

MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF HAYS, KANSAS
HELD ON JANUARY 12, 2023

1. CALL TO ORDER BY CHAIRPERSON: The Governing Body of the City of Hays, Kansas met in regular session on Thursday, January 12, 2023 at 4:00 p.m.

Roll Call: Present: Mason Ruder
Shaun Musil
Sandy Jacobs
Reese Barrick
Alaina Cunningham

Mayor Ruder declared a quorum was present and called the meeting to order.

2. MINUTES: There were no corrections or additions to the minutes of the regular meeting held on December 22, 2022; the minutes stand approved as presented.

3. CITIZEN COMMENTS: There were no comments.

4. CONSENT AGENDA: The following proposed appointment will be presented for approval at the January 26, 2023 City Commission meeting.

Northwest Kansas Community Corrections and Northwest Kansas Juvenile Services Governing Board

Curtis Brown – two-year term to expire February 1, 2025 (3rd term)

Sandy Jacobs moved, Shaun Musil seconded, to approve the Consent Agenda as presented.

Vote: Ayes: Mason Ruder
Shaun Musil
Sandy Jacobs
Reese Barrick
Alaina Cunningham

NEW BUSINESS

5. 2023 STREET MAINTENANCE PROGRAM – AWARD OF BID: Jesse Rohr, Director of Public Works, stated each year staff evaluates the condition of city streets and develops a maintenance program that is brought forward for Commission consideration. Staff utilizes traffic counts, the latest pavement condition assessment, past maintenance treatments, public input, and available budget, in developing the program. The Street Maintenance Program has been funded primarily with Special Highway Funds, which in 2023 includes a transfer of \$200,000 from the General Fund.

2023 Funding

Special Highway

State Gas Tax Refund (KDOT)	\$ 576,750
Connecting Link Maintenance (KDOT)	\$ 74,500
Transfer from General Fund	\$ 200,000
Federal Aid (Exchange Program)	\$ 270,000
Cash Carryover	\$ 465,638
<u>Contingency (keep for unforeseen expenses)</u>	<u>\$ -(50,000)</u>
Special Highway Total Funding Available	\$1,536,888
<u>Special Parks Funding Available</u>	<u>\$ 90,000</u>
Total Funds	\$1,626,888

Mr. Rohr stated that bids for the 2023 Street Maintenance Projects were opened on December 13, 2022. The projects bid with this year's program include seal coat, polypatch, reclamite, major rehab (street, parking lot, and concrete alley), curb and brick repair, and sidewalk improvements. Bids were received from ten different contractors and staff recommends entering contracts with the low bidders for all projects. The total of the low bid contracts being recommended is \$1,494,762.34. Mr. Rohr noted that this year we received at least two bids for each project.

Summary of the Proposed Work

Project	Contractor	Actual Bids
Seal Coat	Circle C	\$554,163.93
Polypatch	Stripe & Seal	\$43,400.00
Asphalt Rejuvenator	ProSeal	\$49,359.18
Curb and Brick Repair	Morgan Bros.	\$64,000.53
Concrete Alley	Sweeney	\$59,528.70
Major Street Rehab	T&T Builders	\$634,595.00
Sidewalk	Morgan Bros.	\$10,920.00
Aubel Bickle Parking Lot	T&T Builders	\$78,795.00
	Subtotal	\$1,494,762.34
Sidewalk Rebate		\$10,000.00
In-House		\$40,000.00
	Subtotal	\$50,000.00
Total Cost of All Projects		\$1,544,762.34
Sp. Hwy. Funding Available		\$1,536,888.00
Total Cost of Special Hwy.		\$1,465,967.34
Balance of Spec. Hwy. Budgeted Projects		
Fund		\$70,920.66
Sp. Parks Funding Available		\$90,000.00
Total Cost of Sp. Parks		\$78,795.00
Balance of Sp. Parks Funds		\$11,205.00

The projects awarded would be accomplished at various locations at various times throughout this year. Projects will be funded out of Special Highway, which has 2023 budgeted funds of \$1,536,888, and Special Parks,

which has budgeted funds of \$90,000 for reconstruction of the Aubel-Bickle Park parking lot project.

Alaina Cunningham moved, Sandy Jacobs seconded, to authorize the City Manager to enter contracts for construction as presented, in the amounts specified, to be paid out of the funds identified by staff.

The Commissioners commented that they appreciate that staff has stayed focused on street maintenance and how city streets have improved in the last 15 years.

Toby Dougherty, City Manager, stated that before the $\frac{3}{4}$ cent sales tax was implemented to fund the General Fund, there were limited funds to spend on streets. He stated that one of the promises the then-City Commission made when the residents passed the sales tax was that money raised for streets would be spent on streets and additional funds would be allocated for street maintenance as well.

Vote: Ayes: Mason Ruder

Shaun Musil

Sandy Jacobs

Reese Barrick

Alaina Cunningham

6. R9 RANCH UPDATE: Toby Dougherty, City Manager, updated the Commission on the R9 water transfer process. The process began in February 2014 when the then-City Commission voted to apply to the state to change the water use from agricultural irrigation to municipal use. In June 2015, the change applications were filed, and the Master Order was issued in March 2019.

R9 Timeline

- February 2014 – Commission approval to begin process
- June 2015 – Change applications filed
- May 2018 – Draft Master Order issued
- March 2019 – Master Order issued
- April 2019 – WaterPACK petitions for administrative review
- April 2019 – Ag Secretary declines to review

- May 2019 – WaterPACK petitions for Judicial review
- January 2021 – Judicial Review Hearing
- June 29, 2022 – Judge Gatterman ruled in favor of the State of Kansas and City
- July 27, 2022 – WaterPACK filed Notice of Appeal
- August 23, 2022 – WaterPACK filed docketing statement
- August 24, 2022 – City filed motions to transfer to Supreme Court and expedite
- September 26, 2022 – Motion to Transfer to Supreme Court granted
- September 28, 2022– First meeting of the Hearing Panel
- October 3, 2022 – WaterPACK brief due. 20-day extension was asked for and granted
- October 20, 2022 – Chief Engineer sent letter to OAH requesting hearing officer
- October 21, 2022 – Matt Spurgen appointed Hearing Officer
- October 23, 2022 – WaterPACK brief due and 20-day extension was asked for and granted
- November 14, 2022 – WaterPACK brief due and 30-day extension granted
- December 14, 2022 – WaterPACK brief due and filed
- February 13, 2023 – Cities/DWR reply due
- February 28, 2023 – WaterPACK reply due
- Oral argument – Summer 2023
- Decision – A few months after argument

The timeline has been dramatically slowed by several petitions and appeals starting in April 2019 by the Water Protection Association of Central Kansas (WaterPACK), the only active opponent of the project.

On June 29, 2022 Judge Bruce Gatterman, Chief District Judge of the Edwards County District Court, affirmed the Kansas Department of Agriculture's Chief Engineer's 2019 approval of the cities' change applications. On July 27, 2022 WaterPACK filed a Notice of Appeal.

Mr. Dougherty stated we have received our positive ruling and we are starting the transfer process. We are moving forward, and we don't think they will be successful in their appeals. WaterPACK believes Hays and Russell are being allowed to take too much water from the R9 Ranch and there is potential harm in that. Mr. Dougherty stated that they have a confusing argument that grass uses almost as much water as irrigated crops, so by converting the R9 Ranch to native grass the grass is going to use so much water it will harm the aquifer. Therefore, we should be limited in what we are taking out of the aquifer.

Commissioner Jacobs expressed her anger at the continued delays and resulting increased cost to the City. Mr. Dougherty stated the deviations have cost the City about \$2 million to date in attorney and engineering fees, which are hard costs. If you include soft costs like inflation, you're talking \$30 to \$40 million dollars, in what we could have done versus what it's going to cost now.

Mr. Dougherty stated converting water rights for one use to another is a widely used practice across Kansas. He stated that when you convert irrigation water rights to municipal water rights, you don't get 100% of that, you get a formulaic reduction. The formula is built in to protect the water rights around you and to protect the aquifer to make sure the new use does not use more water than the previous use. Early in the process, Hays and Russell decided to go above and beyond what is required and reduced their water rights by 30% because we want to make sure that we don't do anything to potentially harm the aquifer.

Commissioner Jacobs stated with the entire state of Kansas currently in a drought, to various degrees, it's getting serious. She added that you would think this is to our benefit, we are talking about water for people, for sustainability of life in our area.

Mr. Dougherty stated he has no doubt we will prevail in the appeal process and reviewed the process moving forward.

- The Wellfield and Pipeline design contracts are being finalized
- Once approved by the Commission, we will send out an RFQ for land acquisition services

- We are preparing the property for the Walk-in Hunting Access Program (WIHA) and potentially more significant public use
- Working to identify federal dollars that can help fund the project

Commissioner Musil stated that year after year Hays has shown we are the most conservative City in the State and to think we would waste water or hurt agriculture is a crazy statement. He added that this water is for human consumption, and we are going to need it to grow, but we are never going to waste water. Mr. Dougherty noted that Hays and Russell use 3,000-acre feet combined and even if we were to abandon our existing water sources, we would still use half of the water that was used when the land at the R-9 Ranch was irrigated.

Mayor Ruder stated it is exciting to finally see this project getting underway.

Commissioner Cunningham asked when the R9 Ranch was purchased. Mr. Dougherty stated it was purchased in 1995 and the City of Russell purchased an 18% stake in 1996. In 2014, coming off a significant drought, the Commission approved to begin the transfer process.

7. COMMISSION INQUIRIES AND COMMENTS: Commissioner Cunningham stated she has learned a lot about the City of Hays this week and is excited to learn more.

Commissioner Barrick stated he is glad to see the south Vine Street Construction nearly completed.

Commissioner Jacobs stated the crew hired to stripe 27th Street was working hard to beat the weather that was coming in and they did a great job.

The meeting was adjourned at 4:52 p.m.

Submitted by: _____

Brenda Kitchen – City Clerk