED by the Mayor this \_\_\_\_\_ day of September, 2013.

\_\_\_\_\_  
KENT L. STEWARD  
Mayor

ATTEST:

\_\_\_\_\_  
BRENDA KITCHEN  
City Clerk

# Commission Work Session Agenda

## Memo

**From:** Jesse Rohr, PIE Superintendent

**Work Session:** September 5, 2013

**Subject:** Public Hearing Regarding Vehicle Abatement at  
3312 Country Lane

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

### Summary

The owner of the property located at 3312 Country Lane was cited by certified mail by the Planning, Inspection, and Enforcement Office for allowing an inoperable vehicle to remain on the premises in violation of City Ordinance Chapter 26, Article II, Division 2. Up to this point, all proper notification has been given to the owner of the property. To date, no action has been taken by the owner of the property, however the owner did request a hearing on the matter. Based on the findings of the hearing, the Commission shall make its findings known by approving a resolution and serving the resolution upon the owner. If the vehicle is removed by the city, all costs of abatement will be charged to the owner of the property. Staff recommends approving the resolution allowing the vehicle located at 3312 Country Lane to be abated by the city.

### Background

The vehicle located at 3312 Country Lane is in such a condition which deems it inoperable and not worthy of being driven on the public street. Police Department staff confirmed that this vehicle is not street legal in its current state of disrepair and is considered inoperable by ordinance and by State Statute. The property belongs to Bill Davis. This issue was originally turned in to PIE staff by personnel from the Solid Waste Division.

### Discussion

The owner of the property located at 3312 Country Lane was cited by certified mail by the Planning, Inspection, and Enforcement Office for allowing an inoperable vehicle to remain on the premises in violation of City Ordinance Chapter 26, Article II, Division 2. The Owner, James William Davis (Bill Davis) has requested a hearing on the matter. In fact, he actually requested a hearing before a judge in court, however that is not the process per City Ordinance (see attached request).

Notice was first given to Mr. Davis by mail on June 19, 2013. Failure of the owner to remedy the situation required staff to issue a certified notice to the owner on August 13, 2013. On August 19, 2013, staff received the request from Mr. Davis for a hearing on the matter.

Staff is hereby requesting a hearing to be held at the September 12, 2013 City Commission meeting. Ordinance Sec. 26-48 allows for such a hearing and states “*Upon the conclusion of the hearing, the governing body shall record its determination of the matter by means of adopting a resolution and serving the resolution upon the person...*” Staff has prepared the appropriate resolution for abatement should the Commission wish to act accordingly on the inoperable vehicle.

### **Legal Consideration**

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

### **Financial Consideration**

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

### **Options**

Options include the following:

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

### **Recommendation**

Staff recommends approving this resolution allowing the vehicle located at 3312 Country Lane to be removed from the property.

### **Action Requested**

Approve the resolution to abate the vehicle located on the property at 3312 Country Lane ten days after the approval date.

### **Supporting Documentation**

Letters to Property Owner  
Hearing Request from Owner  
Pictures  
Resolution

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

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

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

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

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

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



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

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

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

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

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

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

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

June 19, 2013

James Davis  
3312 Country Ln  
HAYS, KS67601

RE: 3312 Country Ln  
Hays, KS67601

Dear James Davis :

It has come to our attention that a city code violation(s) exist at **3312 Country Ln, Hays, Kansas** (photo(s) are attached). The violation consists of **Inoperable Vehicles on Private Property**. Ellis County records indicate that you are the owner of the property. The item(s) listed are in violation of City Ordinance, **Sec. 26-40 (Inoperable Vehicles)**.

We request that you please correct the problem within the next 30 days. We sincerely appreciate your cooperation. Inspectors will revisit the site after **7/21/2013**, and it is our hope that corrective action will have been taken. If not, we will need to take further steps to resolve this issue.

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

Sincerely,

Curtis Weber  
Building Inspector/Code Enforcement Officer

Enclosed: Pictures

Cc: File  
Resident (if applicable)

**LD. CRECH, DIRECTOR**  
**JOHN BRAUN, ASST. DIRECTOR**  
1002 VINE ST., HAYS, KS 67601

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

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

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

TEL 785-628-7310  
FFAX  
785-628-7352



ALVIN PEREZ, SUPT.br /> 1002  
VINE ST., HAYS, KS 67601

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

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

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

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

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

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

August 13, 2013

James Davis  
3312 Country Ln  
HAYS, KS 67601

RE: 3312 COUNTRY LN  
Hays, KS 67601

**VIA CERTIFIED MAIL:**

Dear James Davis :

The violation located at 3312 COUNTRY LN, Hays, Kansas still exists (photos attached). We wrote a letter to you on 6/19/2013 requesting that you abate the situation.

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

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

Sincerely,

Curtis Weber  
Building Inspector/Code Enforcer

Enclosed: Pictures

Cc: City Prosecutor  
File



Case Information

**Date** 6/19/2013  
**Case Number** 20130602  
**Telephone**  
**Owner Name** James Davis  
**Owner Address** 3312 Country Ln  
**Violation Address** 3312 Country Ln  
**Violation** Inoperable Vehicles on Private Property  
**Complaint Received From** Solid Waste  
**Status** Certified Sent  
**Violation Due Date** 7/21/2013  
**Certified Received Date**  
**Certified Due Date**  
**Date Case Closed**  
**Complainant Name**  
**Complainant Telephone/Address**  
**Ordinance Number** Sec. 26-40 (Inoperable Vehicles)  
**Assigned To** Curtis Weber

Property Information

Parcel#: 026-138-28-0-20-17-005.00-0  
 DAVIS, JAMES W  
 3312 COUNTRY LN

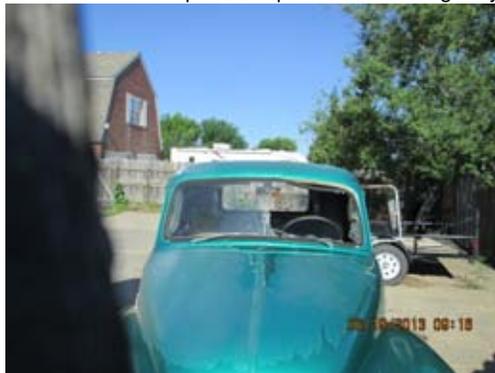
Owner Information

DAVIS, JAMES W  
 3312 COUNTRY LN HAYS, KS 6  
 HAYS, KS 67601

Case History

Date	Type	Description
6/19/2013	Activity	1st Notification Letter: Please remove inoperable vehicle from property, store inside garage or prove that vehicle is in lawful operation upon streets and highways.

6/19/2013	Document
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6/19/2013

Document



6/19/2013

Document



6/19/2013

Letter

1st Letter

7/25/2013

Document



7/25/2013

Document



8/12/2013

Activity

8/12/2013

Letter

Certified Letter: Please remove inoperable vehicle from property, store inside garage or prove that vehicle is in lawful operation upon streets and highways.  
 Certified Form

**From:** [I.D. Creech](#)  
**To:** [Jesse Rohr](#)  
**Subject:** FW: 3312 Country Lane  
**Date:** Monday, August 19, 2013 4:51:07 PM  
**Attachments:** [State Statute - Windshield.doc](#),  
[image001.jpg](#)

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*"Do the right thing - because it IS the right thing to do"*

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**From:** Don Scheibler  
**Sent:** Tuesday, August 13, 2013 6:19 PM  
**To:** I.D. Creech  
**Subject:** 3312 Country Lane

I drove past the residence located at 3312 Country Lane and observed a green pick-up parked in the backyard. I observed that the vehicle had a broken windshield, a broken driver's side window, and a broken rear window. It is my opinion that this vehicle is not road worthy in its current condition. To drive this vehicle on the roadway would be a violation of KSA 8-1741. I have attached a copy of the state statute pertaining to damaged windshields. Please let me know if you have any questions or if I can be of any further assistance.

Thank you,

Don

**Donald L. Scheibler, CPM**  
Chief of Police  
Hays Police Department  
105 West 12th Street  
Hays, Ks 67601  
Office: 785.625.1030  
Cell: 785.623.6909  
Fax: 785.625.1024  
[dscheibler@haysusa.com](mailto:dscheibler@haysusa.com)

RECEIVED

AUG 19 2013

Public Works

Friday, August 16, 2013

City of Hays  
Public Works Department  
Hays, KS. 67601

I am requesting a hearing before an appropriate judge and court re: the enclosed letter I received from your department and Curtis Weber.

Please contact me and advised me as to the time and place of such hearing so that I can make appropriate arrangements with my work schedule.

A handwritten signature in cursive script, appearing to read "Bill Davis".

Bill Davis

**RESOLUTION NO. 2013-**

**A RESOLUTION AUTHORIZING THE CITY OF HAYS OR ITS DESIGNATED AGENT TO ABATE NUISANCE LOCATED ON THE PROPERTY AT 3312 COUNTRY LANE, HAYS, KANSAS.**

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

**WHEREAS**, on June 19, 2013, July 25, 2013, and August 12, 2013, inspections of the property were conducted by the City of Hays, and said inspections determined the inoperable vehicle on the property at 3312 Country Lane was in violation of City Ordinance Chapter 26, Article 2; and

**WHEREAS**, on June 19, 2013, a letter was sent to the owner of the property at 3312 Country Lane, requesting that the owner abate the nuisance by removal of the inoperable vehicles within 30 days; and

**WHEREAS**, on August 13, 2013, a certified letter to the owner of the property at 3312 Country Lane was prepared giving said owner ten days, upon receipt, in which to abate the nuisance; and

**WHEREAS**, on August 19, 2013, the owner of the property at 3312 Country Lane did submit a written request for a public hearing on the matter; and

**WHEREAS**, city Ordinance Sec. 26-48 allows for such a hearing; and

**WHEREAS**, the Governing Body of the City of Hays held such hearing on September 12, 2013 and is required to record its final determination of the matter by means of adopting a resolution; and

**WHEREAS**, the Governing Body of the City of Hays desires that the inoperable vehicle on the property at 3312 Country Lane be abated by the City or its authorized agent.

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

Section 1. That the existence of the inoperable vehicle located at 3312 Country Lane is hereby found to be in violation of Ordinance Chapter 26, Article 2.

Section 2. That the owner of the property located at 3312 Country Lane was given proper notice to abate the nuisance condition located at 3312 Country Lane and has failed to abate the said nuisance.

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

Section 4. That the cost incurred by the City shall be charged against the lot located at 3312 Country Lane as provided in Ordinance Chapter 26, Article 2.

PASSED by the City Commission on the 12<sup>th</sup> day of September, 2013.

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Kent L. Steward, Mayor

ATTEST:

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Brenda Kitchen, City Clerk

# Commission Work Session Agenda

## Memo

**From:** Jesse Rohr, PIE Superintendent

**Work Session:** September 5, 2013

**Subject:** Golden Belt Estates 5<sup>th</sup> Addition Resolution to Establish Benefit District (Danby Lane)

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

### Summary

Western Plains Service Corp. has petitioned the City for Street, Storm Sewer, Water, and Sanitary Sewer Improvements to an area containing 18 lots adjacent to West 45<sup>th</sup> St. within the Golden Belt Estates 5<sup>th</sup> Addition on the street known as Danby Lane. The engineers estimate for total construction costs are \$473,093.40. This project is consistent with past residential developments within the City of Hays. Staff recommends adopting the attached resolution authorizing the improvements in the estimated amount of \$473,093.40.

### Background

This is a continuation of an existing development that has been developing in phases over the last several years. This project follows the plan that has been set forth and approved through the platting process which was recently completed in May of 2013.

### Discussion

Western Plains Service Corp. has petitioned the City for Street, Storm Sewer, Water, and Sanitary Sewer Improvements to an area containing 18 lots adjacent to West 45<sup>th</sup> St. within the Golden Belt Estates 5<sup>th</sup> Addition on a newly platted street named Danby Lane. The engineers estimate for total construction costs is \$473,093.40. There are no over-sizing costs to the City in this project. One street will be constructed along with the associated utilities (water, sanitary sewer, and storm sewer) as specified by the City of Hays Development Policy Infrastructure Guidelines for New Development. This project is consistent with past residential developments within the City of Hays.

### Legal Consideration

Bond Counsel has approved all of the forms and Resolution for this item and there are no other legal concerns.

## **Financial Consideration**

The developer is intending to finance the development project through the creation of a special benefit district. 100% of the costs for this project will be allowed to be special assessed per the agreement dated January 27, 2005 between the City of Hays and Western Plains Service Corp. Per the agreement, the Developer would be allowed to assess 100% of the future costs within the development since they paid 100% of the costs to construct 45<sup>th</sup> St. and associated utilities in 2005. There are no over-sizing costs to the City in this project.

## **Options**

Options include the following:

- Approve the Resolution authorizing the creation of the special benefit district for the Golden Belt Estates 4<sup>th</sup> Addition.
- Do not approve the Resolution.

## **Recommendation**

Staff recommends adopting the attached resolution authorizing the creation of a special benefit district for improvements in the estimated amount of \$473,093.40.

## **Action Requested**

Approve the Resolution authorizing the creation of a special benefit district for infrastructure improvements in the estimated amount of \$473,093.40 for the development of 18 lots within the Golden Belt Estates 5<sup>th</sup> Addition.

## **Supporting Documentation**

Signed Petition  
Map of Benefit District  
Resolution

**PETITION FOR PUBLIC IMPROVEMENTS**

We the undersigned owner(s) of record of property liable for assessment for the following proposed improvements hereby propose that such improvements be made in the manner provided by K.S.A. 12-6a01 *et seq.*, as amended (the "Act").

(a) The proposed improvements are as follows:

The installation of water lines, sanitary sewer lines, and storm sewers along, and the grading, paving, curbing and guttering of Danby Lane

(the "Improvements"), all in the Golden Belt Estates 5<sup>th</sup> Addition to the City of Hays, Kansas.

(b) The estimated or probable cost of the Improvements is \$473,093.40 to be increased at the pro-rata rate of ½ percent per month from and after the date of adoption of the resolution determining the advisability of the Improvements, plus cost of issuance and plus costs of interest on any temporary financing (the "Improvement Costs").

(c) The extent of the proposed Improvement District to be assessed is as indicated on the attached drawing and is described as follows:

**Lot One (1) thru Lot Eighteen (18), Block Two (2);  
All in Golden Belt Estates 5<sup>th</sup> Addition to the City of Hays  
(the "Improvement District")**

(d) The proposed method of assessment to the Improvement District is as follows:

Equally on an individual per lot basis being computed without regard to lot size, each lot being assessed 1/18<sup>th</sup> of the total project costs.

(e) The apportionment of the total actual Improvement Costs shall be as follows:

One hundred percent (100%) to the Improvement District; except, provided that the cost of any additional required pavement width, additional required pavement thickness, intersections, required oversized water, sewer, and storm sewer lines, in connection with any of Improvement are to be apportioned one hundred percent (100%) to the city-at-large, as provided within "Infrastructure Guidelines for New Development" adopted by the Governing Body of the City of Hays, Kansas, October 22, 2009.

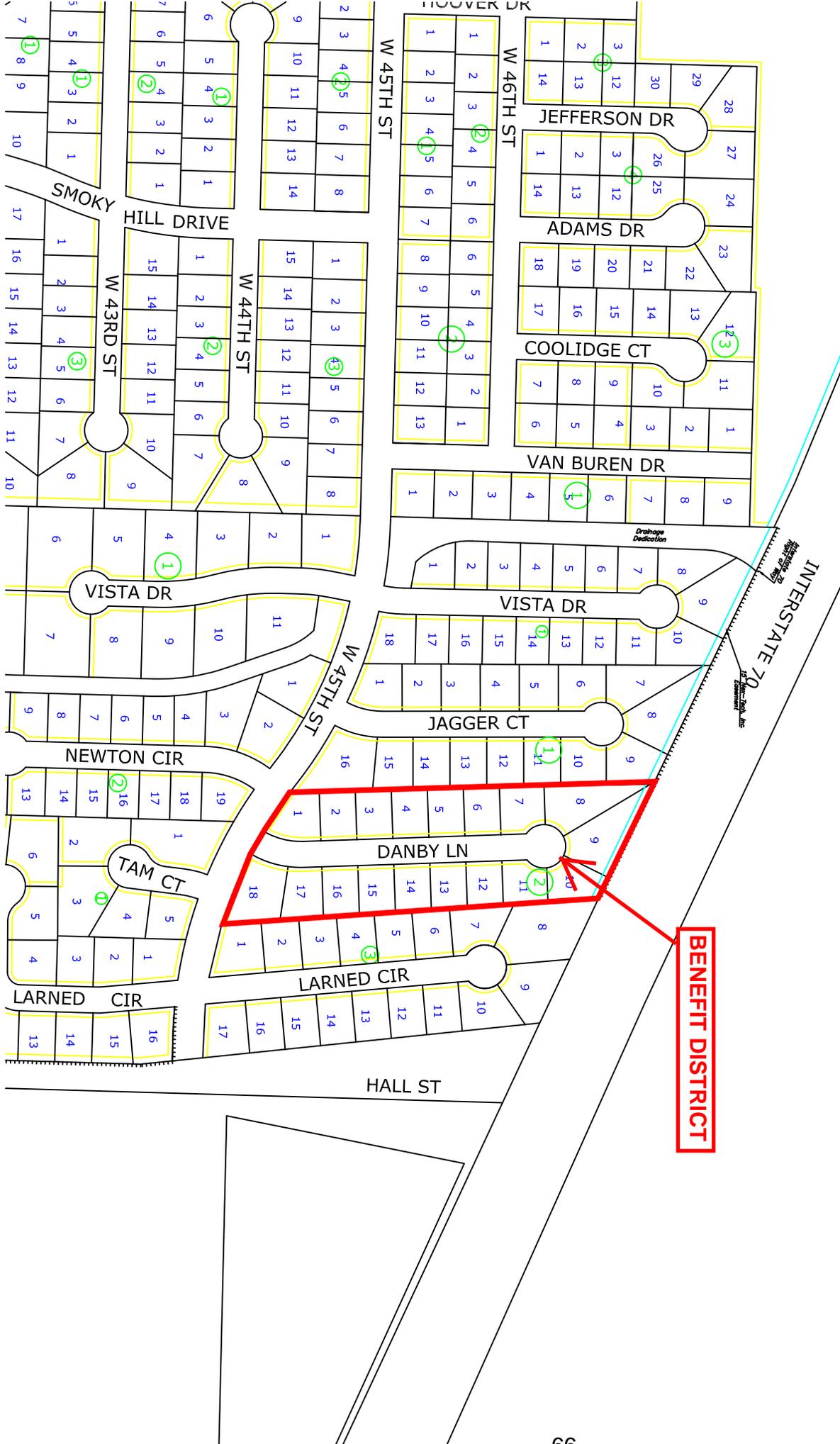
(f) We further propose that the Improvements be made without notice and hearing as required by the Act.

**NOTICE TO PETITION SIGNERS**

No name may be withdrawn from this petition after the Governing Body commences consideration of the petition or later than seven (7) days after this petition has been filed with the City Clerk, whichever occurs first.

Respectfully submitted,

SIGNATURE	ADDRESS	DATE/TIME OF SIGNING	PROPERTY OWNED WITHIN PROPOSED IMPROVEMENT DISTRICT
<i>James Ryland President Western Plains Service Corporation, Inc.</i>	<i>PO Box 931</i>	<i>8-2-2013 3:15 pm</i>	<i>YES</i>



**BENEFIT DISTRICT**

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION DETERMINING THE ADVISABILITY OF THE MAKING OF CERTAIN INTERNAL IMPROVEMENTS IN THE CITY OF HAYS, KANSAS, MAKING CERTAIN FINDINGS WITH RESPECT THERETO; AND AUTHORIZING AND PROVIDING FOR THE MAKING OF THE IMPROVEMENTS IN ACCORDANCE WITH SUCH FINDINGS (WATER, SANITARY SEWER, STORM SEWER AND STREET IMPROVEMENTS/GOLDEN BELT ESTATES 5<sup>TH</sup> ADDITION).**

**WHEREAS**, a petition (the "Petition") was filed on August 2, 2013 with the City Clerk of the City of Hays, Kansas, (the "City"), proposing certain internal improvements described herein; and said petition sets forth: (a) the general nature of the proposed improvements, (b) the estimated or probable cost of the proposed improvements; (c) the extent of the proposed improvement; (d) the proposed method of assessment; (e) the proposed apportionment of the cost between the improvement district and the City-at-large; and (f) a request that such improvements be made without notice and hearing as required by K.S.A. 12-6a04 (the "Act"); and

**WHEREAS**, the Governing Body of the City hereby finds and determines that said petition is sufficient.

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

**SECTION 1. Findings of Advisability.** The Governing Body hereby finds and determines that it is advisable to make the following improvements:

- (a) General nature of the improvements: the installation of water lines, sewer lines, storm sewer and grading, paving, curbing and guttering of Danby Lane (the "Improvements"). All construction shall be done in accordance with the City of Hays Standards.
- (b) The estimated or probable cost of the Improvements is: \$473,093.40 to be increased at the pro-rata rate of ½ percent per month from and after the date of adoption of this Resolution, plus costs of issuance and plus costs of interest on any temporary financing (the "Improvement Cost").
- (c) The extent of the improvement district (the "Improvement District") to be assessed for the cost of the improvements is:
  - Lot One (1) thru Lot Eighteen (18), Block Two (2); all in Golden Belt Estates 5<sup>th</sup> Addition to the City of Hays, Ellis County, Kansas.
- (d) The method of assessment is: equally per lot without regard to lot size, each lot being assessed 1/18<sup>th</sup> of the total project costs.
- (e) The apportionment of the cost of the improvements between the Improvement District and the City-at-large shall be as follows:

One hundred percent (100%) of the total actual cost of the improvements shall be apportioned to the Improvement District, except that the City-at-large shall pay 100% of the additional costs of any required pavement width, additional required pavement thickness and intersections, and required oversized water, sewer and storm sewer lines as provided with "Infrastructure Guidelines for New Development" adopted by the Governing Body of the City of Hays, Kansas, October 22, 2009. The cost of such additional street improvements or oversized water, sewer or storm sewer lines shall not exceed 95% of the total Improvement Costs.

**SECTION 2. Authorization of Improvements.** The above said improvements are hereby authorized and ordered to be made in accordance with the findings of the Governing Body of the City as set forth in Section 1 of this Resolution.

**SECTION 3. Intent to Reimburse.** The City expects to make capital expenditures on and after the date of this Resolution in connection with the above described improvements, and intends to reimburse itself for such expenditures with the proceeds of one or more series of general obligation bonds and temporary notes of the City in the maximum principal amount of \$473,093.40 increased by ½% per month from and after the date of adoption of this resolution, plus cost of issuance and plus costs of interest on any temporary financing.

**SECTION 4. Effective Date.** The Resolution shall be effective upon adoption. This Resolution shall be published one time in the *Hays Daily News*, the official City newspaper, and shall also be filed of record in the Office of the Register of Deeds of Ellis County, Kansas.

**ADOPTED AND APPROVED** by the Governing Body of the City of Hays, on September \_\_\_\_\_, 2013.

(Seal)

\_\_\_\_\_  
KENT L. STEWARD  
MAYOR

ATTEST:

\_\_\_\_\_  
BRENDA KITCHEN  
CITY CLERK

# Commission Work Session Agenda

## Memo

**From:** Jesse Rohr, PIE Superintendent

**Work Session:** September 5, 2013

**Subject:** Golden Belt Estates 5<sup>th</sup> Addition Engineering Services Agreement (Danby Lane)

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

### Summary

Western Plains Service Corporation has petitioned the City for Street, Storm Sewer, Water, and Sanitary Sewer Improvements to an area containing 18 lots within Block 2 of the Golden Belt Estates 5<sup>th</sup> Addition. The resolution accepting the petition is moving forward under a separate agenda item. Ruder Engineering and Surveying, L.L.C. has now prepared a contract for engineering services to include engineering design, contractor solicitation, construction engineering, and warranty inspection. The contract is for a not-to-exceed amount of \$28,200. Staff recommends that the commission authorize the Mayor to sign the Engineering Services Agreement with Ruder Engineering & Surveying, LLC for professional services related to improvements within Block 2 of the Golden Belt Estates 5<sup>th</sup> Addition in an amount not to exceed \$28,200.

### Background

This particular plat was approved in May of 2013. There are 18 lots slated for single-family residential development.

### Discussion

Western Plains Service Corporation has petitioned the City for Street, Storm Sewer, Water, and Sanitary Sewer Improvements to an area containing 18 lots within Block 2 of the Golden Belt Estates 5<sup>th</sup> Addition. The resolution accepting the petition is moving forward under a separate agenda item. Ruder Engineering and Surveying, L.L.C. has prepared a contract for engineering services to include engineering design, contractor solicitation, construction engineering, and warranty inspection. The contract is for a not-to-exceed amount of \$28,200.

## **Legal Consideration**

The transaction is a pass-through procedure for the City and there are no known legal obstacles to proceeding as recommended by City Staff.

## **Options**

Options include the following:

- Approve the Engineering Services Agreement
- Do not approve the Agreement

## **Recommendation**

Staff recommends that the commission authorize the Mayor to sign the Engineering Services Agreement with Ruder Engineering & Surveying, LLC for professional services related to improvements to Block 2 of the Golden Belt Estates 5<sup>th</sup> Addition in an amount not to exceed \$28,200.

## **Action Requested**

Approve the Engineering Services Agreement with Ruder Engineering & Surveying, LLC for an amount not to exceed \$28,200 for the development of Block 2, Golden Belt Estates 5<sup>th</sup> Addition.

## **Supporting Documentation**

Engineering Services Agreement

# ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT, entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the City of Hays, Kansas, party of the first part, hereinafter referred to as the "City", and Western Plains Service Corporation, party of the second part, hereinafter referred to as the "Developer" and the firm of Ruder Engineering & Surveying, LLC, party of the third part, hereinafter referred to as the "Consultant".

## WITNESSETH:

That the City and the Developer plan to complete improvements to and within the Golden Belt Estates Fifth Addition to the City of Hays. The improvements include the sanitary sewer lines, water lines and street construction needed to serve the lots on Danby Lane in said Addition.

These improvements will be hereinafter referred to as the "IMPROVEMENT".

That the City and the Developer require professional engineering services to assist them in implementing the IMPROVEMENT.

That the City and the Developer have selected Ruder Engineering & Surveying, LLC to perform these services;

NOW, THEREFORE, in consideration of these premises and the mutual covenants herein contained, the Parties hereto agree as follows:

## ARTICLE I SCOPE OF SERVICES

Ruder Engineering & Surveying, LLC shall be responsible for engineering services required by the various portions of the "IMPROVEMENT". The services required on the "IMPROVEMENT" are described as follows:

### *Engineering Design Phase:*

1. Perform field surveys to collect pertinent topographic and engineering data necessary to complete the design of the water lines, sewer lines and streets as listed above.
2. Prepare bid and construction documents in sufficient detail, using City's standards, where applicable, to allow competitive bids to be received. All portions of the project shall be included in the same set of the bid and construction documents.
3. Review documents and project budget and perform a field check of the project with City Staff and the Developer.

4. Prepare "Engineers Estimate of Probable Cost" to be used in evaluating bids.
5. Assist in obtaining necessary approvals and permits from KDHE.
6. Design a complete Stormwater Pollution Prevention Plan in accordance with KDHE General Construction Stormwater Permit. The Plan shall require that the contractor for the Improvements, shall maintain the sediment and erosion controls during the construction of the Improvements.

***Contractor Solicitation Phase:***

1. Assist the City and the Developer in soliciting interest from contractors by:
  - a. Preparing a Notice to Contractors, which can be published (at the City's expense) in appropriate newspapers.
  - b. Mailing the Notice to Contractors to approved contractors.
2. Provide bid documents to interested contractors and plan rooms.
3. Address contractor questions and issue appropriate addenda during the bid preparation period.
4. Attend the bid opening, tabulate the submitted bids, analyze the bids and make recommendations to the City and the Developer regarding award of the construction contracts.
5. Prepare contract documents and distribute for execution. Collect fully executed documents and distribute to the appropriate parties.

***Construction Engineering Phase:***

1. Conduct a pre-construction conference.
2. Review all shop drawings and submittals.
3. Review contractor schedules.
4. Provide on-site inspection to maintain compliance with the construction and contract documents.
5. Review and submit periodic Contractor pay estimates to the City and the Developer for payment.
6. Prepare change orders as necessary.
7. Conduct a final inspection of every part of the work prior to acceptance of the work by the City and the Developer.
8. Prepare record drawings.

9. Inspect stormwater controls in accordance with a schedule as listed on the Stormwater Pollution Prevention Plan and ensure that the Contractor maintains the erosion and sediment controls.

***Warranty Inspection Phase:***

1. Conduct a warranty inspection approximately one year from the date of acceptance of the project and monitor repair of any deficient items.

**ARTICLE II  
TIME SCHEDULE**

The services listed in the above scope of services shall be completed as shown on the following schedule:

<b>Task</b>	<b>Proposed Date of Completion</b>
Notice to Proceed	<u>8-22-13</u>
Review Plans	<u>9-23-13</u>
Final Review Due	<u>9-30-13</u>
Send out for bids	<u>10-7-13</u>
Pre-bid meeting	<u>10-16-13</u>
Open bids	<u>10-23-13</u>
City Work Session	<u>11-7-13</u>
Award bids	<u>11-14-13</u>
Construction Engineering Phase	<u>80</u> Working Days
Warranty Inspection	<u>20</u> Working Days

**ARTICLE III  
COMPENSATION**

**Water Line:**

Engineering Design Phase	Not-to-Exceed	\$2,300.00	
Contractor Solicitation Phase	Not-to-Exceed	\$500.00	
Construction Engineering Phase	Not-to-Exceed	\$2,300.00	
Warranty Inspection	Not-to-Exceed	<u>\$300.00</u>	
		<i>Water Line Subtotal</i>	<b>\$5,400.00</b>

**Sewer Line:**

Engineering Design Phase	Not-to-Exceed	\$3,800.00	
Contractor Solicitation Phase	Not-to-Exceed	\$500.00	
Construction Engineering Phase	Not-to-Exceed	\$3,800.00	
Warranty Inspection	Not-to-Exceed	<u>\$300.00</u>	
		<i>Sewer Line Subtotal</i>	<b>\$8,400.00</b>

**Streets:**

Engineering Design Phase	Not-to-Exceed	\$6,800.00	
Contractor Solicitation Phase	Not-to-Exceed	\$500.00	
Construction Engineering Phase	Not-to-Exceed	\$6,800.00	
Warranty Inspection	Not-to-Exceed	<u>\$300.00</u>	
		<i>Streets Subtotal</i>	<b>\$14,400.00</b>

**GRAND TOTAL NOT-TO-EXCEED            \$28,200.00**

The Consultant shall submit an invoice to the City on a monthly basis. The invoice shall show the percentage complete for each phase as shown above. The sum of all invoices submitted for each phase shall not exceed the amount listed above for the applicable phase.

The Consultant will submit invoices within 20 days after the last day of each month during which work on the Project has been in progress. The City will pay the Consultant within thirty days after receipt of the Consultant's statement.

**ARTICLE IV  
MISCELLANEOUS PROVISIONS**

1. **Change in Scope.** The scope of the work described in Article I, Scope of Services shall be subject to modification or supplement upon the written agreement of the contracting parties. Any such modifications in the scope of the work shall be incorporated by supplemental agreement. At the time of such modification of work, equitable adjustments will be made by the parties in the time of performance and the compensation to be paid on the project.

2. **Conferences.** Representatives of the City and the Developer may arrange for such conference and visits as may be deemed necessary or desirable during the progress of the work.

3. **Termination.** The City and the Developer reserve the right to terminate this Agreement at any time, upon written notice, in the event the services of the Consultant are unsatisfactory, or upon failure to prosecute the work with due diligence or to complete the work within the time limits specified; provided, however, that in any such case, the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this Agreement.

4. **Binding Upon Successors.** This Agreement shall be binding upon the undersigned parties, their successors, partners, assigns, and legal representatives.

5. **Liability and Indemnification.**

a. **General.** Having considered the potential liabilities that may exist during performance of the Services, the benefits of the Project, and the Consultant's fee for the Services, and in consideration of the promises contained in this Agreement, the Agreement Parties agree to allocate and limit such liabilities in accordance with this Article.

b. **Indemnification.** The Agreement Parties each agree to defend, indemnify, and hold harmless each other, its agents and employees, from and against legal liability for all claims, losses, damages and expenses to the extent such claims, losses, damages or expenses are caused by its negligent acts, errors or omissions. In the event such claims, losses, damages or expenses are caused by the joint or concurrent negligence of the Agreement Parties, they shall be borne by each party in proportion to its own negligence.

c. **Employee Claims.** Each party of the Agreement shall indemnify the other parties against legal liability for damages arising out of claims by said party's employees.

d. **Survival.** Upon completion of all Services, obligations and duties provided for in this Agreement, or if this Agreement is terminated for any reason, the terms and conditions of this article shall survive.

6. **Opinions of Cost and Schedule.** Since the Consultant has no control over the cost of labor, materials or equipment furnished by others, or over the resources provided by others to meet Project schedules, the Consultant's opinion of probable costs and of Project schedules shall be made on the basis of experience and qualifications as a professional engineer. The Consultant does not guarantee that proposals, bids, or actual Project costs will not vary from the Consultant's opinion of probable costs or that actual schedules will not vary from the Consultant's projected schedules.

7. **Reuse of Documents.** All documents, including, but not limited to, drawings, specifications, and computer software prepared by the Consultant pursuant to this Agreement are instruments of service in respect to a Project. They are not intended or represented to be suitable for reuse by the City or others on extensions of a project or on any other project. Any reuse without prior written verification or adaptation by the Consultant for the specific purpose intended will be at the City's

sole risk and without liability or legal exposure to the Consultant. The City shall defend, indemnify, and hold harmless the Consultant against all claims, losses, damages, injuries, and expenses, including attorneys' fees, arising out of or resulting from such reuse. Any verification or adaptation of documents will entitle the Consultant to additional compensation at rates to be agreed upon by the involved parties.

**8. Ownership of Documents and Intellectual Property.** Except as otherwise provided herein, engineering documents, drawings, and specifications prepared by the Consultant as part of the Services shall become the property of the Developer, provided, however, that the Consultant shall have the unrestricted right to their use. The Consultant shall retain its rights in its standard drawing details, specifications, databases, computer software and other proprietary property. Rights to intellectual property developed, utilized or modified in the performance of the Services shall be the joint property of the Consultant and the Developer, provided that the Consultant shall have the right to use said property in its ordinary course of business.

IN WITNESS WHEREOF, said parties have caused this Agreement to be signed by their duly authorized officers in four counterparts, each of which shall be deemed an original, on the day and year first written.

ATTEST:

CITY OF HAYS, KANSAS

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

\_\_\_\_\_  
Mayor

ATTEST:

WESTERN PLAINS SERVICE CORPORATION

\_\_\_\_\_  
*Chris Deuling*

By

\_\_\_\_\_  
*Clayton Whit*

Title

\_\_\_\_\_  
*President*

ATTEST:

RUDER ENGINEERING & SURVEYING, LLC

\_\_\_\_\_  
*Chris Deuling*

\_\_\_\_\_  
*Harvey Ruder*  
Harvey Ruder, PE, RLS

# Commission Work Session Agenda

## Memo

**From:** Nicholas Willis, Stormwater Superintendent

**Work Session:** September 5, 2013

**Subject:** Levee Improvements – Engineering Design Service Agreement

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

### Summary

This proposed engineering services contract is for design services for repairs and upgrades addressing most of the concerns detailed in Wilson & Co.'s Levee Safety Inspection Engineering Report from October 2012. Making these repairs and improvements will improve the safety and function of the levee and help the City to remain in a federal flood control insurance program known as Public Law 84-99. Staff recommends the City Commission direct the City Manager to execute a contract with Wilson & Co. for levee engineering services in the amount of \$49,500.

### Background

Wilson & Co. was hired in 2012 to perform a safety inspection of the Hays levee system. In their inspection, they found several items needing to be addressed as detailed during Wilson & Co.'s presentation to the City Commission at the May 2, 2013 Work Session. This engineering services agreement provides for surveying, engineering design and construction documents for repairs or improvements to most of the identified problems.

The levee is also part of a federal insurance program called Public Law 84-99. Participation in this program is at no direct cost to the City of Hays and allows for federal reimbursement should the levee be damaged during a flood event. Repairs to damages caused by floods are made to the system with 80% of the costs picked up by the federal government. To maintain eligibility in this program, the levee is periodically inspected by the U.S. Army Corps of Engineers. Hays' latest rating is "minimally acceptable," the lowest rating in which a levee sponsor can remain in the program. Items such as poor sod cover, tree encroachment, minor erosion, a cracked swimming pool drain pipe, silt deposits and erosion near drainages have led to this rating. Most of the repairs required as part of this program, with the exception of a full design to rectify the swimming pool drain, are included in this contract.

## **Discussion**

In 2012 Wilson & Co. performed a safety inspection of the levee system in Hays. They found several items of concern, but in general found the levee to be well maintained. This contract provides for engineering design services to remedy most of these items.

Permit fees are not included as part of this contract. Several permits will be required for floodplain fill and environmental reasons. These fees are not expected to be very costly. Union Pacific generally requires fees for work in their rights-of-way, these fees are often much more expensive than one finds from governmental regulatory agencies.

Video inspection services for the swimming pool drain and Gustad Drive levee penetrations are not included in the cost of this contract. Due to standing water, a third party must be used at the Gustad location and may be required for the swimming pool inspection, depending upon water levels. Depending upon findings of the video inspections, contract addendums may be required for design work in these locations.

The engineering fees for survey are discounted in anticipation of combining efforts for the design of the Levee Trail. Should Wilson Company not be awarded the Levee Trail Design, the 49,500 fee for design of the Levee Improvements would increase.

## **Legal Consideration**

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

## **Financial Consideration**

The engineering services agreement and surveying totals \$49,500. This is to be paid from the Stormwater Utility project line item. Flood control improvements were budgeted for 2013 and sufficient funds are available for this design work. Any needed contract addendums, as discussed, will come from this same funding source.

## **Options**

Options which exist are as follows:

1. Direct the City Manager to execute this contract.
2. Reject the contract.
3. Provide further direction.

## **Recommendation**

Staff recommends the City Commission direct the City Manager to execute a contract with Wilson & Co. for levee engineering services in the amount of \$49,500.

## **Action Requested**

Direct the City Manager to execute a contract with Wilson & Co. for levee engineering services in the amount of \$49,500 to be funded out of the Stormwater Utility's Project Line Item.

## **Supporting Documentation**

Agreement for Professional Engineering Services with Wilson & Co.

AGREEMENT  
FOR  
PROFESSIONAL ENGINEERING SERVICES

THIS IS AN AGREEMENT, made as of \_\_\_\_\_, 2013, between the City of Hays, Kansas (CITY) and Wilson & Company, Inc., Engineers & Architects (ENGINEER). ENGINEER shall provide to CITY Profession Engineering Services for the **Hays (Big Creek) Levee Repairs** project. ENGINEER shall design and develop construction documents necessary to construct repairs to the Big Creek Levee System as outlined in the **Hays Levee Safety Inspection Report**, dated Novemeber 2012. The levee repairs shall be designed in accordance with current accepted Engineering Standards and Practices for levees, generally established by USACE. The limits of the levee system included in this project are illustrated in Figure A-1 of this agreement.

The purpose of this project is to address the levee system deficiencies identified in the 2012 Levee Safety Inspection Report. This project does not include updated Hydrologic, Hydraulic or Geotechnical Analysis, therefore, the actual level of protection provided by this levee system is unknown. Based on the Current Effective FEMA Flood Insurance Study and previous studies completed by the City, the level of protection provided by the levee system in 2004 was less than the 100-yr interval storm event with no freeboard.

**SECTION 1 - BASIC SERVICES OF ENGINEER**

ENGINEER shall provide the Services described in Attachment A, Scope of Services.

**SECTION 2 - ADDITIONAL SERVICES OF ENGINEER**

**2.1. Services Requiring Authorization in Advance.**

If authorized in writing by the CITY, the ENGINEER shall furnish or obtain from others Additional Services of the types listed in paragraphs 2.1.1 through 2.1.4, inclusive. These services are not included as part of Basic Services. These Additional Services will be paid for by the CITY as indicated in Section 5.

2.1.1. Services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, CITY's schedule, and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond ENGINEER's control.

2.1.2. Furnishing services of independent professional associates and consultants for other than Basic Services for customary civil engineering, surveying, and geotechnical design; and providing data or services when the CITY employs the ENGINEER to provide such data or services in lieu of furnishing the same.

2.1.3. Providing any engineering services other than Basic Services included in Section 1.

2.1.4. Additional services in connection with the Project, including services which are to be furnished by the CITY in accordance with Section 3, and services not otherwise provided for in this Agreement.

**2.2. Required Additional Services.** Additional services may include design services for needed improvements determined during the Preliminary Engineering Studies completed in this project (Attachment III, scope item III). If additional design services are requested by the CITY, they will be completed under a supplemental agreement.

### **SECTION 3 - CITY'S RESPONSIBILITIES**

CITY shall do the following in a timely manner so as not to delay the services of ENGINEER:

- 3.1. Designate a person to act as CITY's representative during the project.
- 3.2. Provide all pertinent requested data to ENGINEER from City records, as described in Attachment 1.
- 3.3. Review submittals and provide feedback to ENGINEER as necessary to be complete task items included in this agreement.
- 3.4. Provide access to all facilities as necessary to complete the task items in this contract.
- 3.5. Bear all costs incident to compliance with the requirements of this Section 3.

### **SECTION 4 - PERIODS OF SERVICE**

- 4.1. The provisions of this Section 4 and the various rates of compensation for ENGINEER's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project. ENGINEER's obligation to render services hereunder will extend for a period which may reasonably be required. If specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided and if such dates are exceeded through no fault of ENGINEER, all rates, measures and amounts of compensation provided herein shall be subject to equitable adjustment.
- 4.2. ENGINEER shall complete services described per **Attachment II, Project Schedule**, following execution of this agreement and Notice to Proceed.

ENGINEER shall not be held responsible for delays by others, uncontrollable by and at no fault of the ENGINEER, such as by UPRR, USACE and KSDWR.

## **SECTION 5 - PAYMENTS TO ENGINEER, COST PLUS METHOD OF PAYMENT**

### **5.1. Methods of Payment for Services and Expenses of ENGINEER.**

5.1.1. For Basic Services. CITY shall pay ENGINEER for Basic Services rendered under SECTION I on cost plus basis as detailed in Attachment III.

#### Cost Plus

Payments for those services outlined in SECTION I of this Agreement are to be based on direct labor cost times the current labor multiplier, plus reimbursable direct expenses. The labor multiplier includes overhead (currently 1.831) and profit (12%), and is currently 3.171. The labor multiplier is subject to review and change annually, based on changes in overhead rates. Charges for services and expenses incurred under SECTION I will be based on the rates and charges in effect at the time services are performed and expenses are incurred.

The maximum Cost Plus fee of \$49,500 shall not be exceeded without prior written approval from CITY. Supporting Fee Data is included as Attachment 2.

- 5.1.2. If ENGINEER's Scope of Services is revised, under Section 2, the maximum amount of Cost Plus Fee payable to ENGINEER shall be revised accordingly.
- 5.1.3. ENGINEER may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by the CITY.

### **5.2. Other Provisions Concerning Payments.**

5.2.1. In the event of termination by CITY under paragraph 7.1 upon the completion of any phase of the Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by CITY during any phase of the Basic Services, ENGINEER will be paid for services rendered during that phase on the basis of ENGINEER's completion percentage. In the event of any such termination, ENGINEER will be paid for all unpaid Additional Services.

## **SECTION 6 - OPINIONS OF COST**

### **6.1. Opinions of Cost.**

6.1.1. Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, ENGINEER's opinion of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or

actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by ENGINEER. If prior to the Bidding or Negotiating Phase, CITY wishes greater assurance as to Total Project or Construction Costs, CITY shall employ an independent cost estimator.

## **SECTION 7 - GENERAL CONSIDERATION**

### **7.1. Termination.**

7.1.1. The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

### **7.2. Reuse of Documents.**

7.2.1. All documents prepared or furnished by ENGINEER (and ENGINEER's independent professional associates and consultants) pursuant to this Agreement are instruments of service in respect of the Project and ENGINEER shall retain an ownership and property interest therein whether or not the Project is completed. CITY may make and retain copies for information and reference in connection with the use and occupancy of the Project by CITY and others; however, such documents are not intended or represented to be suitable for reuse by CITY or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at CITY's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's independent professional associates or consultants, and CITY shall indemnify and hold harmless ENGINEER and ENGINEER's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by CITY and ENGINEER.

### **7.3. Insurance.**

#### **7.3.1. Commercial General Liability**

The ENGINEER shall provide public liability insurance coverage in an amount no less than \$500,000 covering the liability of the ENGINEER on an occurrence basis. The insurer must be acceptable to the CITY.

#### **7.3.2. Automobile Liability**

The ENGINEER shall provide coverage protecting the ENGINEER against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle. Required minimum limits: \$500,000 each accident, or a combined total of \$1,000,000.

#### **7.3.3. Workers Compensation**

Before beginning work, the ENGINEER shall furnish to the CITY satisfactory proof that he has taken out, for the period covered by the work under this contract, full workers' compensation coverage as required by state law for all persons who he may employ directly in carrying out the

work contemplated under this contract, and shall hold the CITY free and harmless for all personal injuries of all persons who the ENGINEER may employ directly.

#### 7.3.4. Professional Liability - Errors and Omissions

The ENGINEER shall provide Architects or Engineers Professional Liability Insurance with limits not less than \$1,000,000, covering the liability of the ENGINEER. The insurer must be acceptable to the CITY. In the event coverage provided is claims made coverage, the insurance shall be maintained for a period of not less than three (3) years after completion of the contract or in lieu thereof purchase of tail coverage (extended reporting period) under which the CITY shall be afforded protection.

#### 7.3.5. Certificate(s) of Insurance

Certificate(s) of Insurance acceptable to the CITY shall be filed with the CITY at the time the contract between the CITY and the ENGINEER is executed, if requested by CITY. These certificates shall contain a provisions that coverage that is afforded under the policies will not be cancelled until at least thirty (30) days prior written notice has been given to the CITY and acknowledged.

#### 7.3.6. Notice of Claim

The ENGINEER, upon receipt of notice of any claim in excess of \$1,000 in connection with this contract shall promptly notify the CITY, providing full details thereof, including an estimate of the amount or loss of liability.

#### 7.3.7 Indemnification Clause

The ENGINEER agrees to indemnify and save harmless the CITY, its officials, servants, officers, directors and employees from and against all expenses and judgments for personal injury or death or damage to property where, and to the extent caused by the ENGINEER's negligent acts, errors or omissions.

### **7.4. Controlling Law.**

7.4.1. This Agreement is to be governed by the law of the State of Kansas.

### **7.5. Successors and Assigns.**

7.5.1. CITY and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of CITY and ENGINEER (and to the extent permitted by paragraph 7.5.2 the assigns of CITY and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.5.2. Neither CITY nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment

will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent professional associates and consultants as ENGINEER may deem appropriate to assist in the performance of services hereunder.

7.5.3. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than CITY and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CITY and ENGINEER and not for the benefit of any other party.

This Agreement, consisting of pages 1 to 6, Attachment I (4 pages), Figures A-1 through A-7 (7 pages), Attachment II (1 page), and Attachment III (3 pages) for a total of 21 pages, inclusive, constitutes the entire agreement between CITY and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

CITY:  
City of Hays, Kansas  
1002 Vine Street  
Hays, KS 67601

ENGINEER:  
Wilson & Company, Inc.,  
Engineers & Architects  
800 East 101<sup>st</sup> Terrace, Suite 200  
Kansas City, MO 64131

By: \_\_\_\_\_

\_\_\_\_\_  
Douglas G. Danaher, PE, CFM  
Operation Manager  
[doug.danaher@wilsonco.com](mailto:doug.danaher@wilsonco.com)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title and Date

\_\_\_\_\_  
Date

By: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title and Date

## ATTACHMENT I

### PROFESSIONAL ENGINEERING

#### SCOPE OF SERVICES

##### **BASE SERVICES – Hays (Big Creek) Levee Repairs**

Consultant shall prepare construction documents (plan drawings, technical specifications and cost estimate) necessary for the City to advertise and let a construction project for repairs for the Hays (Big Creek) Levee.

The City plans to utilize funds from the City's Stormwater Utility to fund this project, therefore, City of Hays Design Criteria apply. This scope provides design services and production of construction documents necessary for improvements to address deficiencies based on current physical condition only (opposed to design deficiencies). USACE design criteria and processes will be referenced during design to address individual components with deficiencies detracting from the level of protection provided by the levee system. This project does not include updated Hydrologic, Hydraulic or Geotechnical Analysis, therefore, the actual level of protection provided by this levee system is unknown. Based on the Current Effective FEMA Flood Insurance Study and previous studies completed by the City, the level of protection provided by the levee system in 2004 was less than the 100-yr interval storm event with no freeboard.

Consultant shall provide construction documents sufficient for the improvements located at the six (6) locations as illustrated in Figures A-1 through A-7. Improvements to be included in the construction documents include:

1. Concrete Sill for the UPRR crossing closure
2. Specifications to clean, prepare and paint 2 Sluice Gates (Gustad and Wiest) and 1 Flap Gate (Wiest)
3. Clearing, Grading and Riprap improvements adjacent to three (3) structures (Wiest Inlet, S Ast St Outlet, S Main St Outlet)
4. Install Headwall and Flapgate to three (3) outfall conduits (S Ash St, S Main St and S Pine St)
5. Remove debris from two (2) conduits (Gustad RCB and Gustad RCP)
6. Install temporary coffer, pump ponded water to accommodate video inspection of Gustad RCP conduit
7. Install manholes (2) and RCP necessary to re-route the S Pine St outfall to a stable bank on Big Creek.
8. Fill with flowable fill two (2) abandoned conduits (old S Main St outfall and abandoned portion of S Pine St outfall)
9. Tree removal locations and details throughout the levee system within 15 feet of toe of levee. Some large trees may require levee reconstruction to fill void of root ball.

Consultant shall coordinate with City to accomplish:

1. Video Inspection of two (2) conduits (Gustad RCP and swimming pool drain VCP)
2. CIPP Lining of the S Ash St 24" RCP Conduit

Consultant shall complete preliminary study to determine improvements necessary for:

1. Abandoned S Main St outfall. Determine how conduit was abandoned and fill will flowable fill if not already completed.
2. Swimming pool drain outfall. Determine current functionality. It's understood this drain is still in use. Complete a video inspection of the drain and determine appropriate action, either repair outlet end of drain or, reroute the drain to the manhole near Main St and abandon (fill with flowable fill) the portion of the drain south of the valve just north of the levee.

3. Provide drawings documenting proper operation of the UPRR crossing closure and the S Main St crossing closure.

**I. Engineering services shall include:**

- a. Site Investigation: Consultant shall visit the sites with two (2) representatives, including one Sr Civil Engineer, to document the following items:
  - i. Location of each tree to be removed utilizing GPS coordinates in Kansas State Plane North Coordinate system. Each tree to be removed will be marked with orange paint.
  - ii. Coordinate with City to gain access into the manhole at the upstream end of the abandoned S Main St conduit (Figure A-6) to determine if abandoned conduit is accessible from this manhole.
  - iii. Observe and document current conditions at all six (6) improvement sites as necessary to complete all tasks.

- b. Field Survey Services: Consultant shall complete field survey services necessary to complete design, as illustrated in Figures A-2 through A6. All survey data shall be collected and provided in Kansas State Plane North horizontal coordinate system and NAVD 88 vertical coordinate system.

Consultant will contact utility companies through Kansas One-Call (max two attempts). It's assumed all utilities will be marked within two weeks of the time of the locate request.

Consultant shall establish and document horizontal and vertical control at each of the six (6) sites using 5/8" iron rods with WCI control caps. Control points may be used as benchmarks. Benchmarks may be set on existing concrete structures that are to remain.

Consultant shall office process all field collected data to provide elevation, topographic and utility information sufficient to complete design and construction of improvements.

Consultant shall provide legal boundary services to establish and provide the right-of-way along the UPRR for the improvements illustrated in Figure A-2. It's assumed for all other improvements included that City currently has adequate land rights necessary for design and construction. Therefore, no legal boundary survey services are included for any of the other improvements. Parcel data from the City GIS system will be included in the plan drawings and labeled as approximate.

- c. Construction Plan Drawings: Consultant shall develop construction plan drawings sufficient for construction of recommended repairs. All Engineering services shall be completed by or under the direct supervision of a Professional Engineer, licensed in Kansas, experienced in dam and levee design.

It's estimated the following plan drawings will be required:

- Title Sheet
- General Notes and Quantities
- General Layout and Survey Control
- Site Plans (6 sheets) (1" = 20' scale)
- Tree Removal Plans (6 sheets) (1" = 50' scale)
- Miscellaneous Details (4 sheets)
- Temporary Erosion Control (4 sheets)

It's estimated approximately 20 plan sheet will be required.

- d. Construction Specifications: Consultant shall develop technical construction specifications necessary for construction of recommended repairs and debris removal. Bidding documents and other "Front

End” specifications are not included. It’s estimated the following construction specifications will be required:

1. Site Clearing, Disposal
  2. Excavation
  3. Backfilling
  4. Flowable Fill
  5. Concrete
  6. Steel
  7. Riprap and Geotextile Fabric
  8. Soil
  9. Seeding
  10. Paint
  11. Flap Gates
- e. Quantities and Cost Estimate: Consultant shall tabulate all bid quantities and provide a construction cost estimate for all improvements for the City to reference while letting the project.
- f. Permitting & Coordination Services: Consultant shall submit permit applications to: UPRR, Kansas Division of Water Resources, United States Army Corps of Engineers, and the Kansas Department of Health and Environment, as required. Following submittal of applications, Consultant shall provide necessary coordination with these review agencies, up to 24 hours. If additional coordination time is required, Consultant will furnish these services as additional services.
- g. Field Check Review Meeting: Consultant shall conduct a field review with the City following completion of preliminary plans, to verify existing conditions and proposed improvements.
- h. Consultant shall complete final plans and incorporate review comments from City, Utilities, UPRR and permitting agencies.
- i. Consultant shall coordinate (plan, schedule, provide necessary supporting data, observe, document, etc.) video inspection services for the Gustad RCP and the Swimming Pool Drain.
- j. Consultant shall coordinate (plan, schedule, provide necessary supporting data, observe, document, etc.) CIPP lining services for the S Ash St RCP conduit.

## **II. Construction Related Services shall include:**

- a. Bidding Services: Consultant will provide support (up to 8 hours) for bidding services such as: answer contractor questions during bidding and assist CITY with addenda.
- Should the CITY require Consultant assistance of more than 8 hours, Consultant will furnish services as requested by the CITY as Additional Services.
- b. Consultation During Construction: Consultant will provide support (up to 8 hours) to review shop drawing submittals, answer questions from CITY’s full time inspector, review and comment on change order requests, review and comment on inspection testing results.
- Should the CITY require Consultant assistance of more than 8 hours, Consultant will furnish services as requested by the CITY as Additional Services.
- c. Final Inspection: Consultant will complete one inspection at time of substantial completion.

Consultant will provide a punch list to CITY following the inspection. Consultant will provide CITY with documentation (inspection report and photos). Consultant will coordinate with CITY's full time Construction Inspector.

This task is based on assumption that the CITY will provide full time construction inspection.

Should the CITY require Consultant for more than 1 construction site visit, Consultant will furnish services as requested by the CITY as Additional Services.

- d. As-Built Drawings: Consultant will provide As-Built Record Drawings. These drawings will be drafted based on "Red Lined" mark-ups and field measurements from the Contractor, Construction Inspector and the Consultant's site visits. No field survey services are included.

The following services are **not** included:

- a. Legal Boundary services (except for UPRR - Site 1)
- b. Field survey services for As-Built Drawings
- c. Permitting Fees
- d. Video Inspection Fees for two (2) conduits
- e. CIPP cost for Gustad RCP
- f. Geotechnical investigations or analysis

Assumptions:

- a. This project will be completed concurrently with the Bike Hays – Multi-use Big Creek Levee Trial project by the Consultant.
- b. City shall provide City bench marks and horizontal control points.
- c. City shall provide access necessary to complete work.
- d. City shall provide all applicable readily available resources (design standards, typical drawings, specifications, historical cost data, utility location info, etc.)
- e. City will submit necessary construction permits and corresponding fees, which may include: UPRR, KS DWR, USACE and KDHE/NPDES. Consultant will prepare the permit applications and provide to City for submittal.
- f. City will provide "up-front" construction specifications and assemble the Project Manual. Consultant will provide the technical specifications.
- g. City will provide full time construction inspection and testing services necessary
- h. City will provide "red-lined" plan drawings following construction to be used to create As-Built Drawings.
- i. All utilities will be marked within two weeks of the time of the locate request are submitted to Kansas One-Call.
- j. City currently has adequate land rights necessary to design and construct all improvements, other than the UPRR Concrete Sill improvement. Therefore, no legal boundary survey services are included other than providing right-of-way information along the UPRR for improvements included in Figure A-2. Parcel data for the City GIS system will be included in the plan drawings and labeled as approximate. Coordination with and approval from UPRR and Fort Hays State University will be required for some of the improvements.
- k. If additional design services are necessary (such as for Gustad RCP or the Swimming Pool Drain) this can be completed through a supplemental agreement.



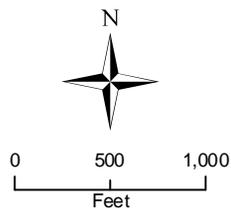
**CITY OF HAYS**

**2013 Levee Improvements  
Scope of Services**

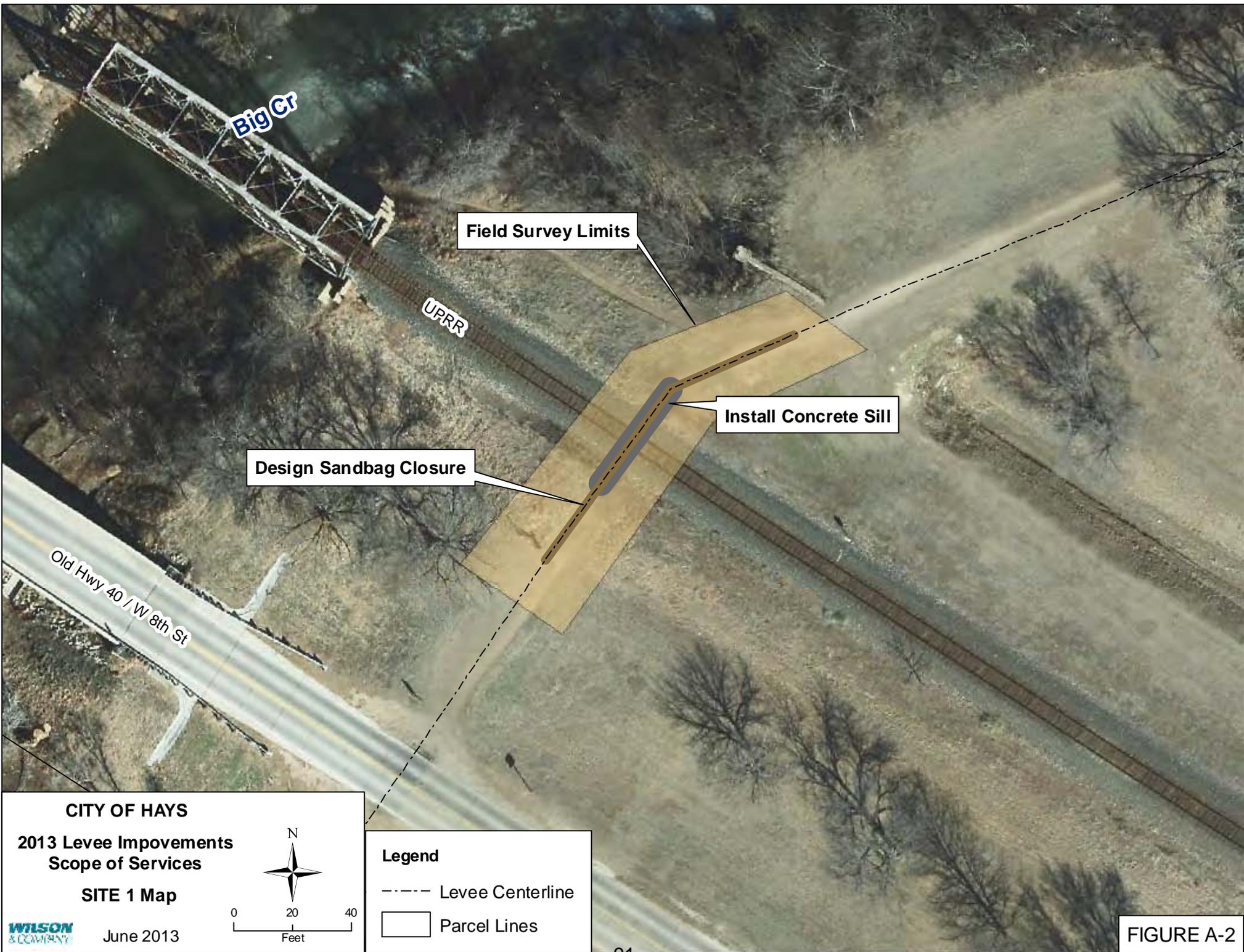
**Overall Location Map**



June 2013



**FIGURE A-1**



Big Cr

Field Survey Limits

UPRR

Install Concrete Sill

Design Sandbag Closure

Old Hwy 40 / W 8th St

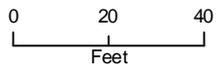
CITY OF HAYS

2013 Levee Improvements  
Scope of Services

SITE 1 Map

WILSON  
& COMPANY

June 2013



Legend

----- Levee Centerline

□ Parcel Lines

FIGURE A-2



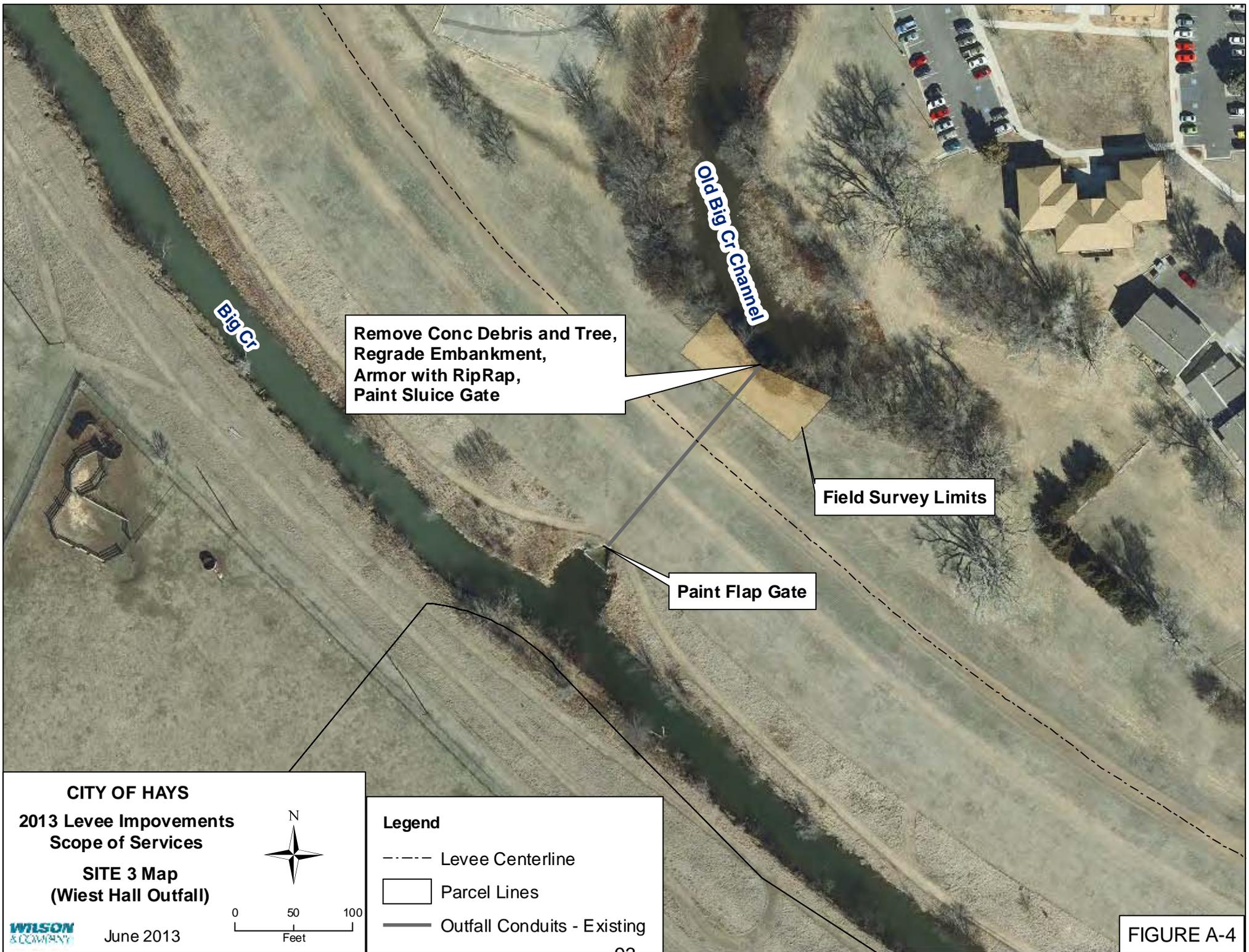
**CITY OF HAYS**  
**2013 Levee Improvements**  
**Scope of Services**  
**SITE 2 Map**  
 June 2013

**Legend**

- Levee Centerline
- Parcel Lines
- Outfall Conduits - Existing

**Pump Pounded Water to Accomodate Inspection**

**FIGURE A-3**



Remove Conc Debris and Tree,  
 Regrade Embankment,  
 Armor with RipRap,  
 Paint Sluice Gate

Field Survey Limits

Paint Flap Gate

**CITY OF HAYS**  
 2013 Levee Improvements  
 Scope of Services

**SITE 3 Map**  
 (Wiest Hall Outfall)

WILSON & COMPANY June 2013

**Legend**

- Levee Centerline
- Parcel Lines
- Outfall Conduits - Existing

**FIGURE A-4**



City to Line 24"x142'  
RCP Conduit

Remove Trees from Channel,  
Regrade Channel,  
Armor Channel with RipRap,  
Install Headwall and Flapgate

Field Survey Limits

W 1st St

Big Cr

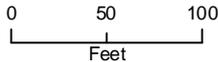
**CITY OF HAYS**

**2013 Levee Improvements  
Scope of Services**

**SITE 4 Map  
(S Ash St Outfall)**



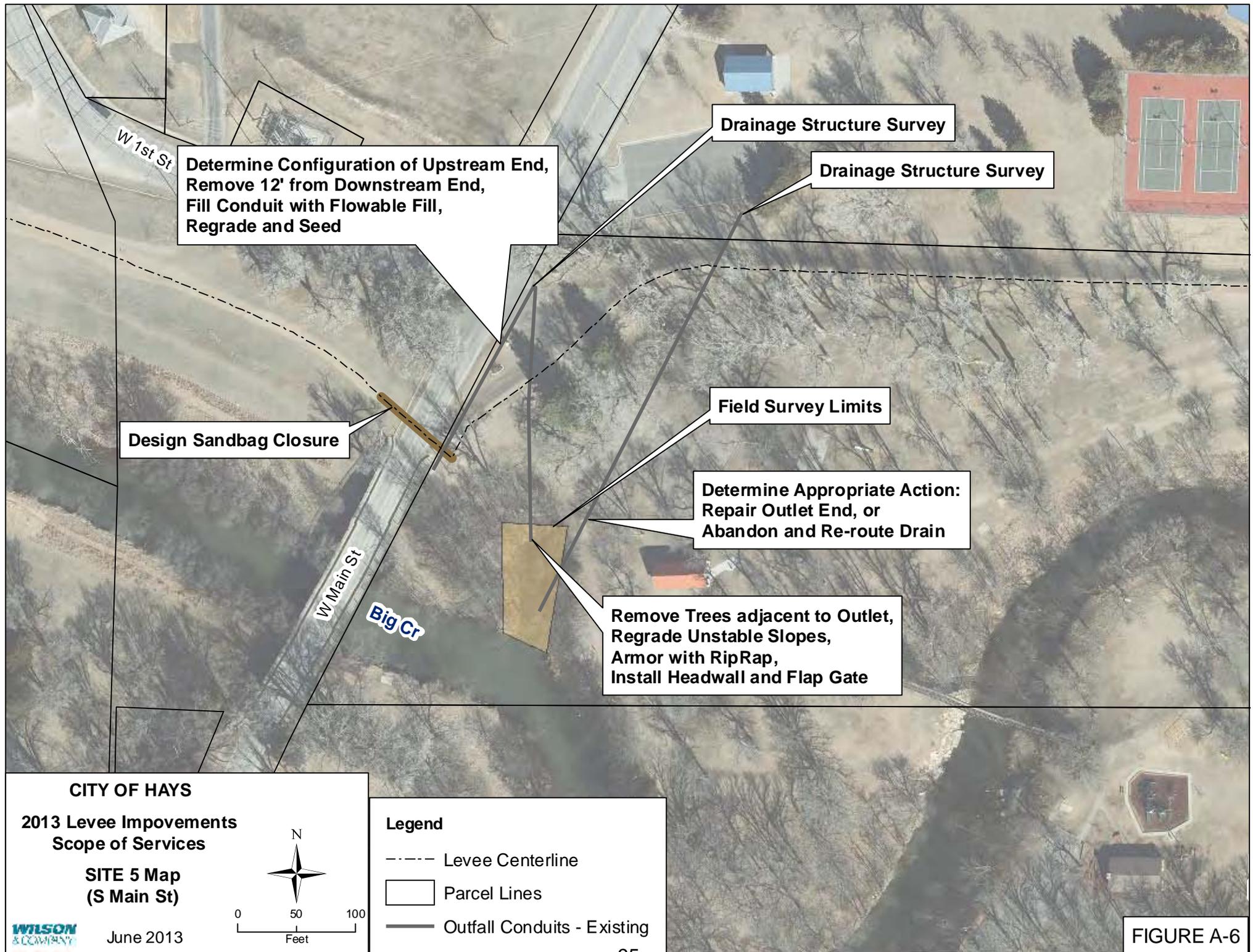
June 2013

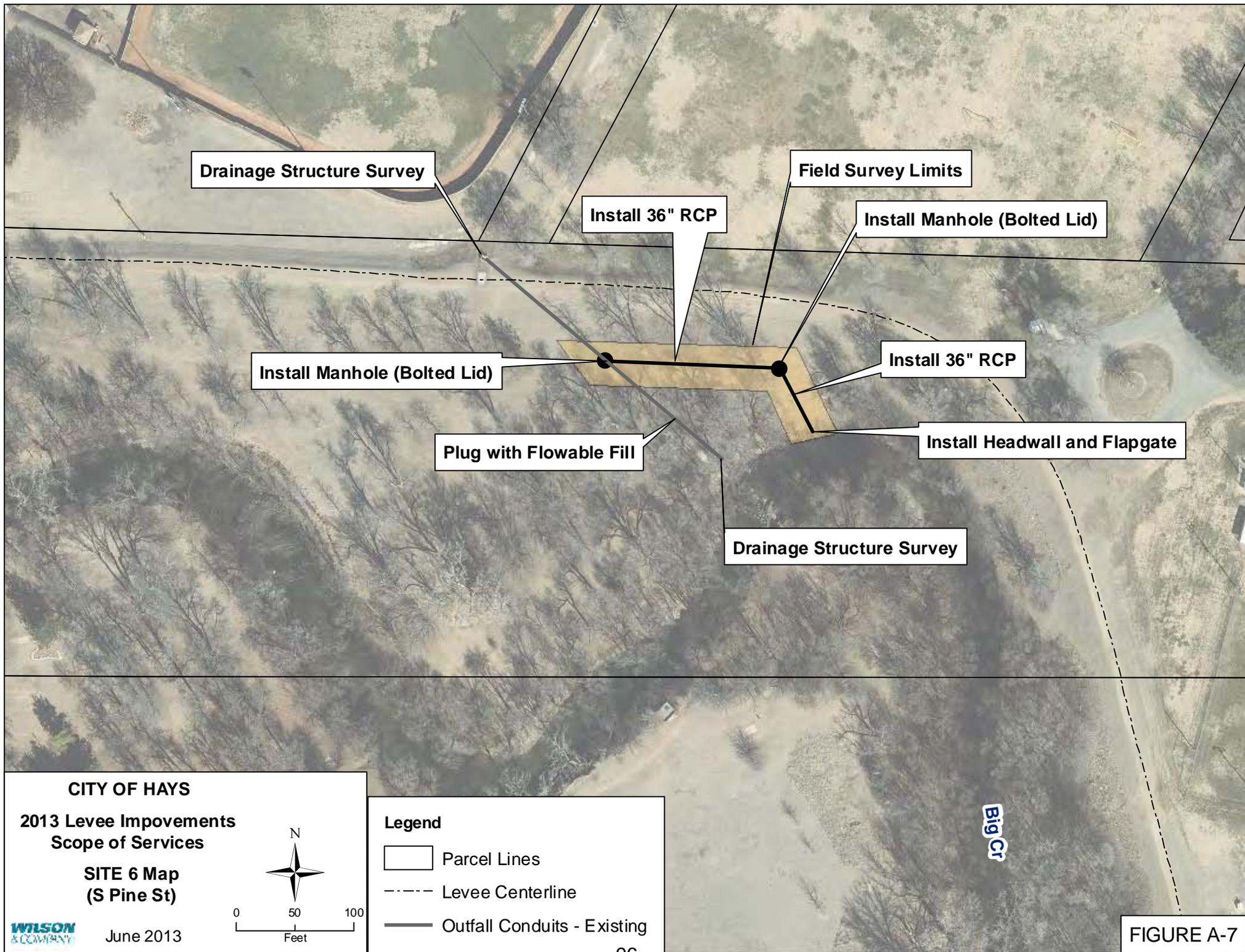


**Legend**

- Levee Centerline
- ▭ Parcel Lines
- Outfall Conduits - Existing

**FIGURE A-5**





# CITY OF HAYS

## BIG CREEK LEVEE REPAIRS - ENGINEERING SERVICES

PROJECT SCHEDULE	
Scope Item	Target Completion Date
Notice to Proceed	Aug 23, 2013
Field Check Plans, Specs & Estimate Submittal	Nov 15, 2013
Field Check	Dec 20, 2013
Submit Permit Applications	Dec 31, 2013
Utility Coordination (if Necessary)	Dec 31, 2013
Approved Final Plans Submittal	Feb 28, 2014
Advertise for Bids	Mar 1, 2014
Construction Letting	Apr 15, 2014
Complete Construction	Jun 30, 2014

<b>FEE SUMMARY</b>								
Scope Item	Task Description	Direct Labor Cost	Overhead Cost	Markup	Direct Expense	Task Sub-Totals	Survey Cost	Total Fee
I.	Engineering Services	\$10,040.40	\$18,373.93	\$2,273.15	\$1,401.50	\$32,088.98	\$4,000.00	<b>\$36,088.98</b>
II.	Construction Related Services	\$1,669.60	\$3,055.37	\$378.00	\$481.00	\$5,583.97	\$0.00	<b>\$5,583.97</b>
III.	Preliminary Engineering Studies	\$2,540.00	\$4,648.20	\$575.06	\$64.40	\$7,827.66	\$0.00	<b>\$7,827.66</b>
0	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	<b>\$0.00</b>
<b>PROJECT TOTALS</b>		\$14,250.00	\$26,077.50	\$3,226.21	\$1,946.90	\$45,500.61	\$4,000.00	<b>\$49,500.61</b>

**USE**      **\$49,500.00**



**LABOR COST - ENGINEERING**

Scope Item	Task Description	Principal P6 \$50.00	Project Manager P5 \$48.50	Intern Engr. P2 \$26.30	CADD Tech. PD2 \$25.80	Clerical OA2 \$18.50		Total Hours	Direct Labor Cost	Overhead Cost 1.83	Markup 8%	Total Labor Cost
I.	Engineering Services	0	40	160	148	4		352	\$10,040.40	\$18,373.93	\$2,273.15	<b>\$30,687.48</b>
II.	Construction Related Services	0	28	4	8	0		40	\$1,669.60	\$3,055.37	\$378.00	<b>\$5,102.97</b>
III.	Preliminary Engineering Studies	0	20	44	16	0		80	\$2,540.00	\$4,648.20	\$575.06	<b>\$7,763.26</b>
0		0	0	0	0	0		0	\$0.00	\$0.00	\$0.00	<b>\$0.00</b>
0		0	0	0	0	0		0	\$0.00	\$0.00	\$0.00	<b>\$0.00</b>
	<b>Totals</b>	0	88	208	172	4		472	\$14,250.00	\$26,077.50	\$3,226.21	<b>\$43,553.71</b>

472

\$43,553.71

**DIRECT EXPENSES - ENGINEERING**

Item / Description	Unit	Unit Cost	Scope Item 1		Scope Item 2		Scope Item 3				Total Expenses
			Quantity	Cost	Quantity	Cost	Quantity	Cost			
Mileage	miles	\$0.65	1,150	\$747.50	580	\$377.00	0	\$0.00		\$0.00	\$1,124.50
Meals	days	\$30.00	4	\$120.00	1	\$30.00	0	\$0.00		\$0.00	\$150.00
Lodging	days	\$85.00	4	\$340.00	0	\$0.00	0	\$0.00		\$0.00	\$340.00
Plotting	each	\$0.60	240	\$144.00	40	\$24.00	24	\$14.40		\$0.00	\$182.40
Postage & Miscellaneous Costs	LS	\$50.00	1	\$50.00	1	\$50.00	1	\$50.00		\$0.00	\$150.00
Sub-Total (Direct Expenses)				\$1,401.50		\$481.00		\$64.40		\$0.00	\$1,946.90
Survey Cost				\$4,000.00		\$0.00		\$0.00		\$0.00	\$4,000.00
<b>Total Direct Expenses</b>				<b>\$5,401.50</b>		<b>\$481.00</b>		<b>\$64.40</b>		<b>\$0.00</b>	<b>\$5,946.90</b>

# Commission Work Session Agenda

## Memo

**From:** John Braun, Assistant Director of Public Works  
Paul Briseno, Assistant City Manager

**Work Session:** September 5, 2013

**Subject:** Bike Hays – On-Street Bike Route & Levee Trail  
Engineering Design Agreements

**Person(s)** Paul Briseno, Assistant City Manager  
**Responsible:** I.D. Creech, Director of Public Works

### Summary

The 2013 budget included \$400,000 in funding for the Bike Hays Plan. In addition, the City was awarded a Transportation Enhancement Grant. The project continues to evolve and staff will provide a greater understanding during the work session presentation. As the next step in the process, staff recommends entering into agreements with CFS Engineers for the On-Street Bike Routes portion of the Bike Hays Plan and a separate agreement with Wilson Company for the Levee Trail Improvements. The cost for engineering design services for the on-street bike routes is \$48,400, and levee trail is \$49,238. The engineer's primary objective is to provide bidding documents and work in collaboration with the state to ensure standards are met as required by KDOT.

### Background

The Bike Hays Master Plan, developed along with the City Comprehensive Master Plan Update in 2012 and included a 1.5 mile multi-use path along the Big Creek Levee in addition to 25 miles of on-street bike lanes and shared routes throughout the City. In February 2013, staff submitted an application to KDOT for Transportation Enhancement (TE) Grant funding to finance the construction of the Bike Hays Improvements.

After the grant application was submitted, City staff was informed by KDOT the rules had changed and State oversight will be require.

KDOT requires:

- The City hires a professional engineering firm to design the project to Federal Highway Administration Standards. (MUTCD, ADA, AASHTO, etc.)
- The cost for design is ineligible for grant funding although a proportional increase is inevitable due to the additional requirements to meet standards.

- Implementation of the system will take longer than expected and include additional costs as the process of administering the grant will be ran through KDOT Bureau of Local Projects.

KDOT has allowed the City to split the project into two separate tasks: the Levee Trail and the On-Street Bike Routes. This split allows the Levee Trail to occur in conjunction with the Big Creek Levee improvements. This split also allows the On-Street Bike Route project to move at a faster pace if possible.

This process has changed from the initial grant submission and will require more time by KDOT for review, prolonging the project more than originally anticipated.

## Discussion

**The On-Street Bike Routes** portion of the Hays Bike Plan includes dedicated bike lanes, while other streets will have signage and pavement markings indicating that vehicles are to share the road with bicyclists.

Since the TE Grant requires the project to be designed by a licensed engineer according to Federal Highway Administration standards, City Staff solicited qualifications from professional engineering firms for the on street routes. Five proposals were received. A committee of staff members reviewed the proposals and recommended the most qualified firm with experience in the construction of bicycle infrastructure. None of the other firms came close to matching the experience of the CFS Engineers/RDG Team. RDG and CFS Engineers were the team that updated the City's Comprehensive Plan and developed the Bike Hays Master Plan. The CFS/RDG team is most familiar with the Bike Hays Plan, existing city infrastructure, proposed cost, and in a position to move forward with design quickly.

CFS Engineers has prepared an Agreement for Profession Engineering Services to design the On-Street Bike Route improvements, provide construction documents, and communicate with KDOT at a cost of **\$48,400**.

**The Levee Trail** is intended to serve as a cap on the levee, which will provide a 10' wide concrete surface to eliminate the wear and erosion currently present due to the use of the levee by pedestrian and bicycle use. Since the Levee Trail Project is intertwined with the proposed levee improvements, it makes sense to have Wilson Company design the Levee Trail Project in conjunction with the Big Creek Levee Improvement Project.

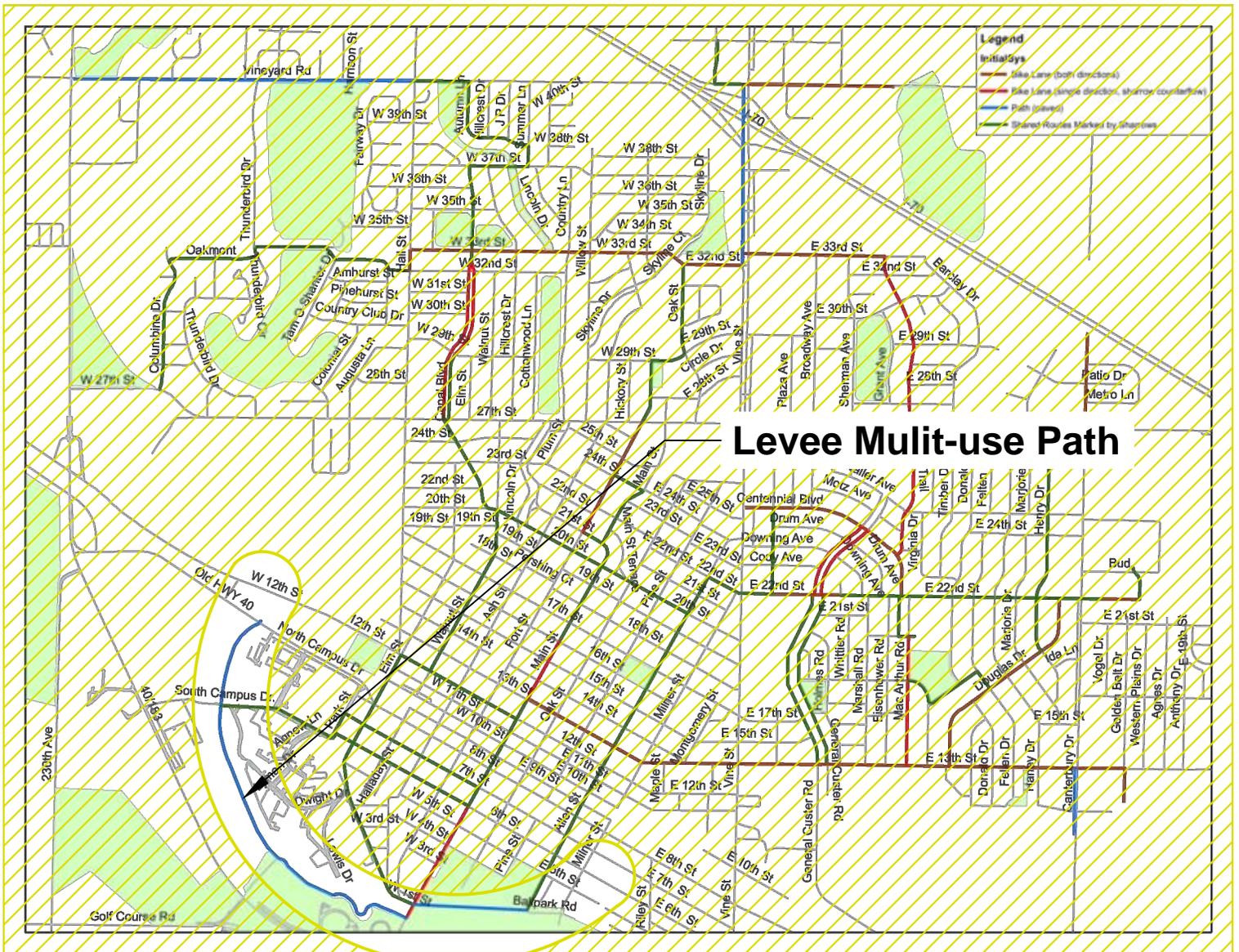
Wilson Company has prepared an Agreement for Profession Engineering Services to design the Levee Trail Improvements as well as provide construction documents, and communicate with KDOT at a cost of **\$49,238**.

Upon staff's request, the KDOT Bureau of Transportation and Planning has awarded the City an additional \$121,750 to assist with the added cost of inspection to be split between the two projects.

If approved, the following is a tentative timeline for engineering, bidding, and construction of the on street system and levee cap:



# Hays Bike Plan Levee Trail



For September 5, 2013 Work Session  
City of Hays Public Works

AGREEMENT  
FOR  
PROFESSIONAL ENGINEERING SERVICES

THIS IS AN AGREEMENT, made as of \_\_\_\_\_, 2013, between the City of Hays, Kansas (CITY) and Wilson & Company, Inc., Engineers & Architects (ENGINEER). ENGINEER shall provide to CITY Profession Engineering Services for the **Bike Hays –Multi-Use Big Creek Levee Trail** project. ENGINEER shall design and develop construction documents necessary to construct the hike / bike trail improvements along Big Creek from 8<sup>th</sup> Street south to Allen Street as illustrated in Figure 1 of this agreement. The trail and appurtenances shall be designed in accordance with current FHWA, AASHTO and MUTCD standards. This project will be completed per Kansas Department of Transportation, Bureau of Local Projects project administration processes.

The purpose of this project is to provide design services needed to construct the **“Big Creek Trail, Main-8” segment of Route 2 – Main**” as defined in the BIKE HAYS MASTER PLAN document, completed in 2012.

A secondary benefit of this trail project will be to increase the level of protection provided by the segments of the Big Creek Levee System on which the new trail will be constructed, by adding height (equal to the trail pavement thickness) to the levee embankment. This project does not include updated Hydrologic, Hydraulic or Geotechnical Analysis, therefore, the level of protection provided by the levee system is unknown. Based on the Current Effective FEMA Flood Insurance Study and previous studies completed by the City, the level of protection provided by the levee system in 2004 was less than the 100-yr interval storm event with no freeboard.

## **SECTION 1 - BASIC SERVICES OF ENGINEER**

ENGINEER shall provide the Services described in Attachment I, Scope of Services.

## **SECTION 2 - ADDITIONAL SERVICES OF ENGINEER**

### **2.1. Services Requiring Authorization in Advance.**

If authorized in writing by the CITY, the ENGINEER shall furnish or obtain from others Additional Services of the types listed in paragraphs 2.1.1 through 2.1.4, inclusive. These services are not included as part of Basic Services. These Additional Services will be paid for by the CITY as indicated in Section 5.

2.1.1. Services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, CITY's schedule, and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond ENGINEER's control.

2.1.2. Furnishing services of independent professional associates and consultants for other than Basic Services for customary civil engineering, surveying, and geotechnical design; and providing data or services when the CITY employs the ENGINEER to provide such data or services in lieu of furnishing the same.

2.1.3. Providing any engineering services other than Basic Services included in Section 1.

2.1.4. Additional services in connection with the Project, including services which are to be furnished by the CITY in accordance with Section 3, and services not otherwise provided for in this Agreement.

**2.2. Required Additional Services.** No additional services have been identified at this time. If additional design services are requested by the CITY, they will be completed under a supplemental agreement.

### **SECTION 3 - CITY'S RESPONSIBILITIES**

CITY shall do the following in a timely manner so as not to delay the services of ENGINEER:

- 3.1.** Designate a person to act as CITY's representative during the project.
- 3.2.** Provide all pertinent requested data to ENGINEER from City records, as described in Attachment 1.
- 3.3.** Review submittals and provide feedback to ENGINEER as necessary to be complete task items included in this agreement.
- 3.4.** Provide access to all facilities as necessary to complete the task items in this contract.
- 3.5.** Bear all costs incident to compliance with the requirements of this Section 3.

### **SECTION 4 - PERIODS OF SERVICE**

- 4.1.** The provisions of this Section 4 and the various rates of compensation for ENGINEER's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project. ENGINEER's obligation to render services hereunder will extend for a period which may reasonably be required. If specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided and if such dates are exceeded through no fault of ENGINEER, all rates, measures and amounts of compensation provided herein shall be subject to equitable adjustment.
- 4.2.** ENGINEER shall complete services described per **Attachment II, Project Schedule**, following execution of this agreement and Notice to Proceed.

ENGINEER shall not be held responsible for delays by others, uncontrollable by and at no fault of the ENGINEER, such as by USACE and KSDWR.

## **SECTION 5 - PAYMENTS TO ENGINEER, COST PLUS METHOD OF PAYMENT**

### **5.1. Methods of Payment for Services and Expenses of ENGINEER.**

5.1.1. For Basic Services. CITY shall pay ENGINEER for Basic Services rendered under SECTION I on cost plus basis as detailed in Attachment III.

#### Cost Plus

Payments for those services outlined in SECTION I of this Agreement are to be based on direct labor cost times the current labor multiplier, plus reimbursable direct expenses. The labor multiplier includes overhead (currently 1.831) and profit (12%), and is currently 3.171. The labor multiplier is subject to review and change annually, based on changes in overhead rates. Charges for services and expenses incurred under SECTION I will be based on the rates and charges in effect at the time services are performed and expenses are incurred.

The maximum Cost Plus fee of \$49,238.00 shall not be exceeded without prior written approval from CITY. Supporting Fee Data is included as Attachment 2.

- 5.1.2. If ENGINEER's Scope of Services is revised, under Section 2, the maximum amount of Cost Plus Fee payable to ENGINEER shall be revised accordingly.
- 5.1.3. ENGINEER may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by the CITY.

### **5.2. Other Provisions Concerning Payments.**

5.2.1. In the event of termination by CITY under paragraph 7.1 upon the completion of any phase of the Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by CITY during any phase of the Basic Services, ENGINEER will be paid for services rendered during that phase on the basis of ENGINEER's completion percentage. In the event of any such termination, ENGINEER will be paid for all unpaid Additional Services.

## **SECTION 6 - OPINIONS OF COST**

### **6.1. Opinions of Cost.**

6.1.1. Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, ENGINEER's opinion of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or

actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by ENGINEER. If prior to the Bidding or Negotiating Phase, CITY wishes greater assurance as to Total Project or Construction Costs, CITY shall employ an independent cost estimator.

## **SECTION 7 - GENERAL CONSIDERATION**

### **7.1. Termination.**

7.1.1. The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

### **7.2. Reuse of Documents.**

7.2.1. All documents prepared or furnished by ENGINEER (and ENGINEER's independent professional associates and consultants) pursuant to this Agreement are instruments of service in respect of the Project and ENGINEER shall retain an ownership and property interest therein whether or not the Project is completed. CITY may make and retain copies for information and reference in connection with the use and occupancy of the Project by CITY and others; however, such documents are not intended or represented to be suitable for reuse by CITY or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at CITY's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's independent professional associates or consultants, and CITY shall indemnify and hold harmless ENGINEER and ENGINEER's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by CITY and ENGINEER.

### **7.3. Insurance.**

#### **7.3.1. Commercial General Liability**

The ENGINEER shall provide public liability insurance coverage in an amount no less than \$500,000 covering the liability of the ENGINEER on an occurrence basis. The insurer must be acceptable to the CITY.

#### **7.3.2. Automobile Liability**

The ENGINEER shall provide coverage protecting the ENGINEER against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle. Required minimum limits: \$500,000 each accident, or a combined total of \$1,000,000.

#### **7.3.3. Workers Compensation**

Before beginning work, the ENGINEER shall furnish to the CITY satisfactory proof that he has taken out, for the period covered by the work under this contract, full workers' compensation coverage as required by state law for all persons who he may employ directly in carrying out the

work contemplated under this contract, and shall hold the CITY free and harmless for all personal injuries of all persons who the ENGINEER may employ directly.

#### 7.3.4. Professional Liability - Errors and Omissions

The ENGINEER shall provide Architects or Engineers Professional Liability Insurance with limits not less than \$1,000,000, covering the liability of the ENGINEER. The insurer must be acceptable to the CITY. In the event coverage provided is claims made coverage, the insurance shall be maintained for a period of not less than three (3) years after completion of the contract or in lieu thereof purchase of tail coverage (extended reporting period) under which the CITY shall be afforded protection.

#### 7.3.5. Certificate(s) of Insurance

Certificate(s) of Insurance acceptable to the CITY shall be filed with the CITY at the time the contract between the CITY and the ENGINEER is executed, if requested by CITY. These certificates shall contain a provisions that coverage that is afforded under the policies will not be cancelled until at least thirty (30) days prior written notice has been given to the CITY and acknowledged.

#### 7.3.6. Notice of Claim

The ENGINEER, upon receipt of notice of any claim in excess of \$1,000 in connection with this contract shall promptly notify the CITY, providing full details thereof, including an estimate of the amount or loss of liability.

#### 7.3.7 Indemnification Clause

The ENGINEER agrees to indemnify and save harmless the CITY, its officials, servants, officers, directors and employees from and against all expenses and judgments for personal injury or death or damage to property where, and to the extent caused by the ENGINEER's negligent acts, errors or omissions.

### **7.4. Controlling Law.**

7.4.1. This Agreement is to be governed by the law of the State of Kansas.

### **7.5. Successors and Assigns.**

7.5.1. CITY and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of CITY and ENGINEER (and to the extent permitted by paragraph 7.5.2 the assigns of CITY and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.5.2. Neither CITY nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment

will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent professional associates and consultants as ENGINEER may deem appropriate to assist in the performance of services hereunder.

7.5.3. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than CITY and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CITY and ENGINEER and not for the benefit of any other party.

This Agreement, consisting of pages 1 to 6, Attachment I (4 pages), Figure 1, Attachment II (1 page), and Attachment III (3 pages) for a total of 15 pages, inclusive, constitutes the entire agreement between CITY and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

CITY:  
City of Hays, Kansas  
1002 Vine Street  
Hays, KS 67601

ENGINEER:  
Wilson & Company, Inc.,  
Engineers & Architects  
800 East 101<sup>st</sup> Terrace, Suite 200  
Kansas City, MO 64131

By: \_\_\_\_\_

\_\_\_\_\_  
Douglas G. Danaher, PE, CFM  
Operation Manager  
[doug.danaher@wilsonco.com](mailto:doug.danaher@wilsonco.com)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title and Date

By: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title and Date

## ATTACHMENT I

### PROFESSIONAL ENGINEERING

#### SCOPE OF SERVICES

##### **BASE SERVICES – Bike Hays – Multi-Use Trail Big Creek Levee**

Consultant shall prepare construction documents (plan drawings, technical specifications and cost estimate) necessary for the City to advertise and let a construction project for the 1.5 miles of BIKE HAYS Multi-use Hike / Bike Trail along the Big Creek Levee from 8<sup>th</sup> Street south to approximately Allen Street.

This project is being partially funded by a Kansas Department of Transportation Transportation (KDOT) Enhancement Grant and therefore will be designed to applicable standards (FHWA, AASHTO and MUTCD). The project will be administered by the City, coordinated with KDOT Bureau of Local Project (BLP), therefore will be subject to the KDOT BLP standard project procedures and schedule (field check, office check, final plan, etc.). This scope provides design services, production of construction documents and permitting services necessary to construct the levee trail as part of the planned improvements included in the BIKE HAYS MASTER PLAN completed in 2012. The trail improvements included in this project will be designed in compliance with the BIKE HAYS MASTER PLAN, City Criteria, FHWA, ADA/AASHTO, MUCTC, KDOT BLP. USACE KC shall be consulted to ensure the trail improvements are completed in a manner that does not decrease the level of flood protection provided by the levee system. This project does not include hydrologic / hydraulic analysis of Big Creek, or geotechnical analysis of the levee embankments. The actual level of protection provided by the levee system is unknown. The level of protection provided the levee system will be equal to existing conditions or increased with the improvements included in this project. Based on the Current Effective FEMA Flood Insurance Study and previous studies completed by the City, the level of protection provided by the levee system in 2004 was less than the 100-yr interval storm event with no freeboard.

Consultant shall develop one bid package (construction documents) sufficient for the trail improvements located along the Big Creek Levee as illustrated in Figure 1. Improvements to be included in the construction documents include:

1. Concrete Trail (10' width, 6" thick, compacted subgrade, 2' earth shoulders).
2. Alignment will be along top of levee unless required width of trail and supporting embankment requires significant fill (such as along more narrow levee section east of Main St) and results in costs greater than the project budget, in which case the trail will be located adjacent to the levee embankment. Alignment will consider utilities, trees, right-of-way limits, impacts to Big Creek channel capacity, fill volume, bridge clearances (horizontal and vertical), embankment conduit end treatments, sluice gate wells, drainage conditions, scenery, bicyclist and pedestrian safety and convenience, park amenities (frisbee golf, signs, access roads, shelters, etc.).
3. Thickness of the trail pavement will be added to the height of the levee embankment.
4. Trail connection to 8<sup>th</sup> Street. May include minor pavement improvements, striping, signing and vehicle access control)
5. Gustad Drive crossing and connection to Bike Hays Route D. May include curb cuts, ramps, striping, signing and vehicle access control.
6. Trail along the newly constructed Dwight Drive from 8<sup>th</sup> Street south past the pedestrian bridge. The trail may need to be in Dwight Drive or along the river side toe of the levee, due to potential insufficient clearance (8 ft minimum) from the top of trail to low steel of the bridge.
7. Coordination with Fort Hays State University and up to two additional connections / ramps to campus trails.

8. Main Street crossing and connections to Bike Hays Route 2 (going northeast on Main St) and Route 1 (going west on 1<sup>st</sup> St). May include curb cuts, ramps, striping, signing and vehicle access control. Consultant will investigate aligning the trail through the Main Street bridge opening.
9. Trail connection to Allen Street / Ball Park Rd cul-de-sac and Bike Hays Route 3 (going northeast on Allen St), adjacent to Glassman Ballfields. May include curb cuts, ramps, striping, signing and vehicle access control.

Consultant will coordinate with UPRR to investigate potential methods of extending the trail north across the UPRR tracks, just north of 8<sup>th</sup> Street. Potential crossing alignments include an at-grade crossing along levee crest or through the rail bridge opening underneath the bridge deck.

#### **I. Engineering services shall include:**

- a. Site Investigation: Consultant shall visit the site with two (2) representatives, including one Sr Civil Engineer, to observe current conditions, confirm preliminary alignment and document site constraints or obstacles. Consultant will be accompanied by a City representative and a Fort Hays State University representative to review and comment on preliminary alignment.
- b. Field Survey Services: Consultant shall complete field survey services necessary to complete design. Survey extents will be 100 feet wide for the extents of and centered on the “Proposed Levee Trail” line illustrated in Figure 1. All survey data shall be collected and provided in Kansas State Plane North horizontal coordinate system and NAVD 88 vertical coordinate system.

Consultant will contact utility companies through Kansas One-Call (max two attempts). It’s assumed all utilities will be marked within two weeks of the time of the locate request.

Consultant shall establish and document horizontal and vertical control at each end using 5/8” iron rods with WCI control caps. Control points may be used as benchmarks. Benchmarks may be set on existing concrete structures that are to remain.

Consultant shall office process all field collected data to provide elevation, topographic and utility information sufficient to complete design and construction of improvements.

It’s assumed that City currently has adequate land rights necessary for design and construction. Therefore, no legal boundary survey services are included for any of the trail improvements. Parcel data from the City GIS system will be included in the plan drawings and labeled as approximate.

- c. Construction Plan Drawings: Consultant shall develop construction plan drawings sufficient for construction of recommended trail improvements. All Engineering services shall be completed by or under the direct supervision of a Professional Engineer, licensed in Kansas, experienced in hike / bike path and KDOT design.

It’s estimated the following plan drawings will be required:

- Title Sheet
- General Notes and Quantities
- General Layout and Survey Control
- Typical Cross Sections
- Plan and Profile Sheets (14 sheets) (1” = 20’ scale)
- Signing and Striping Plans (6 sheets) (1” = 50’ scale)
- Standard Details (3 sheets)
- Miscellaneous Details (4 sheets)
- Temporary Erosion Control (4 sheets)

It's estimated approximately 35 plan sheets will be required. Cross Section Sheets are not included.

d. Construction Specifications: Consultant assemble technical construction specifications necessary for construction. Bidding documents and other "Front End" specifications are not included. It's estimated the following construction specifications will be required:

1. Site Clearing, Disposal
2. Concrete Paving and Incidental Items
3. Embankment
4. Excavating
5. Backfilling
6. Concrete Materials
7. Steel Materials
8. Soil Materials
9. Seeding
10. Temporary Erosion Control
11. Final Grading
12. Pavement Markings
13. Signing

KDOT Standard Constructions Specifications shall be utilized.

- e. Quantities and Cost Estimate: Consultant shall tabulate all bid quantities and provide a construction cost estimate for all improvements for the City to reference while letting the project.
- f. Field Check Review Meeting: Consultant shall conduct a field review with the City, KDOT and FHSU following completion of preliminary plans, to verify existing conditions and proposed improvements.
- g. Consultant shall complete Office Check plans and incorporate review comments from City, KDOT and FHSU. Consultant shall submit office check plans to City, KDOT, Permitting Agencies and Utility Companies. Consultant shall coordinate utility conflicts with the utility companies as necessary for timely progression of project.
- h. Permitting & Utility Coordination Services: Consultant shall submit permit applications to: Kansas Division of Water Resources, United States Army Corps of Engineers, and the Kansas Department of Health and Environment, and utility companies as required. Following submittal of applications, Consultant shall provide necessary coordination with these review agencies, up to 24 hours. If additional coordination time is required, Consultant will furnish these services as additional services.
- i. Consultant shall complete final plans and incorporate review comments from City, KDOT, Utilities and permitting agencies.

The following services are **not** included:

- a. Legal Boundary services
- b. Field survey services for As-Built Drawings
- c. Permitting Fees
- d. Geotechnical investigations or analysis
- e. Construction Related Services

Assumptions:

- a. This project will be completed concurrently with the Hays Levee Safety Repairs project by the Consultant.
- b. City shall provide City bench marks and horizontal control points.
- c. City shall provide access necessary to complete work.
- d. City shall provide all applicable readily available resources (construction plans for new street and parking project, design standards, standard drawings and specifications, cost data, utility info, etc.) Consultant will utilize on-line City GIS data available.
- e. City will submit necessary construction permits and corresponding fees, which may include: KS DWR, USACE and KDHE/NPDES. Consultant will prepare the permit applications and provide to City for submittal.
- f. City will provide “up-front” construction specifications and assemble the Project Manual. Consultant will provide the technical specifications.
- g. City will provide full time construction inspection and testing services necessary.
- h. City will provide “red-lined” plan drawings following construction to be used to create As-Built Drawings.
- i. All utilities will be marked within two weeks of the time of the locate request are submitted to Kansas One-Call.
- j. City currently has adequate land rights necessary to design and construct all improvements. Therefore, no legal boundary survey services are included. Parcel data for the City GIS system will be included in the plan drawings and labeled as approximate. Coordination with FHSU is necessary.



**Connection to 8th Street**

**Gustad Drive Crossing and Connection to Bike Hays Route D**

**Newly Constructed Dwight Drive**

**Pedestrian Bridge**

**Main Street Crossing and Connection to Bike Hays Routes 1 and 2 (north)**

**Connection to Allen Street cul-de-sac and Connection to Bike Hays Route 3**

**Legend**

- Proposed Levee Trail
- Bike Hays Routes (Initial Phase)

**CITY OF HAYS**  
**Bike Hays -**  
**Levee Trail Improvements**  
**Overall Location Map**

Aug 2013

0 300 600  
 Feet

Wilson & Company

**FIGURE 1**

<b>RECOMMEND PROJECT SCHEDULE</b>	
<b>Scope Item</b>	<b>Target Completion Date</b>
Notice to Proceed	Aug 23, 2013
Preliminary Plans and Public Meeting	Nov 14, 2013
Field Check Plans, Specs & Estimate Submittal	Dec 31, 2013
Field Check	Jan 31, 2014
Office Check Plans, Specs & Estimate Submittal	Mar 17, 2014
Submit Permit Applications	Mar 31, 2014
Utility Coordination (if Necessary)	Mar 31, 2014
Final Check Plans & Cost Estimate to BLP & Saline County	May 30, 2014
Approved Final Plans Submittal	Jun 30, 2014
Permits Received, Utilities Cleared (if applicable)	Jun 30, 2014
Advertise for Bids	Jul 1, 2014
Construction Letting	Aug 15, 2014

FEE SUMMARY								
Scope Item	Task Description	Direct Labor Cost	Overhead Cost	Markup	Direct Expense	Task Sub-Totals	Survey Cost	Total Fee
I.	Engineering Services	\$12,611.00	\$23,078.13	\$2,855.13	\$500.00	\$39,044.26	\$10,194.00	<b>\$49,238.26</b>
0	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	<b>\$0.00</b>
0	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	<b>\$0.00</b>
0	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	<b>\$0.00</b>
<b>PROJECT TOTALS</b>		\$12,611.00	\$23,078.13	\$2,855.13	\$500.00	\$39,044.26	\$10,194.00	<b>\$49,238.26</b>

USE \$49,238.00



LABOR COST - ENGINEERING												
Scope Item	Task Description	Principal P6 \$50.00	Project Manager P5 \$48.50	Intern Engr. P2 \$26.30	CADD Tech. PD2 \$25.80	Clerical OA2 \$18.50		Total Hours	Direct Labor Cost	Overhead Cost 1.83	Markup 8%	Total Labor Cost
I.	Engineering Services	0	40	186	224	0		450	\$12,611.00	\$23,078.13	\$2,855.13	<b>\$38,544.26</b>
0		0	0	0	0	0		0	\$0.00	\$0.00	\$0.00	<b>\$0.00</b>
0		0	0	0	0	0		0	\$0.00	\$0.00	\$0.00	<b>\$0.00</b>
0		0	0	0	0	0		0	\$0.00	\$0.00	\$0.00	<b>\$0.00</b>
0		0	0	0	0	0		0	\$0.00	\$0.00	\$0.00	<b>\$0.00</b>
<b>Totals</b>		0	40	186	224	0		450	\$12,611.00	\$23,078.13	\$2,855.13	<b>\$38,544.26</b>

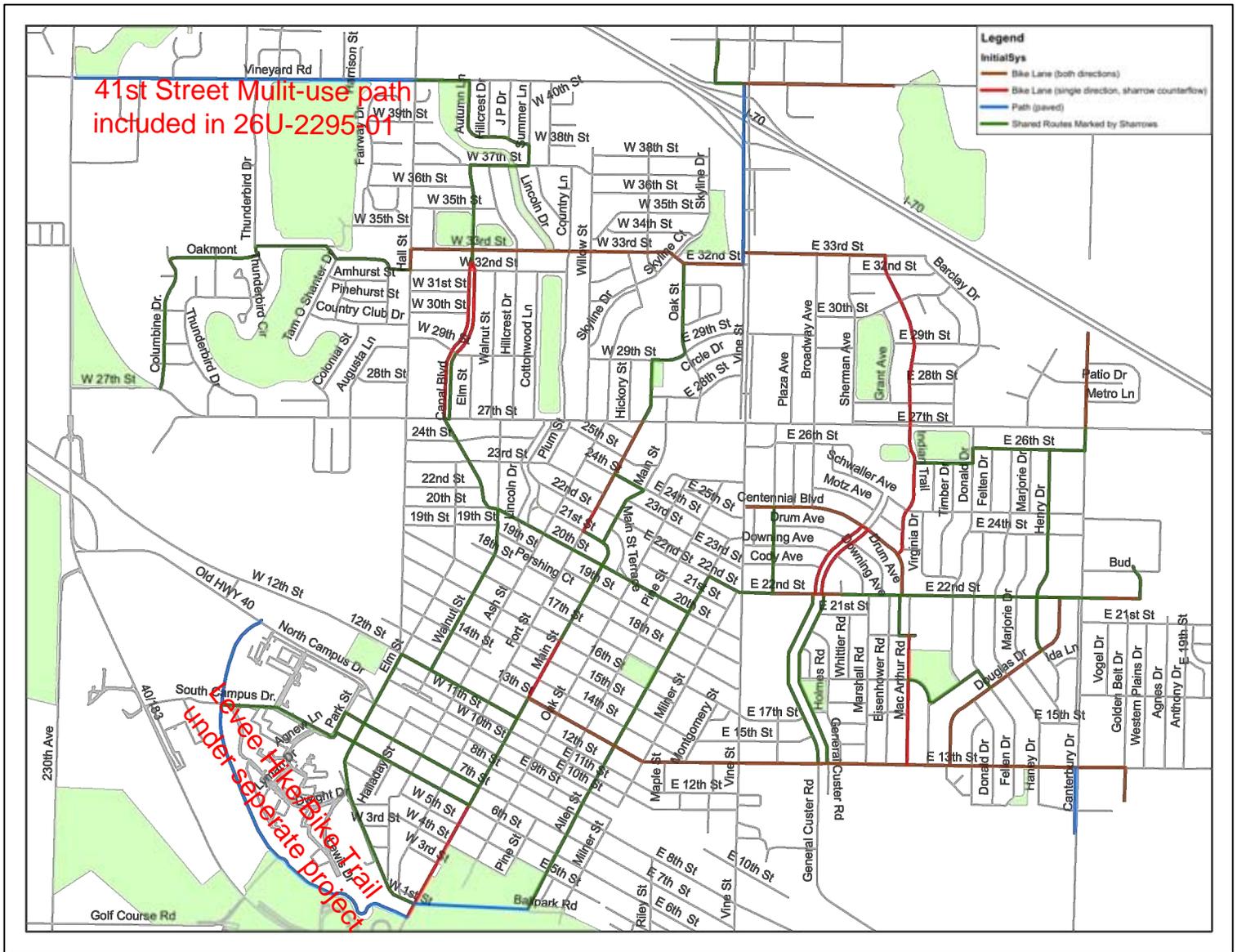
450

\$38,544.26

DIRECT EXPENSES - ENGINEERING										
Item / Description	Unit	Unit Cost	Scope Item 1							Total Expenses
			Quantity	Cost						
Mileage	miles	\$0.65	100	\$65.00					\$0.00	\$65.00
Meals	days	\$30.00	2	\$60.00					\$0.00	\$60.00
Lodging	days	\$85.00	1	\$85.00					\$0.00	\$85.00
Plotting	each	\$0.60	400	\$240.00					\$0.00	\$240.00
Postage & Miscellaneous Costs	LS	\$50.00	1	\$50.00					\$0.00	\$50.00
Sub-Total (Direct Expenses)				\$500.00		\$0.00		\$0.00	\$0.00	\$500.00
Survey Cost				\$10,194.00		\$0.00		\$0.00	\$0.00	\$10,194.00
<b>Total Direct Expenses</b>				<b>\$10,694.00</b>		<b>\$0.00</b>		<b>\$0.00</b>	<b>\$0.00</b>	<b>\$10,694.00</b>

# Hays Bike Plan

## On-Street Bike Routes



For September 5, 2013 Work Session  
 City of Hays Public Works

**CITY OF HAYS  
ENGINEERING DEPARTMENT**

**STANDARD AGREEMENT  
FOR  
ENGINEERING SERVICES**

THIS AGREEMENT, between the City of Hays, Kansas (OWNER) and Cook, Flatt & Strobel Engineers (ENGINEER);

WITNESSETH:

WHEREAS, OWNER intends to provide engineering services for The Bike Hays Improvements (the Project); and, WHEREAS, OWNER requires certain engineering services in connection with the Project (the Services); and,

WHEREAS, ENGINEER is prepared to provide the Services;

NOW THEREFORE, in consideration of the promises contained in this Agreement, OWNER and ENGINEER agree as follows:

**ARTICLE 1 - EFFECTIVE DATE**

The effective date of this Agreement shall be \_\_\_\_\_.

**ARTICLE 2 - GOVERNING LAW**

This Agreement shall be governed by the laws of the state of Kansas and the codes of the City of Hays.

**ARTICLE 3 - SERVICES TO BE PERFORMED BY ENGINEER**

ENGINEER shall perform services listed in the scope of work in each addendum to this contract in accordance with applicable sections of the City of Hays design criteria and drafting standards of latest revision.

#### **ARTICLE 4 - COMPENSATION**

OWNER shall pay ENGINEER in accordance with charges listed in Attachment A, Charge out Rates, and amounts not to exceed specified in each addendum.

#### **ARTICLE 5 - OWNER'S RESPONSIBILITIES**

OWNER shall be responsible for all matters described in each addendum.

#### **ARTICLE 6 - PROJECT SCHEDULE**

The provisions set forth in the project schedule listed in each addendum shall be incorporated into this Agreement.

#### **ARTICLE 7 - STANDARD OF CARE**

ENGINEER shall exercise the same degree of care, skill, and diligence in the performance of Services as is ordinarily possessed and exercised by a professional ENGINEER under similar circumstances.

#### **ARTICLE 8 - INDEMNIFICATION AND INSURANCE**

In the following instances, ENGINEER hereby agrees to indemnify, defend, and hold harmless OWNER and any of its departments, divisions, agencies, officers, and employees from all loss, damage, cost, or expense arising out of ENGINEER 's negligent performance of Services under this Agreement.

- a. Claims, suits, or action of every kind and description when such suits or actions arise from the alleged negligent acts, errors, or omissions of the ENGINEER, its employees, agents, or subcontractor.
- b. Injury or damages received or sustained by any party because of the negligent acts, errors, or omissions of the ENGINEER, its employees, agents, or subcontractors.

ENGINEER shall purchase and maintain during the life of this Agreement, insurance coverage,

which will satisfactorily insure him against claims, and liabilities, which arise because of the execution of this Agreement. The insurance coverages are as follows:

- (1) General Liability Insurance, with a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate.
- (2) Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- (3) Worker's Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.
- (4) Professional Liability Insurance, with a limit of \$1,000,000 annual aggregate.

Prior to issuance of the Notice to Proceed by OWNER, ENGINEER shall have on file with OWNER certificates of insurance acceptable to OWNER. Said certificates of insurance shall be filed with OWNER in January of each year or may be submitted with each agreement.

ENGINEER shall also maintain valuable papers insurance to assure the restoration of any plans, drawings, field notes or other similar data relating to the work covered by this agreement, in the event of their loss or destruction, until such time as the work has been delivered to the OWNER.

Upon completion of all Services, obligations, and duties provided for in this Agreement, or if this Agreement is terminated for any reason, the terms and conditions of this Article shall survive.

#### **ARTICLE 9 - LIMITATIONS OF RESPONSIBILITY**

ENGINEER shall not be responsible for: (1) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project; (2) the failure of any contractor, subcontractor, vendor, or other Project participant, not under contract to ENGINEER, to fulfill contractual responsibilities to the OWNER or to comply with federal, state or local laws, regulations, and codes; or (3) procuring permits, certificates, and licenses required for any construction unless such responsibilities are specifically assigned to the ENGINEER in the scope of work.

#### **ARTICLE 10 - OPINIONS OF COST AND SCHEDULE**

Since ENGINEER has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others to meet Project construction schedules, ENGINEER 's opinion of probable construction costs and of construction schedules shall be made on the basis of experience and qualifications as a professional ENGINEER. The ENGINEER does not guarantee that proposals, bids, or actual Project construction costs will not vary from ENGINEER 's cost estimates or that actual construction schedules will not vary from ENGINEER 's projected schedules.

#### **ARTICLE 11 - REUSE OF DOCUMENTS**

All documents, including, but not limited to, drawings, specifications, and computer software prepared by ENGINEER pursuant to the Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without prior written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER. Any verification or adaptation requested by OWNER shall entitle ENGINEER to compensation at rates to be agreed upon by OWNER and ENGINEER.

#### **ARTICLE 12 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

Except as otherwise provided herein, engineering documents, drawings, and specifications prepared by ENGINEER as part of the Services shall become the sole property of OWNER, however, that both OWNER and ENGINEER shall have the unrestricted right to their use. ENGINEER shall retain its rights in its standard drawing details, specifications, databases, computer software, and other proprietary property protected under the copyright laws of the United States. Rights to intellectual property developed, utilized, or modified in the performance of services shall remain the property of ENGINEER. OWNER shall have the unlimited right to the use of intellectual property

developed, utilized, or modified in the performance of the Services at no additional cost to the OWNER.

#### **ARTICLE 13 - TERMINATION**

This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The nonperforming party shall have fifteen calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party. OWNER may terminate or suspend performance of this Agreement for OWNER's convenience upon written notice to ENGINEER. ENGINEER shall terminate or suspend performance of the Services on a schedule acceptable to OWNER. If termination or suspension is for OWNER's convenience, OWNER shall pay ENGINEER for all Services performed prior to the date of the termination notice. Upon restart, an adjustment acceptable to OWNER and ENGINEER shall be made to ENGINEER 's compensation.

#### **ARTICLE 14 - DELAY IN PERFORMANCE**

Neither OWNER nor ENGINEER shall be considered in default of the Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonconforming party. For purposes of this Agreement, such circumstances include abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, or other civil disturbances; sabotage, judicial restraint, and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either OWNER or ENGINEER under this Agreement.

Should such circumstances occur, the nonconforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of the Agreement.

For delays in performance by ENGINEER, which are caused by circumstances, which are within its

control, such delays, shall be documented on the ENGINEER's Project Performance Evaluation form. Said form shall be completed at the conclusion of Project and acknowledged by both OWNER and ENGINEER. Completed form shall be retained by OWNER for a period of five years and reviewed prior to consultant selection for City projects.

In the event ENGINEER is delayed in the performance of Services because of delays caused by OWNER, ENGINEER shall have no claim against OWNER for damages or contract adjustment other than an extension of time.

#### **ARTICLE 15 - COMMUNICATIONS**

Any communication required by this Agreement shall be made in writing to the address specified below:

Engineer: Cook, Flatt & Strobel, Engineers, P.A.  
2930 SW Woodside Drive  
Topeka, KS 66614

Owner: City of Hays  
Engineering Department  
1002 Vine Street  
Hays, KS 67601

Nothing contained in the Article shall be construed to restrict the transmission of routine communications between representatives of ENGINEER and OWNER.

#### **ARTICLE 16 - WAIVER**

A waiver by either OWNER or ENGINEER of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

#### **ARTICLE 17 - SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision

shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

#### **ARTICLE 18 - INTEGRATION**

This Agreement represents the entire and integrated agreement between OWNER and ENGINEER. All prior and contemporaneous communications, representations, and agreements by ENGINEER, whether oral or written, relating to the subject matter of this Agreement are hereby incorporated into and shall become a part of this Agreement.

#### **ARTICLE 19 - SUCCESSORS AND ASSIGNS**

OWNER and ENGINEER each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this Agreement.

#### **ARTICLE 20 - ASSIGNMENT**

Neither OWNER nor ENGINEER shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent ENGINEER from employing independent consultants, associates, and subcontractors to assist in the performance of the Services; however, other agreements to the contrary notwithstanding, in the event ENGINEER employs independent consultants, associates, and subcontractors to assist in performance of the Services,

ENGINEER shall be solely responsible for the negligent performance of the independent consultants, associates, and subcontractors so employed.

**ARTICLE 21 - THIRD PARTY RIGHTS**

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than OWNER and ENGINEER.

IN WITNESS WHEREOF, OWNER and ENGINEER have executed this Agreement.

CITY OF HAYS  
Owner

Cook, Flatt & Strobel, Engineers  
Engineer

\_\_\_\_\_  
By Toby Dougherty

\_\_\_\_\_  
By

City Manager  
Title

Vice President  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Attest:

Attest:

**BIKE HAYS IMPROVEMENT**  
**ATTACHMENT A**  
**TO**  
**AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Hays, Kansas  
Engineer: Cook, Flatt & Strobel, Engineers, P.A.  
Project Number & Name: COH Project 20012-13 Bike Hays Improvements

**SCOPE OF SERVICES**

**I. BASIC SERVICES**

The scope of Basic Services for this project is as follows: Work under any particular phase if applicable will not proceed until owner authorizes Engineer in writing to proceed.

**A. Engineering Design Phase:**

1. Initial visit to City (2 day)
  - a. Conduct coordination meeting
  - b. On-site preliminary workshop including field reconnaissance
  - c. Public presentation
2. Additional visit to the City (2 days)
  - a. Meeting with City and stakeholders
  - b. On-site work session
  - c. Public open house/presentation
3. Develop field check plans for KDOT review
  - a. One site visit for field check
4. Develop office check plans and specifications for KDOT review
5. Develop final check plans and specifications for KDOT letting

*Contractor Solicitation Phase:*

1. This project will let by KDOT
2. Address contractor questions and review appropriate addenda during the bid preparation period.

## SUPPLEMENTAL SERVICES

Any work requested by the Owner that is not included in the Basic Services will be classified as Supplemental Services. Supplemental Services shall include, but are not limited to the following.

1. Changes in the general scope, extent, or character of the project or its design, including but not limited to changes in size, complexity, Owner's schedule, character of construction or method of financing; and revising previously accepted studies, reports, or design documents when such revisions are required by changes in laws, regulations, ordinances, codes, or orders enacted subsequent to the preparation of such studies/reports/documents or designs or due to any other causes beyond the Engineer's control.
2. Construction Engineering Phase:
  - a. Attendance at pre-construction conference.
  - b. Review all shop drawings and submittals.
  - c. Attend progress meetings
  - d. Construction observation
3. Topographic, ALTA, or boundary surveys. Plans will be based on aerial imagery and approximate field measures.
4. Legal descriptions or right of way plans. Easement and/or right of way acquisition are not anticipated for this project.
5. Utility Coordination and/or utility plans. Utility conflicts and relocations are not anticipated.
6. Geotechnical investigation
7. Additional presentations or on-site visits not listed under the basic services.

**BIKE HAYS IMPROVEMENT**  
**ATTACHMENT B**  
**TO**  
**AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Hays, Kansas  
Engineer: Cook, Flatt & Strobel, Engineers, P.A.  
Project Number & Name: COH Project 20012-13 Bike Hays Improvements

**COMPENSATION**

For the services covered by this Agreement, the Owner agrees to pay the Engineer as follows:

- A. For the Basic Service described in Attachment A, an hourly rate plus mark-ups and expenses as defined below not-to-exceed forty-eight thousand four hundred dollars (\$48,400.00).
- B. Payments shall be made to the Engineer by the Owner based on the Engineer's statement. Payments shall be made monthly in amounts which are consistent with the amount of engineering services provided, as determined by the Engineer. The entire amount of each statement shall be due and payable upon receipt by the Owner.

Payments shall be full compensation for salary costs, overhead, profit, expenses and all other costs required in performing the work described herein. Overhead costs, including fringe benefits, shall be defined by the Engineer's rate schedule, see Attachment F. Hourly charge rates are subject to adjustment annually on January 1. Overtime, when authorized by the Owner, will be billed at 1.5 times the rates listed (non-engineer time only).

- D. It is understood and agreed that a delay, for any reason or cause, in the start of services by the Engineer shall not entitle the Engineer to additional compensation.
- E. It is understood and agreed:
  - 1. That the Engineer shall start the performance of Services within 10 days of receipt of a notice to proceed and shall complete the work in accordance with the contract times set forth in Attachment E, Project Schedule.
  - 2. That the Engineer shall keep records on the basis of generally accepted accounting practice of costs and expenses which records shall be available for inspection at all reasonable times.

**BIKE HAYS IMPROVEMENT**  
**ATTACHMENT C**  
**TO**  
**AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Hays, Kansas  
Engineer: Cook, Flatt & Strobel, Engineers, P.A.  
Project Number & Name: COH Project 20012-13 Bike Hays Improvements

**OWNER'S RESPONSIBILITIES**

The Owner will furnish, as required by the work and not at the expense of the Engineer, the following items:

1. Right of way maps, plats, and deeds.
2. Aerial, street and utility maps.
3. Provide meeting space for meetings, presentations, design workshops, and public presentations.

**BIKE HAYS IMPROVEMENT**  
**ATTACHMENT D**  
**TO**  
**AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Hays, Kansas  
Engineer: Cook, Flatt & Strobel, Engineers, P.A.  
Project Number & Name: COH Project 20012-13 Bike Hays Improvements

**SUPPLEMENTAL AGREEMENTS**

Owner and Engineer agree that the following communications, representations, and agreements by Engineer, whether oral or written, relating to the subject matter of the Agreement are hereby incorporated into and shall become a part of the Agreement as set forth in ARTICLE 19 - INTEGRATION.

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

**BIKE HAYS IMPROVEMENT**  
**ATTACHMENT E**  
**TO**  
**AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Hays, Kansas  
Engineer: Cook, Flatt & Strobel, Engineers, P.A.  
Project Number & Name: COH Project 20012-13 Bike Hays Improvements

**PROJECT SCHEDULE**

Owner and Engineer recognize that time is of the essence of the Agreement and that Owner will suffer financial loss if the work is not completed within the times stipulated herein, plus any extensions thereof. Accordingly, Engineer has established time intervals, in calendar days, for submittals at various stages of the project as detailed below. As each actual submittal date occurs, if requested, Engineer shall meet with Owner to discuss the progress of the work and the actual submittal date shall be documented. If project is behind schedule, the reason shall be recorded. Engineer shall not be responsible for the time required by Owner's representative to review Engineer's submittal. When review is complete, Owner shall, in writing, authorize Engineer to proceed to the next submittal date. After final submittal date, if requested, Engineer and Owner shall meet to evaluate Engineer's performance with regard to design schedule.

1. Schedule. Engineer will make plan submittals to Owner based on the following schedule:
  - a. The project submittal schedule will generally follow the KDOT schedule for a letting in September 2014. The engineer will work to expedite the schedule and letting for this project, if possible.
  - b. Engineering services will begin 10 calendar days after Notice to Proceed by owner including scheduling the first design visit.
  - c. First visit will be scheduled in September 2013 if the City is available. Second visit will be scheduled before December 2013, also based on City's availability.
  - d. Field check plans will be submitted 40 calendar days after completion of second visit to Hays for design workshop and presentation.
  - e. Office check plans and specifications will be submitted 40 calendar days after on-site field check.

- f. Final plans and specifications will be submitted 30 calendar days after receiving commons back from the City and KDOT on the field check plans.

# **Commission Work Session Agenda**

## **Memo**

**From:** Kim Rupp, Director of Finance  
**Work Session:** September 5, 2013  
**Subject:** Refuse Trucks Lease/Purchase Buyout  
**Person(s) Responsible:** Kim Rupp, Director of Finance  
Toby Dougherty, City Manager

### **Summary**

October 18, 2013 is the first available call date of the lease/purchase agreement on the three 2008 Bridgeport refuse trucks. The City can realize an interest savings of \$16,236.04 if a buyout were completed on the date mentioned. The City Commission will be asked to approve an expenditure of \$207,735.16 from the Solid Waste reserve fund to buyout the lease/purchase agreement on the three refuse trucks.

### **Background**

In 2007 the Solid Waste division purchased three Bridgeport Ranger 24 cubic yard automated side load refuse bodies mounted to three 2008 American LaFrance Condor chassis. These were purchased from Downing Sales & Service Inc and financed by an equipment lease/purchase agreement with Municipal Services Group, Inc. On or after October 18, 2013 the agreement provides for the option to purchase the equipment upon a 30 day written notice to Municipal Services Inc. The agreed upon purchase price of the equipment is the principal now owing plus accrued interest.

### **Discussion**

Based on the poor interest rate environment on idle funds, the available cash in the Solid Waste reserve account and the projected interest savings it would be in the best interest of the City to exercise this option to purchase.

### **Legal Consideration**

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

### **Financial Consideration**

The total purchase price of the three refuse trucks was \$458,553. Payments due each April and October beginning 10/18/2007 are \$27,996.40 for total annual payments of

\$55,992.80 each year. The principal balance now owing is \$203,243.48 and accrued interest due on 10/18/2013 is \$4,491.68 for a total buyout of \$207,735.16. This buyout would save \$16,236.04 in future interest payments. The current balance of the Solid Waste Reserves is \$481,451. All things remaining equal, there is a transfer to reserves budgeted for 2013 in the amount of \$242,839. That transfer will be completed by year end 2013. Therefore this expenditure for the buyout would be replenished fairly quickly.

### **Options**

Several options exist for the City Commission to consider.

- 1) Direct City Staff to issue a 30 day written notice of the City's intent to exercise its option to purchase the refuse trucks in the amount of \$207,735.16 to be funded from the Solid Waste reserve fund.
- 2) Do nothing
- 3) Provide staff with further direction

### **Recommendation**

Staff recommends the Commission direct City Staff to issue a 30 day written notice of the City's intent to exercise its option to purchase the refuse trucks in the amount of \$207,735.16 to be funded from the Solid Waste reserve fund.

### **Action Requested**

Authorize City Staff to issue a 30 day written notice of the City's intent to exercise its option to purchase the refuse trucks and authorize the expenditure in the amount of \$207,735.16 to be funded from the Solid Waste reserve fund.

### **Supporting Documentation**

N/A