



City of Leavenworth
100 N. 5th Street
Leavenworth, Kansas 66048

CITY COMMISSION REGULAR MEETING
COMMISSION CHAMBERS
TUESDAY, OCTOBER 27, 2020 7:00 P.M.

Welcome to your City Commission Meeting – Please turn off or silence all cell phones during the meeting

Meetings are televised everyday on Channel 2 at 7 p.m. and midnight and available for viewing on YouTube and Facebook Live

The Leavenworth City Commission meeting will be open to the public with limited seating capacity.

To reserve a seat, email cwilliamson@firstcity.org no later than 4:00 pm on October 27. Seats will be available on a first come first serve basis. To mitigate the spread of COVID-19 face coverings and social distancing are REQUIRED to attend the meeting. In accordance with Kansas Open Meetings Act (KOMA), the meeting can be viewed on Channel 2 and via Facebook Live. The public is encouraged to continue to view the meeting via Facebook Live or Channel 2 and to submit public comments to be read during the Public Comments portion of the meeting and questions on agenda items to be read during discussion on that topic. Submit your comments or questions to cwilliamson@firstcity.org no later than 6:00 pm on October 27.

Call to Order – Pledge of Allegiance Followed by Silent Meditation

OLD BUSINESS:

Consideration of Previous Meeting Minutes:

- 1. Minutes from October 13, 2020 Regular Meeting **Action:** Motion (pg. 3)

Second Consideration Ordinances

- 2. Second Consideration Ordinance 8147-Special Use Permit 220 Spruce Child Care Center **Action:** Roll Call (pg. 8)
- 3. Second Consideration Ordinance 8148-Rezoning 619 S 4th Street From Office Business District to General Business District **Action:** Roll Call (pg. 11)
- 4. Second Consideration Ordinance 8149-Vacate 6th Street From Metropolitan Avenue to Cheyenne Street **Action:** Roll Call (pg. 14)

NEW BUSINESS:

Public Comment: *(i.e. Items not listed on the agenda or receipt of petitions- Please state your name and address)*
Any emails received by the public for public comment on non-agenda items will be read at this time.

General Items:

- 5. Consider Utility Easement Agreement-Fort Gate Marketplace **Action:** Motion (pg. 24)
- 6. Acceptance of Dedicated Land for Public Use-Fort Gate Marketplace First Plat **Action:** Motion (pg. 31)
- 7. Request to Name City Owned Property (Soccer Complex) **Action:** Motion (pg. 35)
- 8. Review Unsafe & Dangerous Structures Given 30-day Extensions on September 22 **Action:** Motion (pg. 40)

Public Hearings:

- 9. Consideration to Adopt a Redevelopment Project Plan (Price Chopper TIF) (pg. 47)
 - a. Open Public Hearing **Action:** Motion
 - b. Staff and Public Comments
 - c. Close Public Hearing **Action:** Motion
 - d. First Consideration of Ordinance **Action:** Consensus
- 10. Consider Creation of a Community Improvement District (Price Chopper) (pg. 69)
 - a. Open Public Hearing **Action:** Motion
 - b. Staff and Public Comments

- c. Close Public Hearing
- d. First Consideration Ordinance

Action: Motion
Action: Consensus

Resolutions:

- 11. Resolution B-2267 Adopting the 2020 Stormwater Management Program **Action:** Motion (pg. 75)
- 12. Resolution B-2268 Adopting the Manual of Infrastructure Standards **Action:** Motion (pg. 102)
- 13. Resolution B-2269 Adopting the Revised Investment Policy **Action:** Motion (pg. 106)

Bids, Contract and Agreements:

- 14. Consider Amendment to 1994 City & Price Chopper Lease Agreement **Action:** Motion (pg. 114)
- 15. Consider Super Market Developers Development Agreement (Price Chopper) **Action:** Motion (pg. 133)
- 16. Consider Purchase of Remote Control Mower-Parks & Recreation **Action:** Motion (pg. 164)

First Consideration Ordinances:

- 17. First Consideration Ordinance Special Use Permit-611 Miami Two Family Dwelling in R1-6 Single Family Residential Zone. **Action:** Consensus (pg. 169)
- 18. First Consideration Ordinance Industrial Revenue Bonds (Price Chopper) **Action:** Consensus (pg. 178)

Consent Agenda:

Claims for October 10, 2020 through October 23, 2020 in the amount of \$542,991.35; Net amount for Payroll #22 effective October 23, 2020 in the amount of \$350,090.87 (Includes Police & Fire Pension in the amount of \$11,839.36).

Action: Motion

Other:

Adjournment

Action: Motion



CALL TO ORDER - The Governing Body met for a regular meeting and the following commission members were present in the commission chambers: Mayor Myron J. (Mike) Griswold and Commissioner Mark Preisinger. The following member was present virtually via teleconference: Mayor Pro-Tem Nancy Bauder and Commissioners Camalla Leonhard and Jermaine Wilson

Others present in the commission chambers: City Manager Paul Kramer, Assistant City Manager Taylour Tedder, Community Development Director Julie Hurley, and City Clerk Carla K. Williamson.

City Attorney David E. Waters was present virtually via teleconference.

Other members participating via teleconference: Public Works Director Mike McDonald, Deputy Public Works Director Mike Hooper, Deputy Finance Director Brandon Mills and Finance Director Ruby Maline

Mayor Griswold read the following statement from the agenda index:

The Leavenworth City Commission meeting will be open to the public with limited seating capacity. To reserve a seat, email cwilliamson@firstcity.org no later than 4:00 pm on October 13. Seats will be available on a first come first serve basis. To mitigate the spread of COVID-19 face coverings and social distancing are REQUIRED to attend the meeting. In accordance with Kansas Open Meetings Act (KOMA), the meeting can be viewed on Channel 2 and via Facebook Live. The public is encouraged to continue to view the meeting via Facebook Live or Channel 2 and to submit public comments to be read during the Public Comments portion of the meeting and questions on agenda items to be read during discussion on that topic. Submit your comments or questions to cwilliamson@firstcity.org no later than 6:00 pm on October 13. For call in options related to commenting on agenda items, submit your inquiry to cwilliamson@firstcity.org

Mayor Griswold asked everyone to stand for the pledge of allegiance followed by silent meditation.

Proclamations:

The Mayor read the following proclamations:

Domestic Violence Awareness Month, Food Day October 16, and National Arts & Humanities Month.

New Employee Welcome:

Due to COVID-19, no employees were present. The Mayor recognized the following new employees:

Joseph Jacobson, Park Technician I	Tyriek Ford, WPC Operator I
Barrett Damron, Traffic Control Technician	Antione Powell, Police Officer
John Marshall, Stormwater Equipment Operator I	Dion DePaolis, Firefighter
Austin White, Firefighter	John Burkhart, Firefighter
Brian McKeighan, Solid Waste Laborer	Samuel Lough II, WPC Operator I
Joseph Dill, Firefighter	

OLD BUSINESS:

Consideration of Previous Meeting Minutes:

Commissioner Preisinger moved to approve the minutes from the September 22, 2020 regular meeting as presented. Commissioner Leonhard seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

NEW BUSINESS:

Public Comment: *emails received by the public for public comment on non-agenda items will be read at this time. No emails were received and no one was present in person for comment.*

Public Hearings:

Public Hearing to Consider a Petition to Vacate 6th Street from Metropolitan Avenue to Cheyenne Street

- **Open Public Hearing:** Commissioner Preisinger moved to open the public hearing. Commissioner Bauder seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.
- **Staff and Public Comments:**

Staff Comment: City Manager Paul Kramer reviewed the petition filed by Fort Gate Properties LLC requesting the vacation of 6th Street between Metropolitan Avenue and Cheyenne Street. All utility companies were notified and the owner and developer has accommodated any requests and agreements with the utilities in retaining and creating the easements. Staff recommends and supports the request to vacate. A draft of the ordinance to vacate the street with a General Utility Easement Agreement as Exhibit B is attached. The ordinance is placed on first consideration and the General Utility Easement will come back to the commission for approval along with second consideration of the ordinance.

Public Comment: None
(Kevin Lee, Attorney (Polsinelli PC) and Hilary Zerr, Civil Engineer both representing Fort Gate Properties attended virtually via GoToMeeting to answer any questions. There were no questions.)
- **Close Public Hearing:** Commissioner Preisinger moved to close the public hearing. Commissioner Wilson seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.
- **First Consideration Ordinance:** There was a consensus to place the ordinance on first consideration.

Public Hearing to Consider Amendment to Community Development Block Grant (CDBG) Annual Action Plan (AAP) 2019-2020

- **Open Public Hearing:** Commissioner Preisinger moved to open the public hearing. Commissioner Bauder seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.
- **Staff and Public Comments:**

Staff Comment: Community Development Director Julie Hurley reviewed the additional funds. In order to accept and allocate the CARES Act funds second allocation awarded to the City, the AAP

2019-2020 must again be amended. The funds were awarded to combat the effects of the COVID-19 pandemic. The AAP will be amended to increase Public Service Agency by \$108,897.00 and Administration by \$11,000.00 for a total of \$119,897.00. Resolution B-2266 is presented for adoption authorizing the amendment.

Public Comment: none

- **Close Public Hearing:** Commissioner Preisinger moved to close the public hearing. Commissioner Bauder seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.
- **Adopt Resolution B-2266:** Commissioner Preisinger moved to adopt Resolution B-2266 amending the CDBG Annual Action Plan 2019-2020. Commissioner Bauder seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Bids, Contracts and Agreements:

Consider Bids for Uniform Rental Contract – Deputy Finance Director Brandon Mills presented for consideration the bids for the Uniform Rental Contract. Staff recommends approval of the bid from Ace Image Wear in the annual amount not to exceed \$28,185.04 with a contract term of 3 years. Bids were opened on September 11, 2020 and the following bids were received:

Vendor	Location	Bid Amount	Meets Specifications
Ace Image Wear	Kansas City MO	\$28,185.04	Yes
Cintas	Dallas TX	\$37,241.36	Yes
Clean	Kansas City MO	Not Read	No
Unifirst	Kansas City MO	Not Read	No

Commissioner Preisinger moved to approve the bid for employee uniform services to Ace Image Wear in the amount not to exceed \$28,185.04 annually. Commissioner Leonhard seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Consider Design Services Contract with Affinis for 2021 Pavement Management - Public Works Director Mike McDonald presented for consideration a contact with Affinis for design services of the 2021 Pavement Management Program in the amount not to exceed \$88,500.00.

Commissioner Preisinger moved to approve the design services contract with Affinis Corporation in an amount not to exceed \$88,500.00 for the 2021 Pavement Management Program. Commissioner Wilson seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

First Consideration Ordinances:

First Consideration Ordinance Special Use Permit – Child Care Center at 220 Spruce Street - Community Development Director Julie Hurley presented for first consideration an ordinance to allow by special use a child care center at 220 Spruce. The request for the special use permit submitted by Savannah Nelson was

considered by the Planning Commission at their September 14, 2020 and was voted unanimously to recommend approval.

Commissioner Wilson disclosed that this is his mother's property. There was a consensus by the City Commission to place on first consideration.

First Consideration Ordinance Rezoning 619 S 4th Street from Office Business District (OBD) to General Business District (GBD) - Community Development Director Julie Hurley presented for first consideration an ordinance to Rezone 619 S 4th Street from Office Business District to General Business District. The request for rezoning submitted by Development, Inc. owned by Jeremy Greenamyre was considered by the Planning Commission at their September 14, 2020 and was voted unanimously to recommend approval.

There was a consensus by the City Commission to place on first consideration.

CONSENT AGENDA:

Commissioner Leonhard moved to approve claims for September 19, 2020 through October 9, 2020 in the amount of \$2,319,325.31; Net amount for Payroll #20 effective September 25, 2020 in the amount of \$353,321.04 (Includes Police & Fire Pension in the amount of \$11,839.36); and Net amount for Payroll # 21 effective October 9, 2020 in the amount of \$335,509.06 (No Police & Fire Pension). Commissioner Preisinger seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Other:

City Manager Kramer

- Trunk or Treat sponsored by the City Parks & Recreation Department will be held on October 24 at Sportsfield
- Veterans day parade committee and staff met again last week and the parade is a go for November 11. This year's parade will be scaled down quite a bit due to COVID-19
- Pavement management in process but still several roads to be completed

Commissioner Leonhard

- Reviewed and reminded everyone about the upcoming election, voting dates and locations

Commissioner Wilson

- Reminded everyone to vote and look at records of candidates

Commissioner Preisinger

- Asked everyone to please follow CDC recommendations and health professional regarding wearing masks

Commissioner Bauder

- Discussed COVID-19 and encouraged everyone to wear a mask and to consider others that you may expose

Mayor Griswold

- Echoed and supports the comments by Commissioners Preisinger and Bauder regarding wearing of masks and thanked Commissioners Wilson and Leonhard for comments on voting.

Adjournment:

Commissioner Preisinger moved to adjourn the meeting. Commissioner Bauder seconded the motion and the motion was unanimously approved.

Time Meeting Adjourned 7:50 p.m.

Minutes taken by City Clerk Carla K. Williamson, CMC

POLICY REPORT
SECOND CONSIDERATION ORDINANCE 8147
SPECIAL USE PERMIT 220 SPRUCE STREET – CHILD CARE CENTER

October 27, 2020



Carla K. Williamson, CMC
City Clerk



Paul Kramer
City Manager

BACKGROUND:

At the October 13, 2020 City Commission Regular meeting the City Commission reviewed and placed on first consideration:

**AN ORDINANCE ALLOWING A SPECIAL USE FOR A CHILD CARE CENTER TO
BE LOCATED AT 220 SPRUCE STREET IN THE CITY OF LEAVENWORTH,
KANSAS.**

Ordinance No. 8147 is now presented for second consideration and requires a roll call vote.

ATTACHMENTS:

- Ordinance No. 8147

(Summary Published in the Leavenworth Times on October 30, 2020)

ORDINANCE NO. 8147

AN ORDINANCE ALLOWING A SPECIAL USE FOR A CHILD CARE CENTER TO BE LOCATED AT 220 SPRUCE STREET IN THE CITY OF LEAVENWORTH, KANSAS.

WHEREAS, under the Development Regulations, Appendix A of the Code of Ordinances of the City of Leavenworth, Kansas, the Governing Body of the City of Leavenworth is given the power to locate special uses in each zoning district by ordinance within said City; and

WHEREAS, the City Planning Commission, after fully complying with the requirements of the Code of Ordinances of the City of Leavenworth, Kansas, and pursuant to K.S.A 12-757, held a public hearing on the 14th day of September, 2020 in the Commission Room, 1st Floor of City Hall, 100 N. 5th Street, Leavenworth, Kansas, the official date and time set as was published in the Leavenworth Times newspaper and mailed to all property owners within 200 feet of the said property on the 20th day of August 2020; and

WHEREAS, upon a motion made, duly seconded, and passed, the City Planning Commission adopted findings of fact and recommended approval of the request for a child care center at 220 Spruce Street, Leavenworth, Kansas; and

WHEREAS, upon a roll call vote duly passed, the Governing Body adopted the findings of fact and conclusions to allow special use for a child care center for the property described herein.

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

Section 1. That a special use permit be issued for a child care center on the following described property:

Lot 12, Block 8, Clark & Rees' Addition, City of Leavenworth, Leavenworth County, Kansas, and **more commonly referred to as 220 Spruce Street, Leavenworth, Kansas.**

Section 2. That this special use permit is subject to the following:

- a.) A minimum of 1,200 square feet of open space 100% enclosed by a minimum 4' high fence or wall shall be provided and maintained in good condition;
- b.) To operate a childcare center for up to twelve (12) children;
- c.) A copy of the permanent Child Care Center License shall be provided annually upon renewal by the State of Kansas; and
- d.) No additional home occupations may be carried out at the resident; and
- e.) Annual payment of Special Use Permit.

Section 3: That this Ordinance shall take effect and be in force from and after its passage by the Governing Body, and its publication once in the official City newspaper.

PASSED AND APPROVED by the Leavenworth City Commission of the City of Leavenworth, Kansas on this 27th day of October, 2020.

Myron J. "Mike" Griswold, Mayor

{Seal}

ATTEST:

Carla K. Williamson, CMC, City Clerk

**POLICY REPORT
SECOND CONSIDERATION ORDINANCE 8148
REZONING 619 S 4th STREET FROM
OFFICE BUSINESS DISTRICT (OBD) TO GENERAL BUSINESS DISTRICT (GBD)**

October 27, 2020



Carla K. Williamson, CMC
City Clerk



Paul Kramer
City Manager

BACKGROUND:

At the October 13, 2020 City Commission Regular meeting the City Commission reviewed and placed on first consideration:

**AN ORDINANCE AMENDING THE DEVELOPMENT REGULATIONS, APPENDIX
A OF THE CODE OF ORDINANCES OF THE CITY OF LEAVENWORTH, KANSAS
BY REZONING 619 S. 4TH STREET FROM OFFICE BUSINESS DISTRICT (OBD)
TO GENERAL BUSINESS DISTRICT (GBD).**

Ordinance No. 8148 is now presented for second consideration and requires a roll call vote.

ATTACHMENTS:

- Ordinance No. 8148

(Summary Published in the Leavenworth Times on October 30, 2020)

ORDINANCE NO. 8148

AN ORDINANCE AMENDING THE DEVELOPMENT REGULATIONS, APPENDIX A OF THE CODE OF ORDINANCES OF THE CITY OF LEAVENWORTH, KANSAS BY REZONING 619 S. 4TH STREET FROM OFFICE BUSINESS DISTRICT (OBD) TO GENERAL BUSINESS DISTRICT (GBD).

WHEREAS, under the Development Regulations, Appendix A of the Code of Ordinances of the City of Leavenworth, Kansas, the Governing Body of the City of Leavenworth is given the power to amend, supplement or change existing zoning regulations within said City; and

WHEREAS, the City Planning Commission, after fully complying with the requirements of the Code of Ordinances of the City of Leavenworth, Kansas, held a public hearing on the 14th day of September 2020 in the Commission Room, 1st Floor of City Hall, 100 N. 5th Street, Leavenworth, Kansas. The official date and time set as was published in the Leavenworth Times newspaper on the 20th day of August 2020; and

WHEREAS, upon a motion made, duly seconded, and passed, the Planning Commission adopted findings of fact and recommended approval of the request Rezoning of 619 S. 4th Street, Leavenworth Kansas from Office Business District (OBD) to General Business District (GBD); and

WHEREAS, upon a roll call vote duly passed, the Governing Body adopted the findings of fact and conclusions to rezone the property described herein.

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

Section 1: That the following described properties, to-wit:

PROPERTY A: LOTS 14, 15, AND 16, IN BLOCK 15, IN CLARK AND REES' ADDITION, CITY OF LEAVENWORTH, LEAVENWORTH COUNTY, KANSAS, AND, PROPERTY B: LOT 13, BLOCK 15, IN CLARK AND REES' ADDITION, CITY OF LEAVENWORTH, LEAVENWORTH COUNTY, KANSAS, AND MORE COMMONLY REFERRED TO AS 619 S. 4th STREET, LEAVENWORTH, KANSAS.

Section 2: That the "Zoning District Map" adopted under the Development Regulations, Appendix A of the Code of Ordinances of the City of Leavenworth, Kansas shall be and the same is hereby amended to conform to the rezoning as set forth in Section 1 above.

Section 3: That this Ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper of the City of Leavenworth, Kansas, as provided by law.

PASSED and APPROVED by the Governing Body on the 27th day of October 2020.

Myron J. (Mike) Griswold, Mayor

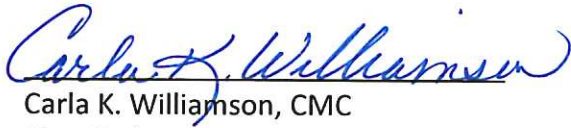
{Seal}

ATTEST:

Carla K. Williamson, CMC, City Clerk

**POLICY REPORT
SECOND CONSIDERATION ORDINANCE 8149
VACATING 6TH STREET FROM METROPOLITAN AVENUE TO CHEYENNE STREET**

October 27, 2020



Carla K. Williamson, CMC
City Clerk



Paul Kramer
City Manager

BACKGROUND:

At the October 13, 2020 City Commission Regular meeting the City Commission held a public hearing reviewed and placed on first consideration:

AN ORDINANCE VACATING ALL THAT PART OF 6th STREET RIGHT OF WAY LYING BETWEEN BLOCK G, LEAVENWORTH CITY AND BLOCK 97 DAY & MACAULAY'S BETWEEN CHEYENNE STREET AND METROPOLITAN AVENUE, IN THE CITY OF LEAVENWORTH, LEAVENWORTH COUNTY, KANSAS, AMENDING APPENDIX C, ARTICLE I, STREET VACATIONS OF THE CITY OF LEAVENWORTH CODE OF ORDINANCES AND SUBJECT TO ACCEPTANCE OF THE PROPOSED UTILITY EASEMENT.

The ordinance is subject to acceptance of the proposed utility easements that will be presented to the commission as a separate agenda item at the meeting. The utility easement agreement, once approved and signed will be attachment B of the ordinance.

Ordinance No. 8149 is now presented for second consideration and requires a roll call vote.

ATTACHMENTS:

- Ordinance No. 8149

(Summary Published in the Leavenworth Times on October 30, 2020)

ORDINANCE NO. 8149

AN ORDINANCE VACATING ALL THAT PART OF 6th STREET RIGHT OF WAY LYING BETWEEN BLOCK G, LEAVENWORTH CITY AND BLOCK 97 DAY & MACAULAY'S BETWEEN CHEYENNE STREET AND METROPOLITAN AVENUE, IN THE CITY OF LEAVENWORTH, LEAVENWORTH COUNTY, KANSAS, AMENDING APPENDIX C, ARTICLE I, STREET VACATIONS OF THE CITY OF LEAVENWORTH CODE OF ORDINANCES AND SUBJECT TO ACCEPTANCE OF THE PROPOSED UTILITY EASEMENT.

WHEREAS, a petition for a vacation of all that part of 6th Street right of way lying between Block G, Leavenworth City and Block 97, Day & Macaulay's between Cheyenne Street and Metropolitan Avenue in the City of Leavenworth, Leavenworth County, Kansas; and

WHEREAS, the petition included the proposed utility easements which have been modified as to the agreements with the utility companies involved; and

WHEREAS, the City Clerk of the City of Leavenworth, Kansas gave public notice of the same by publication in the official City newspaper on September 4, 2020 stating that a petition has been filed in the office of the City Clerk praying for such vacation, describing the property fully and setting October 13, 2020 as the hearing date on which the petition shall be presented to the Governing Body of the City for hearing and that at such time and place and giving instructions to all persons interested to be heard under the petition; and

WHEREAS, the petition did proceed to hearing as published and no objections were filed with the City Clerk or received at the time of the hearing; and

WHEREAS, all utility companies were notified and agreed to such vacation and the utility easement described in Exhibit B; and

WHEREAS, all the requirements of K.S.A. 12-504 *et. seq.* have been complied with.

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

Section 1. Those certain streets, road, alleys, or rights-of-way, as previously platted or otherwise, and being more fully described and depicted in Exhibit A, are hereby vacated.

Section 2. Notwithstanding the foregoing, such vacation is contingent and depending upon, contemporaneously herewith, the delivery, dedication, and recording of those certain easements as more particularly described on Exhibit B, which easements shall be deemed to survive and/or be effective notwithstanding the above-described vacation, and are intended to replace such easement rights as may have existed prior to such vacation.

Section 3. EFFECTIVE DATE. This ordinance shall take effect and be in force from and after the date of its publication in the official city newspaper.

PASSED and APPROVED by the Governing Body on this 27th day of October 2020.

{Seal}

Myron J. "Mike" Griswold, Mayor

ATTEST:

Carla K. Williamson, CMC, City Clerk

Exhibits A to Ordinance 8149

EXHIBIT A STREET VACATION

All that part of 6th Street right of way, in the city of Leavenworth, Leavenworth County, Kansas lying between Block G, LEAVENWORTH CITY and Block 97, DAY & MACAULAY'S and between Cheyenne Street and Metropolitan Avenue more particularly described as follows:

Beginning at the Southwest corner of said Block G; thence South 78°46'13" West a distance of 60.00 feet to the Southeast corner of said Block 97; thence North 11°13'47" West, along the West line of said Block 97, a distance of 262.51 feet to a point of intersection with the South right-of-way line of Metropolitan Avenue, as it now exists; thence along said South right-of-way line, North 85°02'02" East a distance of 60.36 feet to a point of intersection with the West line of said Block G; thence along the west line of said Block G, South 11°13'47" East a distance of 255.92 feet to the Point of Beginning, containing 15,553 square feet, or 0.357 acres, more or less.

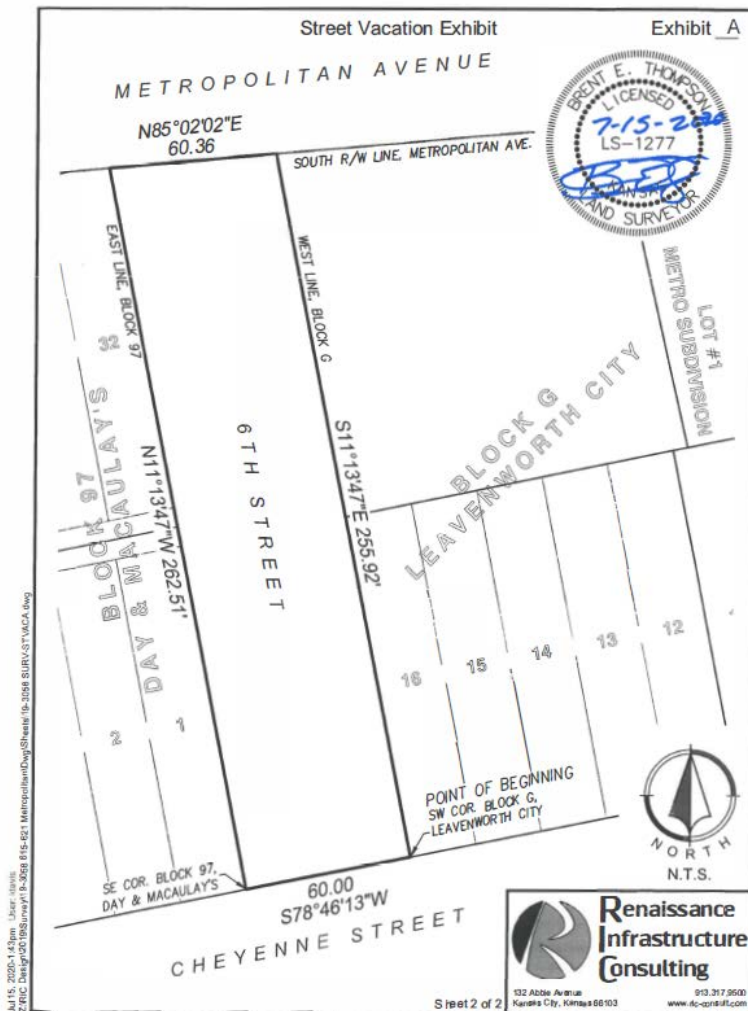


EXHIBIT B to Ordinance 8149

RECORDING COVER SHEET

Title of Document: General Utility Easement

Date of Document: _____, 2020

Grantor: Fort Gate Properties, LLC, a Kansas limited liability company

Grantor's Mailing Address: 7939 Floyd Street
Overland Park, KS 66204

Grantee: City of Leavenworth, Kansas

Grantee's Mailing Address: City of Leavenworth, Kansas
Attn: City Clerk
100 N. 5th Street
Leavenworth, KS 66048

Legal Description: See Exhibit A attached hereto

Reference Book and Page(s): N/A

After recording return to:
M. Kevin Lee
Polsinelli PC
900 W. 48th Place, Ste. 900
Kansas City, MO 64112

GENERAL UTILITY EASEMENT AGREEMENT

THIS GENERAL UTILITY EASEMENT AGREEMENT (this “Agreement”) is made and entered into, effective as of _____, 2020 (the “Effective Date”), by and between FORT GATE PROPERTIES, LLC, a Kansas limited liability company (“Grantor”), and the CITY OF LEAVENWORTH, KANSAS, a municipal corporation organized according to Kansas law (“Grantee”).

WITNESSETH

WHEREAS, Grantor is the owner of that certain real property situated in the City of Leavenworth, Leavenworth County, Kansas, as legally described on Exhibit A and generally depicted on Exhibit B (the “Easement Area”), attached hereto and incorporated herein; and

WHEREAS, Grantee has requested from Grantor, and Grantor is desirous of granting to Grantee, a perpetual, non-exclusive easement over, under, and through the Easement Area for the purpose of entering upon, locating, constructing and maintaining, or authorizing the location, construction, or maintenance, and use of, conduits, water, gas, sewer pipes, wires, surface drainage facilities, ducts, cables and appurtenances thereto, excluding any overhead lines (collectively, the “Utilities”), in any part of the Easement Area, including the right to clean, repair, replace and care for the Utilities, and for any reconstruction and future expansion of the Utilities within the Easement Area together with a right of access to the Easement Area and over the Easement Area for said purposes.

NOW THEREFORE, in consideration of the sum of Ten and 00/100 Dollars (\$10.00), of the above-referenced recitals, of the mutual promises contained herein, of the benefits to be derived from the construction and maintenance of any and all Utilities in the Easement Area, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, subject to the terms and conditions set forth herein, Grantor and Grantee hereby agree as follows:

1. **Grant of Permanent Utility Easement.** Grantor does hereby grant to Grantee forever a perpetual, non-exclusive easement over, under, and through the Easement Area for the purpose of entering upon, locating, constructing and maintaining, or authorizing the location, construction, or maintenance, and use, of, the Utilities, in any part of the Easement Area, including the right to clean, repair, replace and care for the Utilities, and for any reconstruction and future expansion of the Utilities within the Easement Area together with a right of access to the Easement Area and over the Easement Area for said purposes.

2. **Maintenance.** Following completion of the initial construction of any and all Utilities and upon completion of any subsequent maintenance, repair or replacement thereof, Grantee, its agents and employees, and successors and assigns, shall restore the surface of the Easement Area to as near as possible to the original condition existing prior to any such activities by Grantee, its agents and employees, and successors and assigns, and shall be responsible for making any repairs made necessary due to any damage caused by such activities.

3. **Duration; Assignment.** The rights and obligations set forth in this instrument shall run with the land and be binding upon the successors and assigns of Grantor and Grantee. The rights of Grantee under this Easement may be assigned, in whole or in part, by Grantee.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Grantor and Grantee have executed this instrument as of the Effective Date.

GRANTOR:

FORT GATE PROPERTIES, LLC, a Kansas limited liability company

By: _____
Name: Justin Kaufmann
Its: Manager

STATE OF _____)
) ss.
COUNTY OF _____)

On this ___ day of _____, 2020, to me personally known, appeared Justin Kaufmann, who, being by me duly sworn did say that he is the Manager of FORT GATE PROPERTIES, LLC, a Kansas limited liability company, and that said instrument was signed and delivered on behalf of said limited liability company by authority of its members, as the free act and deed of said limited liability company acting with full power and authority to so bind the limited liability company.

Notary Public

My commission expires:

[SEAL]

EXHIBIT A

Legal Description of Easement Area

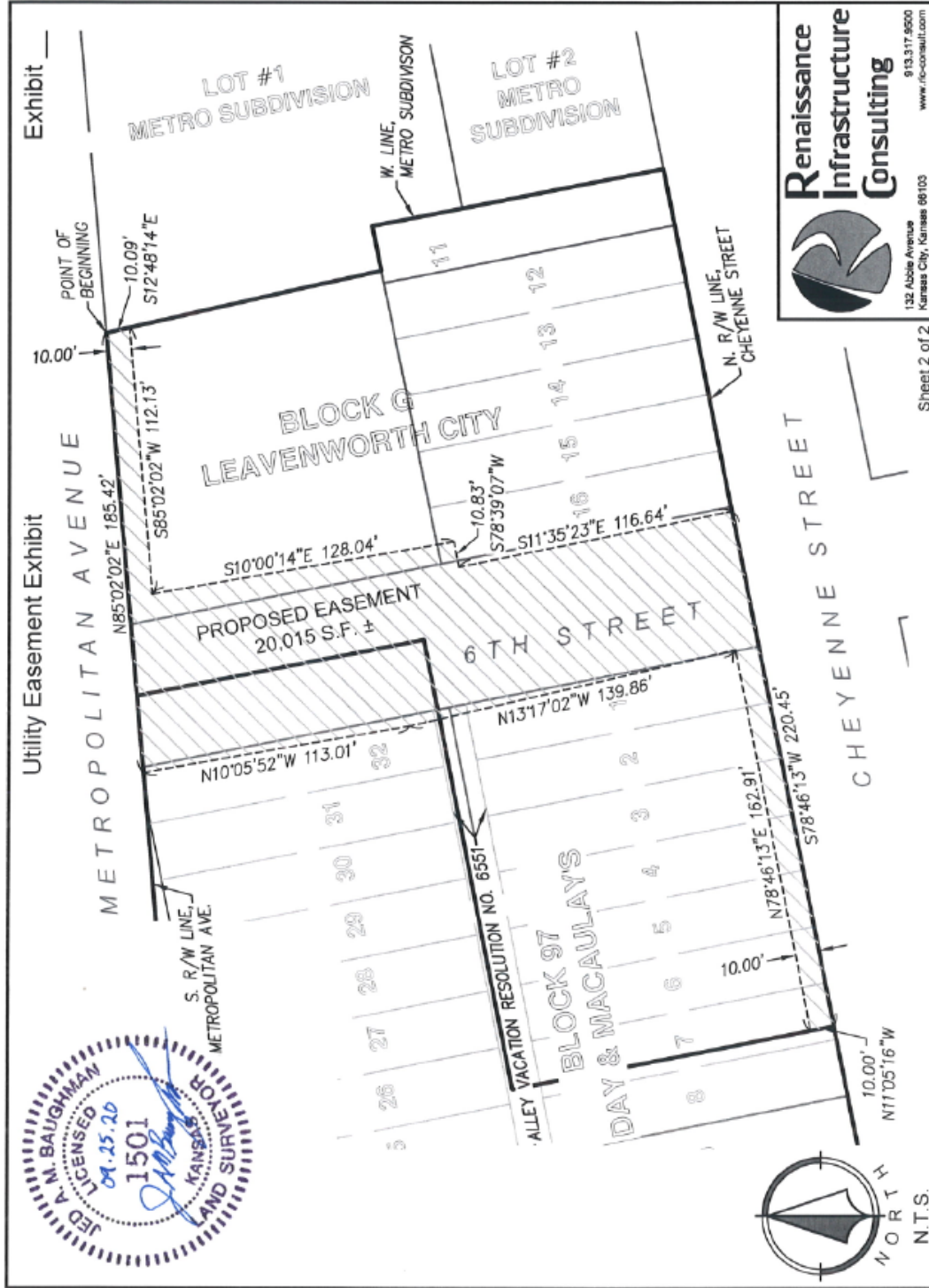
All that part of the North Fractional portion of Block G, together with Lot 16, Block G, LEAVENWORTH and Lots 1 through 7, inclusive and Lot 38, vacated Sioux Street and 6th Street and all that part of the alley vacated by Resolution No. 6551, all in Block 97, DAY AND MACAULAY'S SUBDIVISION; all in the City of Leavenworth, Leavenworth County, Kansas more particularly described as follows:

Beginning at the Northwest corner of Lot 1, METRO SUBDIVISION, a subdivision in said City of Leavenworth; thence South 12°48'14" East, along the West line of said Lot 1, a distance of 10.09 feet to a point on a line 10 feet distant and parallel with the South right-of-way line of Metropolitan Avenue; thence along said parallel line, South 85°02'02" West a distance of 112.13 feet; thence leaving said parallel line, South 10°00'14" East a distance of 128.04 feet; thence South 78°39'07" West a distance of 10.83 feet; thence South 11°35'23" East a distance of 116.64 feet to a point being on the North right-of-way line of Cheyenne Street, as it now exists; thence South 78°46'13" West, along said North right-of-way line, a distance of 220.45 feet; thence leaving said North right-of-way line, North 11°05'16" West a distance of 10.00 feet to a point on a line 10 feet distant and parallel with said North right-of-way line; thence North 78°46'13" East, along said parallel line, a distance of 162.91 feet; thence North 13°17'02" West a distance of 139.86 feet; thence North 10°05'52" East a distance of 113.01 feet; to a point on the South right-of-way line of Metropolitan Avenue, as it now exists; thence North 85°02'02" East, along said South right-of-way line, a distance of 185.42 feet to the Point of Beginning, containing 20,015 square feet, more or less.



EXHIBIT B

General Depiction of Easement Area



Renaissance Infrastructure Consulting
 132 Abble Avenue
 Kansas City, Kansas 66103
 913.317.9500
 www.ri-consult.com

Sheet 2 of 2

8/25/2020 7:37am User: jbaughman 7:18:13 AM Design: 2018LSUW119-3058 8149-521 Metro/Leavenworth/ExhibitB/19-3258 SURV-PSMT-LIE.dwg

POLICY REPORT
CONSIDER APPROVAL OF GENERAL UTILITY EASEMENT AGREEMENT IN CONNECTION WITH
THE VACATION OF 6TH STREET FROM METROPOLITAN AVENUE TO CHEYENNE STREET

October 27, 2020



Carla K. Williamson, CMC

City Clerk



Paul Kramer

City Manager

ISSUE:

The issue before the City Commission is to consider a General Utility Easement Agreement for the 6th Street vacation from Metropolitan Avenue to Cheyenne Street.

BACKGROUND:

Fort Gate Properties LLC submitted a petition to vacate 6th Street from Metropolitan Avenue to Cheyenne Street. The vacation process included notification to all utility companies of the request. After negotiations between Fort Gate Properties LLC and the utility companies the easement as described and depicted in the attached was agreed to be all parties.

At the October 13, 2020 City Commission Regular meeting the City Commission held a public hearing, reviewed and placed on first consideration the ordinance vacating the street as requested.

Earlier in this meeting, the Commission will, by roll-call vote, consider ordinance 8149 to vacate the street. If the commission approves the ordinance, it is subject to the acceptance of the proposed utility easements. That agreement is before the Commission at this time.

ACTION REQUIRED:

Approve General Utility Easement Agreement with Fort Gate Properties LLC as presented.

ATTACHMENTS:

- General Utility Easement Agreement

RECORDING COVER SHEET

Title of Document: General Utility Easement

Date of Document: _____, 2020

Grantor: Fort Gate Properties, LLC, a Kansas limited liability company

Grantor's Mailing Address: 7939 Floyd Street
Overland Park, KS 66204

Grantee: City of Leavenworth, Kansas

Grantee's Mailing Address: City of Leavenworth, Kansas
Attn: City Clerk
100 N. 5th Street
Leavenworth, KS 66048

Legal Description: See Exhibit A attached hereto

Reference Book and Page(s): N/A

After recording return to:

M. Kevin Lee
Polsinelli PC
900 W. 48th Place, Ste. 900
Kansas City, MO 64112

GENERAL UTILITY EASEMENT AGREEMENT

THIS GENERAL UTILITY EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into, effective as of October 27, 2020 (the “**Effective Date**”), by and between FORT GATE PROPERTIES, LLC, a Kansas limited liability company (“**Grantor**”), and the CITY OF LEAVENWORTH, KANSAS, a municipal corporation organized according to Kansas law (“**Grantee**”).

WITNESSETH

WHEREAS, Grantor is the owner of that certain real property situated in the City of Leavenworth, Leavenworth County, Kansas, as legally described on Exhibit A and generally depicted on Exhibit B (the “**Easement Area**”), attached hereto and incorporated herein; and

WHEREAS, Grantee has requested from Grantor, and Grantor is desirous of granting to Grantee, a perpetual, non-exclusive easement over, under, and through the Easement Area for the purpose of entering upon, locating, constructing and maintaining, or authorizing the location, construction, or maintenance, and use of, conduits, water, gas, sewer pipes, wires, surface drainage facilities, ducts, cables and appurtenances thereto, excluding any overhead lines (collectively, the “**Utilities**”), in any part of the Easement Area, including the right to clean, repair, replace and care for the Utilities, and for any reconstruction and future expansion of the Utilities within the Easement Area together with a right of access to the Easement Area and over the Easement Area for said purposes.

NOW THEREFORE, in consideration of the sum of Ten and 00/100 Dollars (\$10.00), of the above-referenced recitals, of the mutual promises contained herein, of the benefits to be derived from the construction and maintenance of any and all Utilities in the Easement Area, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, subject to the terms and conditions set forth herein, Grantor and Grantee hereby agree as follows:

1. Grant of Permanent Utility Easement. Grantor does hereby grant to Grantee forever a perpetual, non-exclusive easement over, under, and through the Easement Area for the purpose of entering upon, locating, constructing and maintaining, or authorizing the location, construction, or maintenance, and use, of, the Utilities, in any part of the Easement Area, including the right to clean, repair, replace and care for the Utilities, and for any reconstruction and future expansion of the Utilities within the Easement Area together with a right of access to the Easement Area and over the Easement Area for said purposes.

2. Maintenance. Following completion of the initial construction of any and all Utilities and upon completion of any subsequent maintenance, repair or replacement thereof, Grantee, its agents and employees, and successors and assigns, shall restore the surface of the Easement Area to as near as possible to the original condition existing prior to any such activities by Grantee, its agents and employees, and successors and assigns, and shall be responsible for making any repairs made necessary due to any damage caused by such activities.

3. Duration; Assignment. The rights and obligations set forth in this instrument shall run with the land and be binding upon the successors and assigns of Grantor and Grantee. The rights of Grantee under this Easement may be assigned, in whole or in part, by Grantee.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Grantor and Grantee have executed this instrument as of the Effective Date.

GRANTOR:

FORT GATE PROPERTIES, LLC, a Kansas limited liability company

By: _____
Name: Justin Kaufmann
Its: Manager

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2020, to me personally known, appeared Justin Kaufmann, who, being by me duly sworn did say that he is the Manager of FORT GATE PROPERTIES, LLC, a Kansas limited liability company, and that said instrument was signed and delivered on behalf of said limited liability company by authority of its members, as the free act and deed of said limited liability company acting with full power and authority to so bind the limited liability company.

Notary Public

My commission expires:

[SEAL]

GRANTEE:

CITY OF LEAVENWORTH, KANSAS, a Kansas
municipal corporation

By: _____
Myron J. "Mike" Griswold, Mayor

ATTEST:

By: _____
Carla K. Williamson, CMC, City Clerk

APPROVED AS TO FORM:

David E. Waters, City Attorney

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

Now on this ___ day of _____, 2020, before me, a notary public in and for said county and state, came Myron J. "Mike" Griswold and Carla K. Williamson, Mayor and City Clerk, respectively, of the City of Leavenworth, Kansas, a Kansas municipal corporation duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Kansas, who are personally known to me to be the same persons who executed , as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public

My commission expires:

[SEAL]

EXHIBIT A

Legal Description of Easement Area

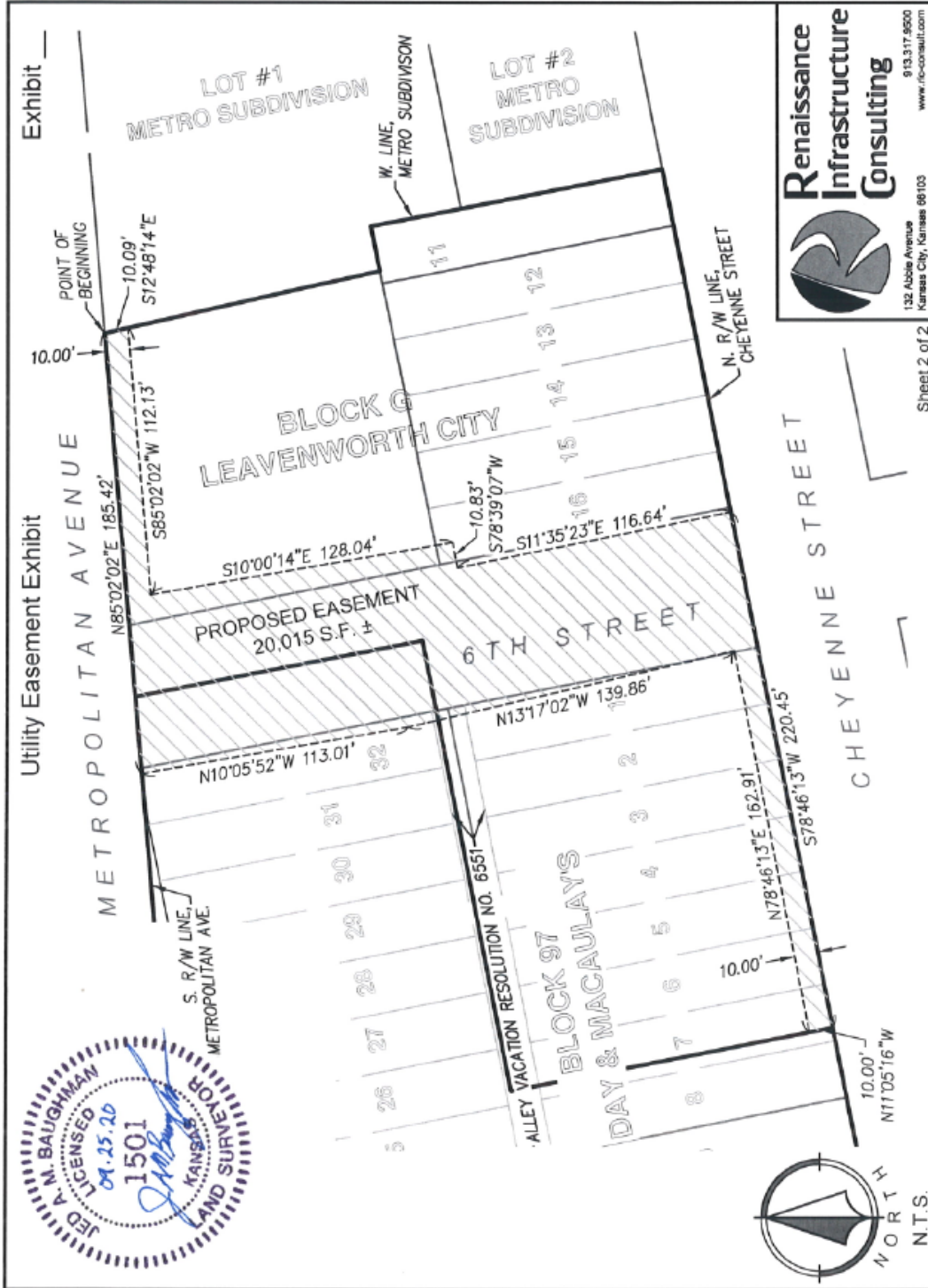
All that part of the North Fractional portion of Block G, together with Lot 16, Block G, LEAVENWORTH and Lots 1 through 7, inclusive and Lot 38, vacated Sioux Street and 6th Street and all that part of the alley vacated by Resolution No. 6551, all in Block 97, DAY AND MACAULAY'S SUBDIVISION; all in the City of Leavenworth, Leavenworth County, Kansas more particularly described as follows:

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EXHIBIT B

General Depiction of Easement Area




**POLICY REPORT
LEAVENWORTH CITY COMMISSION
FORT GATE MARKETPLACE, FIRST PLAT**

OCTOBER 27, 2020

SUBJECT:

A request for a final plat of Fort Gate Marketplace, First Plat


Prepared By:
Julie Hurley
Director of Planning and
Community Development


Reviewed By:
Paul Kramer
City Manager

ANALYSIS:

The subject property is owned by Fort Gate Properties, LLC, plat prepared by Renaissance Infrastructure Consulting. The applicant is requesting approval of a 2.072 acre, 2 lot and 1 tract plat for the Fort Gate Marketplace commercial development. The property is zoned GBD, General Business District, and is currently vacant. The site was previously occupied by the Armed Forces Bank, which was recently demolished.

The plat includes dedication of necessary utility easements, as well as the vacation of a portion of 6th Street. The remainder of the 6th Street Right-of-Way between Metropolitan Avenue and Cheyenne Street will be vacated by separate instrument, and was considered by the City Commission on October 13, 2020. The applicant intends to redevelop the property with an Armed Forces ATM on Tract A (already in place), a convenience store, and a fast food restaurant.

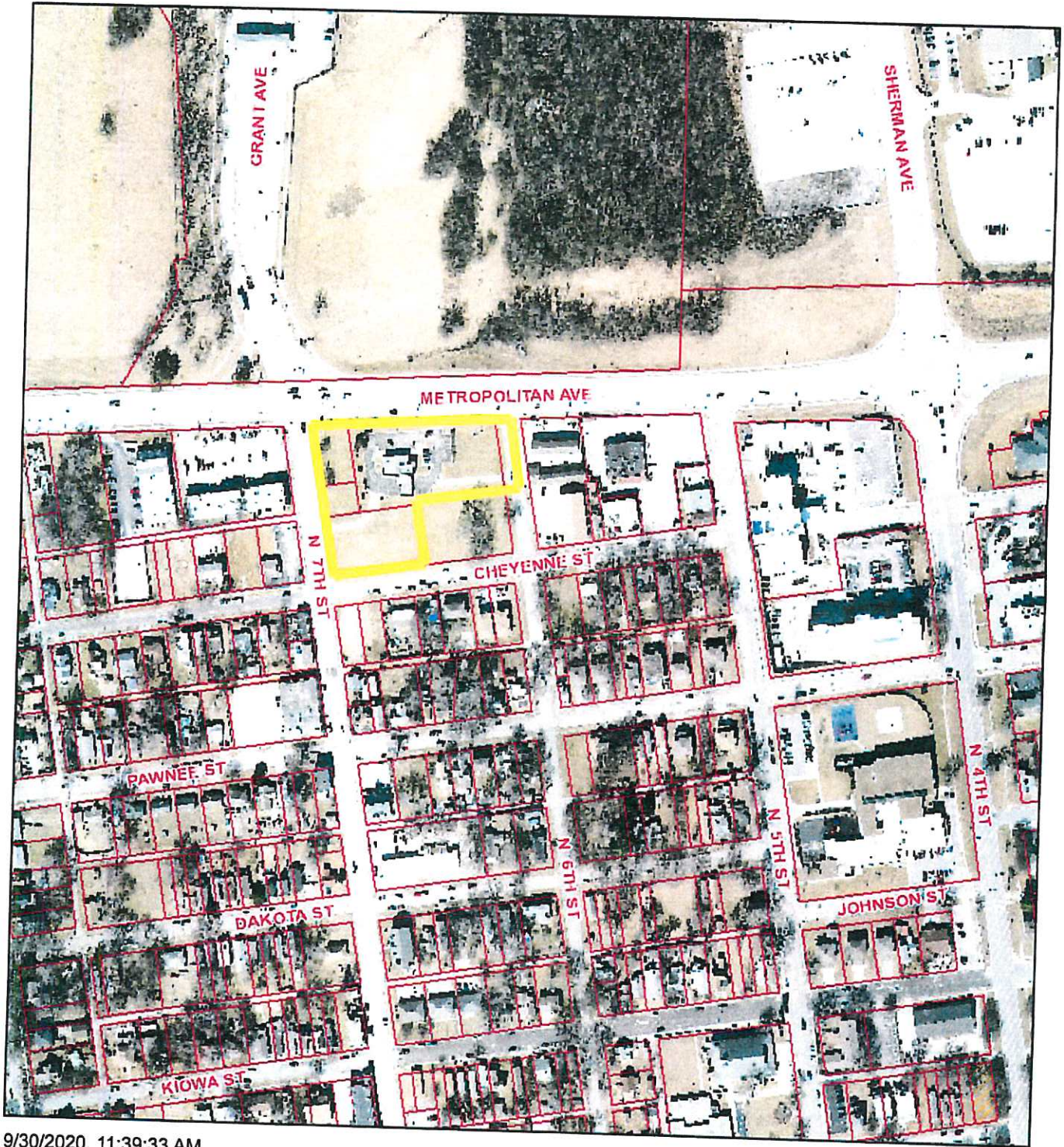
The Project Plan to establish the North Gateway Redevelopment District for this project was reviewed by the Planning Commission for conformance with the Comprehensive Plan in November, 2019, and approved by the City Commission.

The Planning Commission considered this plat at their October 5, 2020 meeting and voted unanimously to approve the plat. The plat is before the City Commission for the purpose of accepting the dedication of land for public purposes in the form of public utility easements that are associated with the plat.

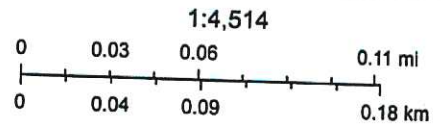
ACTION/OPTIONS:

Accept the dedication of land for public purposes as part of the Final Plat

2020-32-SUB



9/30/2020, 11:39:33 AM



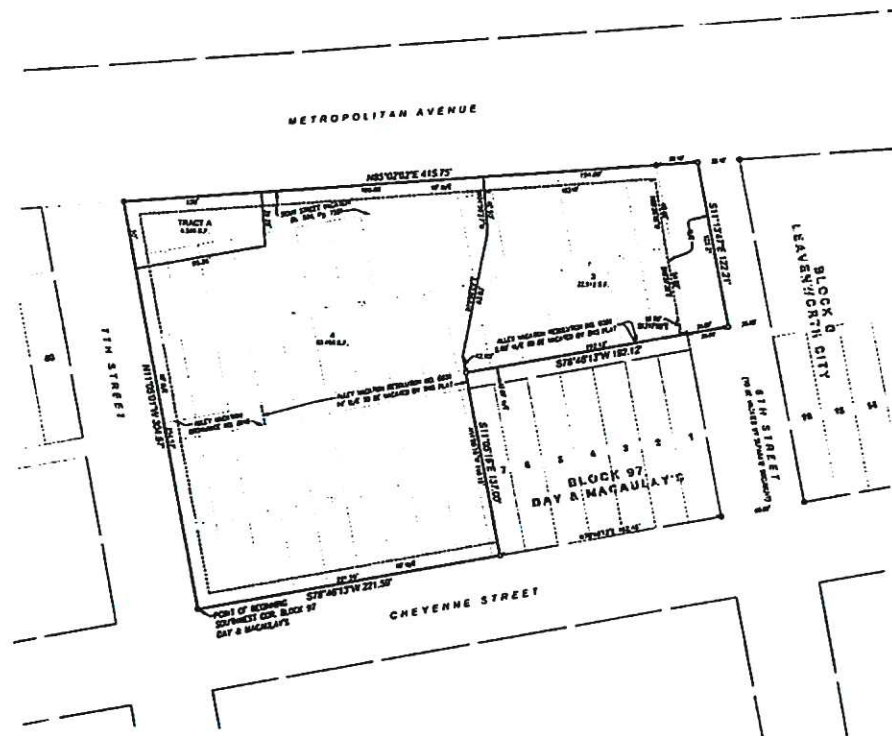
Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

Web AppBuilder for ArcGIS

FINAL PLAT

FORT GATE MARKETPLACE, FIRST PLAT

A SUBDIVISION IN THE CITY OF LEAVENWORTH, LEAVENWORTH COUNTY, KANSAS



DESCRIPTION
 All that part of Lots 7 through 12, inclusive, situated between 2nd Street and 3rd Street and all of the alley situated by Resolution No. 6251 and Ordinance No. 0114, all in Block 97, DAY AND MACAULAY'S SUBDIVISION, all in the City of Leavenworth, Leavenworth County, Kansas here particularly described as follows:

Beginning at the Southeast corner of said Block 97, said parcel being on the East right-of-way line of 7th Street, as a norwesterly, thence North 11°02'00" West, along said East right-of-way line, a distance of 204.37 feet, to a point of intersection with the South right-of-way line of Metropolitan Avenue, on a true-south, thence North 88°02'00" East, along said South right-of-way line, a distance of 432.75 feet, to the southeast corner of said 7th Street, thence along said southeast corner, South 11°02'00" East, a distance of 122.71 feet, thence along said southeast corner, South 78°45'12" West, a distance of 182.12 feet, thence South 11°02'00" East, a distance of 122.03 feet to a second bearing on the South right-of-way line of 7th Street, as a true-south, thence South 78°45'12" West, along said South right-of-way line, a distance of 221.03 feet to the Point of Beginning, containing 61,273 square feet, or 2,077 acres, more or less.

DEDICATION
 The undersigned proprietor of the above described tract of land has caused the same to be subdivided in the manner as shown on the accompanying plat, which subdivisions and plat shall hereinafter be known as:

"FORT GATE MARKETPLACE, FIRST PLAT"

The premises, treatment, and arrangement of property described on this plat hereby available for public use all land described on this plat as streets or public ways not heretofore dedicated. Acceptance of the dedication of land for public use shall be deemed to have taken effect on the date of the recording of this plat, and shall not constitute acceptance of any terms or conditions set forth in any agreement or contract on this plat.

An easement or license to enter upon, locate, construct, use and maintain or authorize the location, construction or maintenance and use of conduits, water, gas, sewer pipes, cables, lines, drainage facilities, irrigation systems, ducts and canals, and similar facilities, water, sewer and under these areas defined and designated on this plat as "Utility Easement" or "ULE" is hereby granted to the City of Leavenworth, Kansas with subordinate use of the same by other governmental entities and public utilities as may be authorized by such laws as such easement for said purposes.

EXEMPTION
 Tract "A" is intended to be used as an A Tract, and shall be owned and managed by the L.P.A.

CONSENT TO LAY
 The undersigned proprietor of the above described tract of land hereby agrees and consents and agrees that the governing body of any special assessment district shall have the power to impose such tax proposed to be dedicated for streets and roads, or parks, streets, for public use, from the lot and all of any special assessment, and that the amount of unpaid special assessments on such land dedicated, shall become and remain a lien on the remainder of the land being or abutting on such dedicated road or street.

EXCLUSION
 IN TESTIMONY WHEREOF, the undersigned proprietor has caused the instrument to be executed this _____ day of _____, 2020.

FORT GATE PROPERTIES, LLC

 Manager

STATE OF KANSAS 1 ES
 COUNTY OF JOHNSON

BE IT REMEMBERED, that on this _____ day of _____, 2020, before me a Notary Public in and for said County and State, personally known to me to be the same person who executed the foregoing instrument of writing on behalf of said corporation, and he duly acknowledged the execution of the same to be his act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year first written above.

My Appointment Expires _____
 Notary Public _____
 City Attorney

REGISTER OF DEEDS CERTIFICATE
 Filed for Record on Document _____ on the _____ day of _____, 2020 at _____ o'clock _____ in the Office of the Register of Deeds of Leavenworth County, Kansas.

 Stacy A. Drexel, Register of Deeds

COUNTY SURVEYOR'S APPROVAL:
 I hereby certify this plat meets the requirements of K.S.A. 66-2203. The facts of this plat were reviewed for compliance with Kansas Uniform Standards for Boundary Surveys. No field verifications are required. This review is for survey information only.

 COUNTY SURVEYOR



LEGEND

- FORMER 1/4 SECTION WITH THE ORIGINAL SURVEY HIGHLIGHTS/COAP UNLESS OTHERWISE NOTED
- SET BY A SURVEYOR WITH THE ORIGINAL SURVEY'S SECTION CAP OR SURVEY'S LOCATION

NOTES
 Basis of Bearings: As determined by GPS observations, referenced to the Kansas State Plane Coordinate System, North Zone (NAD 83).

CLOSURE CALCULATIONS
 Precision: 1 foot in 2,000,000.00
 Spheroid: Everest
 Spher. Correction: 0.0007
 Reference: 1982.00
 Datum: NAD 83

All bearings and distances shown on this plat are plotted and measured unless otherwise noted.

Final Plat Note: According to the F.S.A.A. Flood Insurance Rate Map Number SH00001320, issued July 16, 2015, the land generally lies in OTHER AREAS. ZONE 2, defined as most determined to be outside the 0.2% annual chance floodplain.



Steve E. Thompson, Kansas 16-1277
 REC-036-204
 Information@sead.com

FORT GATE MARKETPLACE, FIRST PLAT

Prepared For:
 Chris Walker
 Development A-E
 4201 Indian Creek Parkway
 Overland Park, KS 66207
 913.431.8200

Date of Preparation:
 July 14, 2020

**Renaissance
 Infrastructure
 Consulting**

112 Albee Avenue
 Kansas City, Kansas 66103
 913.371.6500
 www.ri-ks.com



Project No. 2020-32 SUB

OFFICE USE ONLY
Application No. 8097
Fee: 350.00
(\$350 plus \$10 per lot over 5 lots)
Date Paid 8-27-20
Received By SA
NOH, N2PO, Publication - NA

Planning Comm. 10/5/20

FINAL PLAT APPLICATION
CITY OF LEAVENWORTH

615 Metropolitan
FORT GATE MARKETPLACE, FIRST PLAT

NAME OF SUBDIVISION/PROJECT:

NAME OF PROPERTY OWNER: (If Corporation, include name and address of Director or President)

NAME: Fort Gate Properties, LLC
STREET ADDRESS: 7939 Floyd, Suite 200
CITY: Overland Park STATE: KS ZIP: 66204
PHONE: 913-747-3340 FAX: _____ EMAIL: justin@cadencekc.com

NAME OF DEVELOPER: (If Corporation, include name and address of Director or President)

NAME: Cadence - Justin Kaufmann
STREET ADDRESS: 7939 Floyd, Suite 200
CITY: Overland Park STATE: KS ZIP: 66204
PHONE: 913-747-3340 FAX: _____ EMAIL: justin@cadencekc.com

NAME OF ENGINEER PREPARING PLAT:

NAME: Brent Thompson
STREET ADDRESS: 132 Abbie Avenue
CITY: Kansas City STATE: KS ZIP: 66103
COMPANY: Renaissance Infrastructure Consulting
PHONE: 913-317-9500 FAX: _____ EMAIL: bthompson@ric-consult.com

PARCEL NO: _____ SEC.TWP.RNG. _____

ZONING OF SUBJECT PROPERTY: GBD CURRENT LAND USE: Commercial

TOTAL ACREAGE: 90, 273 S.F. or 2.072 Ac. NUMBER OF LOTS: 3

LEGAL DESCRIPTION: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE or a TITLE COMPANY)

DATE OF PRELIMINARY PLAT APPROVAL: May 4, 2020

SIGNATURE OF OWNER(S) _____ Date: 8-13-2020


State of Kansas County of Johnson SS
Signed or attested before me on August 13, 2020 by Cynthia E. Shirley
Cynthia E. Shirley 8/13/2020
Notary Appointment Expires

CYNTHIA E. SHIRLEY
Notary Public - State of Kansas
My Appt. Expires 8/13/2022

Subdivision Final Plat Application May 2019

POLICY REPORT NO. P&R 06-20
Parks & Recreation Department
Request to Name City-Owned Property
October 27, 2020

PREPARED BY:


Steve Grant
Parks and Recreation Director

REVIEWED BY:


Paul Kramer
City Manager

ISSUE:

Consider naming city-owned property currently known as the soccer game complex located at the intersection of New Lawrence Road and 14th Street after the late Frank Mazeitis.

BACKGROUND:

Upon his passing in May of this year, the Parks and Community Activities Advisory Board had much discussion regarding Mr. Frank Mazeitis and not only his contribution in service to the Board for over 10 years, but much more notably his contribution to the soccer community in Leavenworth for over 40 years. The Board unanimously voted to nominate the city-owned soccer game complex to be named after Mr. Mazeitis, to be called Frank Mazeitis Soccer Complex.

Parks and Community Activities Advisory Board member Mr. Dave Davis spearheaded the development of the attached nomination letter. Mr. Davis is present this evening for discussion regarding this recommendation from the Board.

RECOMMENDATION:

Staff recommends approval of naming the soccer game complex Frank Mazeitis Soccer Complex.

BUDGET IMPACT:

Budget impact is minimal. The cost of sign production can easily be covered in the Parks operating budget. Park maintenance staff will install the sign.

ATTACHMENTS:

Nomination Letter

Resolution B-1562, Policy for the Naming/Renaming of City-Owned Properties

Parks and Community Activities Advisory Board
Riverfront Community Center
123 S. Esplanade
Leavenworth, KS 66048
September 14, 2020

Leavenworth City Commission
c/o Mr. Paul Kramer,
Leavenworth City Manager
City Hall
100 N. 5th Street
Leavenworth, KS 66048

Re: Nomination Letter

Dear Mr. Kramer,

The Leavenworth Parks and Community Activities Advisory Board hereby nominates the naming of the Leavenworth soccer complex, located at the intersection of S. 14th Street and New Lawrence Road, after the late Frank Mazeitis.

Mr. Mazeitis served on our board for over ten years and was a major contributor to the ideas and recommendations that emanated from our board. However, it was his contributions to the soccer community in Leavenworth for over 40 years that prompts this nomination.

Soon after moving to Leavenworth in 1977, Mr. Mazeitis began coaching youth soccer both on Fort Leavenworth and downtown until 1991. He was the assistant coach for the inaugural Immaculata High School's boys' soccer team in 1983 and then took over as head coach in 1994. He continued in that capacity until the high school closed down in 2016. He also served as assistant girls' soccer coach at Platte County High School from 2000 – 2005, and then the assistant girls' soccer coach at Immaculata High School from 2006 – 2009. Because of the school's financial difficulties, he personally funded much of both programs to help out the athletes and to keep the programs alive. Mr. Mazeitis was inducted into the Immaculata High School Hall of Fame in 2015.

However, Mr. Mazeitis' contributions to local soccer were not limited to area high schools. After his wife passed away, he then served as assistant coach of both the men's and women's soccer programs at the University of Saint Mary from 2016 – 2019.

Finally, Mr. Mazeitis also coached club soccer from 1990 – 2015, taking teams comprised of students from Leavenworth, Lansing, Immaculata, and Pleasant Ridge high schools to the annual Kansas City Area Soccer Invitational Tournament and the Sunflower Games held in Lawrence. In fact, Mr. Mazeitis was a founding member of the Board of Directors for the annual

Kansas City Area Invitational Soccer Tournament. Immaculata High School played its games at this soccer complex, and the various club teams that Mr. Mazeitis coached over the years practiced there as well.

It is for these reasons that the Parks and Community Activities Advisory Board unanimously nominates this soccer complex be named after the late Frank Mazeitis: **Frank Mazeitis Soccer Complex.**

Respectfully submitted,

Jim Mathis
Chairman,
Parks and Community Activities Advisory Board

RESOLUTION NO. B- 1562

A RESOLUTION ESTABLISHING POLICY FOR THE
NAMING/RENAMING OF CITY-OWNED PROPERTIES

WHEREAS, the City Commission of the City of Leavenworth, Kansas, has deemed it necessary to identify a policy establishing guidelines for the naming or renaming of City-owned properties.

NOW, THEREFORE, BE IT RESOLVED THAT THE FOLLOWING POLICY SHALL EXIST FOR THE PURPOSE OF NAMING OR RENAMING CITY-OWNED PROPERTIES:

- Section 1: Nominations for the naming/renaming of City facilities shall be submitted to an appropriate City Advisory Committee and/or the City Manager.
- Section 2: Written background information shall be attached, and shall include the proposed name of the property, a complete description of the contributions(s) of the individual(s) for whom the naming/renaming is proposed, or the reasoning for the name proposed (if not an individual).
- Section 3: Contributions shall refer to the advancements made by a person or group that benefit the community, state or nation, including, but not limited to, donations of time, money, land, gifts, or service(s) to bring about social well being.
- Section 4: The City Manager, upon receiving the proposal for naming or renaming, shall ensure that all information required is provided by the applicant, and that the information submitted is confirmed. Incomplete applications shall be returned for additional information.
- Section 5: After confirming the information provided by the applicant(s), recommendation(s) will be sent to the appropriate citizen advisory board for review (if not previously done, see #1 above). After reviewing the proposal, the recommendation of the advisory board will be sent to the City Commission for review and possible action.
- Section 6: For continuity's sake, strong bias will be given toward maintaining current names for City-owned facilities. It is the intent of the City Commission to rename facilities only in extraordinarily exceptional cases (very persuasive case).

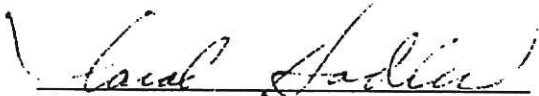
Section 7: A name must receive a majority vote of the City Commission.

This resolution shall be in effect upon its adoption this 24th day of November, 1998.



H. B. Weeks, Mayor

ATTEST:



Carol Sadler, City Clerk, CMC

Adopted: 11-24-1998

POLICY REPORT

Review Unsafe and Dangerous Structures

October 27, 2020



Prepared By:
Julie Hurley,
Director of Planning and
Community Development



Reviewed By:
Paul Kramer,
City Manager

DISCUSSION

On July 14, 2020, the City Commission adopted Resolution B-2257 regarding demolition of 18 structures. At that time, the Commission voted to grant a 60-day extension to the following 10 properties. The properties were again reviewed by the City Commission on September 22. At that time, the Commission voted to grant a 30 day extension to the following 6 properties. The current status of each property is as follows:

1. **1033 Osage** – Detached garage
No change.
2. **1914 W. 7th** – Single family house
Building permit issued on 10/8/2020 for installation of new siding, roof, foundation repair, and interior renovations. Work ongoing.
3. **504 Miami** – Single family house
Building permit issued on 5/11/2020 for exterior and interior renovations. Minimal visible change.
4. **513 Lawrence Ave** – Single family house
Building permit issued on 6/23/2020 for interior and exterior renovations. Work ongoing.
5. **701 S. 2nd** – Single family house
No active building permits, work ongoing.
6. **824 Osage** – Single family house and detached garage
Building permit issued on 5/22/2020 for roof. Work ongoing.

Current progress pictures of each property will be presented to the Commission during the October 27th, 2020 meeting.

RECOMMENDED ACTION

- Motion to remove listed properties from demolition list.
- Motion to grant extension to complete repairs to listed properties.
- Motion to proceed with demolition of listed properties.



PROPERTY REMEDIATION AGREEMENT

Owner: Ricky L. Smith & Linda S. Conley _____
 Site Address: 1033 Osage Street _____
 Leavenworth, KS 66048

The owner(s) of the property located at **1033 Osage Street** recognize that the property is in violation of the City's Property maintenance ordinance(s). As such, they agree to bring the property in to compliance with City Ordinance standards, draw all necessary permits for the work to be performed, and meet the repair deadlines listed below. In return, the City agrees to stay the prosecution of any existing code violations, consider them abated after the property is found in compliance, and to work with the owners throughout this remediation process to help them resolve all code enforcement issues at the site.

	DEADLINE	TASK
1)	07/10/2020	Garage- Repair the roof, fascia, gutters, any missing siding, broken or missing windows, any holes, breaks, loose or damaged construction materials.
2)		
3)		
4)		

I (Ricky L. Smith & Linda S. Conley) _____ agree to honor the commitments as described above and understand that failure to do so may result in legal and remedial actions by the City of Leavenworth, possibly up to and including the demolition of unremediated structures. I also agree to maintain all yard areas by keeping the site free of junk and clutter, as well as excessive vegetation while I am remediating the property.

Notary Area

Signature

Date



PROPERTY REMEDIATION AGREEMENT

Owner: Clim Curry
 Site Address: 1914 West 7th Street
 Leavenworth, KS 66048

The owner(s) of the property located at 1914 West 7th Street recognize that the property is in violation of the City's Property maintenance ordinance(s). As such, they agree to bring the property in to compliance with City Ordinance standards, draw all necessary permits for the work to be performed, and meet the repair deadlines listed below. In return, the City agrees to stay the prosecution of any existing code violations, consider them abated after the property is found in compliance, and to work with the owners throughout this remediation process to help them resolve all code enforcement issues at the site.

	DEADLINE	TASK
1)	7/10/2020	Siding – replace/repair all exterior walls and siding. Soffits & eaves – Replace/repair all soffits and eaves.
2)	7/10/2020	Windows & doors – replace/repair all windows and doors.
3)	7/10/2020	Paint – remove all peeling paint and repaint entire structure.
4)		

I (Print the Owner's Name) _____ agree to honor the commitments as described above and understand that failure to do so may result in legal and remedial actions by the City of Leavenworth, possibly up to and including the demolition of unremediated structures. I also agree to maintain all yard areas by keeping the site free of junk and clutter, as well as excessive vegetation while I am remediating the property.

Notary Area

Signature

Date



PROPERTY REMEDIATION AGREEMENT

Owner: Toya La Rose Morris & Sharode Monte Hayward
 Site Address: 504 Miami Street
 Leavenworth, KS 66048

The owner(s) of the property located at 504 Miami Street recognize that the property is in violation of the City’s Property maintenance ordinance(s). As such, they agree to bring the property in to compliance with City Ordinance standards, draw all necessary permits for the work to be performed, and meet the repair deadlines listed below. In return, the City agrees to stay the prosecution of any existing code violations, consider them abated after the property is found in compliance, and to work with the owners throughout this remediation process to help them resolve all code enforcement issues at the site.

	DEADLINE	TASK
1)	July 10, 2020	Roof – replace entire roof Chimney – replace chimney
2)	July 10, 2020	Siding – replace/repair all exterior walls and sidings. Soffits & eaves – replace/repair all soffits and eaves.
3)	July 10, 2020	Windows & doors – replace/repair all windows & doors.
4)	July 10, 2020	Paint – remove ALL peeling paint and repaint entire exterior.
		Remove all dead and dying trees, limbs or other unsightly natural growth or unsightly appearances.

I (Print the Owner’s Name) _____ agree to honor the commitments as described above and understand that failure to do so may result in legal and remedial actions by the City of Leavenworth, possibly up to and including the demolition of unremediated structures. I also agree to maintain all yard areas by keeping the site free of junk and clutter, as well as excessive vegetation while I am remediating the property.

Notary Area

Signature

Date



PROPERTY REMEDIATION AGREEMENT

Owner: Redie Lewis
 Site Address: 513 Lawrence Avenue
 Leavenworth, KS 66048

The owner(s) of the property located at 513 Lawrence Avenue recognize that the property is in violation of the City's Property maintenance ordinance(s). As such, they agree to bring the property in to compliance with City Ordinance standards, draw all necessary permits for the work to be performed, and meet the repair deadlines listed below. In return, the City agrees to stay the prosecution of any existing code violations, consider them abated after the property is found in compliance, and to work with the owners throughout this remediation process to help them resolve all code enforcement issues at the site.

	DEADLINE	TASK
1)	July 10, 2020	Roof – replace entire roof
2)	July 10, 2020	Siding – replace/repair all exterior walls and sidings. Soffits & eaves – replace/repair all soffits and eaves.
3)	July 10, 2020	Windows & doors – replace/repair all windows & doors.
4)	July 10, 2020	Paint – remove ALL peeling paint and repaint entire exterior.
		Remove all dead and dying trees, limbs or other unsightly natural growth or unsightly appearances.

I (Print the Owner's Name) _____ agree to honor the commitments as described above and understand that failure to do so may result in legal and remedial actions by the City of Leavenworth, possibly up to and including the demolition of unremediated structures. I also agree to maintain all yard areas by keeping the site free of junk and clutter, as well as excessive vegetation while I am remediating the property.

Notary Area

Signature

Date



PROPERTY REMEDIATION AGREEMENT

Owner: Calvin Lockett
 Site Address: 701 South 2nd Street
 Leavenworth, KS 66048

The owner(s) of the property located at 701 South 2nd Street recognize that the property is in violation of the City’s Property maintenance ordinance(s). As such, they agree to bring the property in to compliance with City Ordinance standards, draw all necessary permits for the work to be performed, and meet the repair deadlines listed below. In return, the City agrees to stay the prosecution of any existing code violations, consider them abated after the property is found in compliance, and to work with the owners throughout this remediation process to help them resolve all code enforcement issues at the site.

	DEADLINE	TASK
1)	July 10, 2020	Roof – replace entire roof
2)	July 10, 2020	Siding – replace/repair all exterior walls and sidings. Soffits & eaves – replace/repair all soffits and eaves.
3)	July 10, 2020	Windows & doors – replace/repair all windows & doors.
4)	July 10, 2020	Paint – remove ALL peeling paint and repaint entire exterior.
		Remove all dead and dying trees, limbs or other unsightly natural growth or unsightly appearances.

I (Print the Owner’s Name) _____ agree to honor the commitments as described above and understand that failure to do so may result in legal and remedial actions by the City of Leavenworth, possibly up to and including the demolition of unremediated structures. I also agree to maintain all yard areas by keeping the site free of junk and clutter, as well as excessive vegetation while I am remediating the property.

Notary Area

Signature

Date



PROPERTY REMEDIATION AGREEMENT

Owner: Herbert L. & Darlene W. Derringer
 Site Address: 824 Osage Street
 Leavenworth, KS 66048

The owner(s) of the property located at 824 Osage Street recognize that the property is in violation of the City's Property maintenance ordinance(s). As such, they agree to bring the property in to compliance with City Ordinance standards, draw all necessary permits for the work to be performed, and meet the repair deadlines listed below. In return, the City agrees to stay the prosecution of any existing code violations, consider them abated after the property is found in compliance, and to work with the owners throughout this remediation process to help them resolve all code enforcement issues at the site.

	DEADLINE	TASK
1)	July 10, 2020	Roof – replace entire roof
2)	July 10, 2020	Siding – replace/repair all exterior walls and sidings. Soffits & eaves – replace/repair all soffits and eaves.
3)	July 10, 2020	Windows & doors – replace/repair all windows & doors.
4)	July 10, 2020	Paint – remove ALL peeling paint and repaint entire exterior.
		Remove all dead and dying trees, limbs or other unsightly natural growth or unsightly appearances.

I (Print the Owner's Name) _____ agree to honor the commitments as described above and understand that failure to do so may result in legal and remedial actions by the City of Leavenworth, possibly up to and including the demolition of unremediated structures. I also agree to maintain all yard areas by keeping the site free of junk and clutter, as well as excessive vegetation while I am remediating the property.

Notary Area

Signature

Date

**POLICY REPORT
PUBLIC HEARING
ADOPTION OF A REDEVELOPMENT PROJECT PLAN FOR
A REDEVELOPMENT PROJECT AREA WITHIN AN ESTABLISHED REDEVELOPMENT DISTRICT IN THE CITY
OF LEAVENWORTH (PRICE CHOPPER TIF)**

OCTOBER 27, 2020

Prepared By:



Carla K. Williamson, CMC
City Clerk

Reviewed By:



Paul Kramer
City Manager

ISSUE:

The issue before the Commission is a public hearing to adopt a redevelopment project plan for a redevelopment project area within an established redevelopment district.

BACKGROUND:

In accordance to KSA 12- 1772(a), any city proposing to undertake a redevelopment project within a redevelopment district shall prepare a project plan that shall include the following:

1. feasibility study;
2. a reference to the district plan established (Price Chopper Redevelopment District);
3. a description and map of the redevelopment project;
4. a relocation plan (if applicable);
5. a detailed description of the buildings and facilities proposed to be constructed or improved in such area; and
6. any other information the governing body deems necessary to advise the public of the project plan.

Pursuant to KSA 12-1772(a)(b), upon the finding by the planning commission that the project plan is consistent with the intent of the comprehensive plan for the development of the city, the governing body of the city shall adopt a resolution stating that the city is considering the adoption of the project plan. Such resolution shall:

- (1) give notice that a public hearing will be held to consider the adoption of the redevelopment project plan and fix the date, hour and place of such public hearing; and
 - (2) describe the boundaries of the redevelopment district which the redevelopment project will be located and the date of establishment of such district; and
 - (3) describe the boundaries of the area proposed to be included within the redevelopment project area; and
 - (4) state that the project plan, including a summary of the feasibility study, relocation assistance plan and financial guarantees of the prospective developer and a description and map of the area to be redeveloped or developed are available for inspection during regular office hours in the office of the City Clerk.
- Resolution No. B-2262 was approved by the City Commission its regular business meeting on September 22, 2020 setting forth the public hearing date of October 27, 20120.

- Resolution No. B-2262 was forwarded via certified mail return/receipt requested to the Board of County Commissioners and the Board of Education and to each landowner and occupant of land within the proposed redevelopment project area on September 25, 2020.
- Resolution No. B-2262 was published once in the official City newspaper (Leavenworth Times) on October 14, 2020
- The City's Planning Commission met on September 14, 2020 to review and discuss the proposed redevelopment project plan and they unanimously found the plan to be consistent with the Comprehensive Plan and adopted Resolution No. 2020-01

SUBJECT:

At the October 27, 2020 public hearing, the City Manager shall present the proposed project plan. Following the presentation all interested persons shall be given the opportunity to be heard. Thereafter, the City Commission may consider first reading of the ordinance (consensus to move forward). Pursuant to KSA 12-1772 (e), the ordinance adopting the project plan must be passed by a 2/3 vote of the governing body.

ACTION REQUIRED:

- Following the public hearing the City Commission may approve the ordinance (first reading) by consensus
- Second consideration (second reading) will follow on November 10, 2020 to adopt the ordinance by majority vote.

ATTACHMENTS:

- City of Leavenworth Planning Commission Resolution No. 2020-01
- Draft Ordinance

(Published in *The Leavenworth Times* on _____, 2020)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LEAVENWORTH, KANSAS ADOPTING A REDEVELOPMENT PROJECT PLAN FOR A REDEVELOPMENT PROJECT AREA WITHIN AN ESTABLISHED REDEVELOPMENT DISTRICT IN THE CITY (PRICE CHOPPER TIF).

WHEREAS, the City of Leavenworth, Kansas (the "City") desires to promote, stimulate, and develop the general and economic welfare of the City and the State of Kansas (the "State") and to assist in the development and redevelopment of eligible areas within the City, thereby promoting the general welfare of the citizens of the State and the City; and

WHEREAS, on August 11, 2020, the governing body of the City (the "City Commission") adopted Ordinance No. 8135, which established the Price Chopper Redevelopment District (the "District") within the City, all in accordance with K.S.A. 12-1770 *et seq.*, as amended (the "Act"); and

WHEREAS, pursuant to the Act, the City is authorized to adopt redevelopment project plans within established redevelopment districts, as said terms are defined by the Act, and to finance all or a portion of redevelopment project costs from tax increment revenues and various other fees and revenues described in the Act, or a combination thereof; and

WHEREAS, in consultation with the Planning Commission of the City of Leavenworth, Kansas (the "Planning Commission"), in accordance with the Act, the City has prepared a redevelopment project plan (the "Project Plan") for a redevelopment project area (the "Project Area") within the District, a copy of which is attached hereto as Exhibit A; and

WHEREAS, a copy of the Project Plan has been delivered to the Board of County Commissioners of Leavenworth County, Kansas (the "County"), and to the Board of Education of Unified School District 453, Leavenworth, Kansas, all in accordance with the Act; and

WHEREAS, the Planning Commission has reviewed the Project Plan and, in accordance with the Act, found that the Project Plan is consistent with the intent of the comprehensive plan for development of the City; and

WHEREAS, the City adopted Resolution No. B-2262 on September 22, 2020 calling for a public hearing considering the adoption of the Project Plan to be held by the City Commission on October 27, 2020; and

WHEREAS, the public hearing was held and closed on October 27, 2020, with presentation of the Project Plan and an opportunity for all interested persons to be heard regarding the proposed Project Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LEAVENWORTH, KANSAS:

Section 1. Approval of Project Plan. The City Commission hereby adopts the Project Plan pursuant to the Act, subject to the condition that the developer of the project proposed for the Project Area, Super Market Developers, Inc., and the City will enter into a Development

Agreement by no later than November 13, 2020, on terms which are mutually satisfactory to City and such developer. Such Project Plan approval shall be subject to the terms of the above-described Development Agreement.

Section 2. Further Action. The Mayor, City Manager, City Clerk, and other officials and employees of the City, including counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Ordinance.

Section 3. Transmittal of Project Plan. In accordance with the Act, copies of the Project Plan and this Ordinance shall be filed with the Clerk and also transmitted by the Clerk to the County Appraiser and County Treasurer and to the governing body of the County and the School District in which the District is located.

Section 4. Effective Date. This Ordinance shall be effective from and after final passage by the City Commission, approval by the Mayor and publication in the official newspaper of Leavenworth, Kansas. Provided, that this Ordinance shall not be published unless and until the above condition regarding the Development Agreement has been satisfied. If the above condition has not been satisfied by November 13, 2020, this Ordinance shall not be effective, and shall be deemed revoked without further action on the part of the City Commission.

PASSED BY NO LESS THAN TWO-THIRDS OF THE MEMBERS-ELECT OF THE CITY COMMISSION OF THE CITY OF LEAVENWORTH, KANSAS ON NOVEMBER 10, 2020.

Myron J. "Mike" Griswold, Mayor

[SEAL]

ATTEST:

Carla K. Williamson CMC, City Clerk

EXHIBIT A

(Project Plan – Attached)

REDEVELOPMENT PROJECT PLAN PRICE CHOPPER TIF DISTRICT

In accordance with K.S.A. 12-1770 *et seq.*, as amended (the “**Act**”), to promote, stimulate and develop the general and economic welfare of the city of Leavenworth, Kansas (“**City**”), the Leavenworth City Council adopted Ordinance No. 8135 on August 11, 2020, establishing a Redevelopment (TIF) District (the “**Price Chopper TIF District**”). The Price Chopper TIF District includes approximately 4.11 acres located at 2107 South 4th Street, Leavenworth, Kansas and legally described in attached **Exhibit A**.

The Act allows one or more TIF projects to be undertaken by a city within an established district and any such project plan may be implemented in separate development stages.

The City desires to establish project plan in the Price Chopper TIF District. The project plan (“**Project Plan**”) area is coterminous with the Price Chopper TIF District, and the owner/developer is Super Market Developers, Inc., a corporation (the “**Developer**”). The improvements anticipated within the Project Plan Area are the redevelopment of the existing Price Chopper grocery store, which will include a multi-million dollar investment in the interior and exterior of the store to upgrade and enhance the store layout, equipment, offerings and other features to match a modern, first-class Price Chopper; the project shall also include improvements to property north of and adjacent to the Price Chopper District for parking (approximately 130 feet by 230 feet) which property is currently owned by the City and leased to the Developer (the “**Project**”).

The Project Plan shall extend for a period of twenty (20) years from the date the Project Plan is approved by the City (the “**Project Plan Term**”). One cent of the City’s sales tax and the incremental ad valorem property taxes (as defined by the Act) generated from the real property within the Project Plan Area during the Project Plan Term in excess of the amount of real property taxes collected for the base year assessed valuation shall constitute the “**TIF Revenues**”. In accordance with the Act and in cooperation with the Planning Commission, the City prepared the Project Plan.

1. **Comprehensive Feasibility Study.**

City Staff prepared a Financial Feasibility Study (“**Feasibility Study**”) for the Project Plan is attached hereto as **Exhibit B**. Projections on development in the Project Plan Area were provided by the Developer. The Feasibility Study incorporates a number of assumptions, including a constant mill levy of 120.6970. The mill levy may vary each year of the TIF Term based on legislative actions and budgetary decisions made by the individual taxing jurisdictions. It also assumes property tax collection at 100%, Project completion by April 1, 2021 and a 1.5% annual increase in appraised valuation after the Project is fully constructed and stabilized.

The Developer will advance funds necessary to construct the Project and to pay the costs associated with the estimated and approved, private TIF eligible reimbursable costs set forth generally on **Exhibit C** attached hereto (the “**TIF Reimbursable Costs**”), and it is contemplated that Developer will subsequently be reimbursed with TIF Revenues received by the City on a “pay-as-you-go” basis. Such advances and reimbursements will be made in accordance with the terms of a Development Agreement executed by the Developer and the City (the “**DA**”). The TIF Reimbursable Costs are set forth in more detail in the DA.

There is an estimated total of \$4,125,296 in TIF Reimbursable Costs identified with the Project Plan, but reimbursement of TIF Reimbursable Costs is dependent upon the amount of TIF Revenues generated within the Project Plan Area during the Project Plan Term and received by the City, and shall be paid in accordance with the amount, priority and duration set forth in the DA. In no event will any TIF Reimbursable Costs be reimbursed in an amount that exceeds the amount of TIF Revenues available.

The Feasibility Study indicates that if projected development, assessed values and tax revenues are accurate, TIF Revenues will be sufficient to reimburse the Developer for a portion of the approved TIF Reimbursable Costs. Other revenue sources, including but not limited to private equity, are available to meet TIF Reimbursable Costs and other private development costs associated with the Project. TIF Reimbursable Costs must (1) be reasonably approved by the City in accordance with the terms of the DA; (2) meet the definition of “redevelopment project cost” set out in K.S.A. 12-1770a(o), as amended; (3) be an eligible expense under the City’s adopted TIF Policy and/or Procedures, unless otherwise permitted in the DA; (4) be authorized in this Project Plan; and (5) be in compliance with the terms for reimbursement and prioritization described with particularity in the DA.

The City anticipates reimbursing Developer for the TIF Reimbursable Costs incurred and paid by the Developer with available TIF Revenues generated during the twenty (20) year Project Plan Term. Based on the current projections and cash flow analysis contained in the Feasibility Study, it is determined that the Project benefits, TIF Revenues and other available revenues, exceed the TIF Reimbursable Costs, and that the TIF Revenues and other available revenue sources, including private revenue sources for the private costs, should be sufficient to pay for such TIF Reimbursable Costs.

In summary, assuming Project Plan approval in spring 2020 with construction commencing the summer of 2020 and completion of all improvements by April 1, 2021, the City anticipates the captured sales tax and ad valorem property tax increment will generate approximately \$2,796,637 over the Project Plan Term (the “**Estimated Total TIF Revenue Projection**”). If the TIF Revenue does not meet the estimated total TIF Reimbursable Costs, the City shall be under no obligation to provide financial assistance to Developer beyond the TIF Revenues actually generated from the Project Plan Area in accordance with the distribution formula and term set out in the DA. A summary of the feasibility

assumptions and Estimated Total TIF Revenue Projection is included in **Exhibit D**.

2. Map of Redevelopment Project Plan Area.

A map of the Project Plan Area is attached as **Exhibit E**.

3. Relocation Assistance Plan.

No relocation will occur as a result of the Project Plan and therefore no relocation assistance plan is provided.

4. Description of the Building and Facilities Proposed to be constructed.

The improvements anticipated within the Project Plan Area are the redevelopment of the existing Price Chopper grocery store, which will include a multi-million dollar investment in the interior and exterior of the store to upgrade and enhance the store layout, equipment, offerings and other features to match a modern, first-class Price Chopper. TIF Reimbursable Costs incurred as a result of the Project Plan include, but are not limited to, architectural and engineering costs associated with the site improvements (except vertical structures), infrastructure improvements, site development, surface parking, lighting, landscaping, hardscape, utilities located within the right-of-way, sidewalks and related site amenities. The Private TIF Reimbursable Costs are described in more detail in the DA.

5. Other Relevant Information.

- a. Reimbursement of TIF Reimbursable Costs shall be made from captured sales tax and ad valorem property tax increment (as defined in the Act) actually received by the City from the Project Plan Area and deposited into the special fund established by the City in accordance with K.S.A. 12-1778 (the "**Price Chopper Project Plan Fund**").
- b. If sufficient TIF Revenues are not available to pay all of the TIF Reimbursable Costs, the City is under no obligation to reimburse TIF Reimbursable Costs from any other source.
- c. Prior to any reimbursement of TIF Reimbursable Costs, Developer shall enter into a separate, valid and enforceable DA with the City. The procedure for distribution, reimbursement and priority of payment of TIF Reimbursable Costs shall be set out in the DA and consistent with this Project Plan.

EXHIBIT A

**LEGAL DESCRIPTION OF REDEVELOPMENT DISTRICT AND PROJECT
PLAN AREA**

Lot 1, BALL'S SUBDIVISION REPLAT, a subdivision in the City of Leavenworth,
Leavenworth County, Kansas except that part conveyed by the deed recorded as
Doc. No. 2015R03578

Parcel ID No 1010104002003020

EXHIBIT B
FEASIBILITY STUDY

FEASIBILITY STUDY

Leavenworth Price Chopper
2107 South 4th Street, Leavenworth, Kansas

July, 2020



OVERVIEW

This Feasibility Study is to determine the economic feasibility of the renovation and improvement of the Leavenworth Price Chopper, 2107 South 4th Street, Leavenworth, Kansas (the “Project”). On July 28, 2020, the City of Leavenworth, Kansas (the “City”) authorized the creation of a Tax Increment Financing District pursuant to by K.S.A. 12-1770, et. seq., as amended (the “Act”), coterminous with the Project site (“District”), for a term of up to 20 years to provide for the reimbursement of eligible Project costs. Eligible project costs under the Act include land acquisition, site preparation, parking lot improvements, landscaping, utilities and public infrastructure.

The Act states that before a project plan is approved, a feasibility study is required to determine (1) that a proposed redevelopment project’s benefits and tax increment revenue and other available revenues are expected to exceed or be sufficient to pay for the redevelopment project costs and (2) the effect, if any, the redevelopment project costs will have on any outstanding special obligation bonds payable from revenues which are collected from taxpayers and users within the District.

PROJECT DESCRIPTION

The Project is a \$12,340,296.00 renovation and improvement of the existing Leavenworth Price Chopper at 2107 South 4th Street, Leavenworth, Kansas, consisting of interior renovation and modernization, replacement of equipment,

façade and signage improvements, landscaping, parking lot resurfacing and new lighting; the Project will transform the store into the most modern model in the Price Chopper family and will offer products and services not currently available at the facility. The store is well-established and is the northern-most full service grocery store in the City, serving a substantial portion of the citizens of the City and surrounding areas. The owner and developer of the Project is Super Market Developers, Inc., an established grocery store developer and subsidiary of Associated Wholesale Grocers, Inc. (“Developer”).

ESTIMATED PROJECT COST

The cost of property acquisition by the Developer in March of 2020 was \$2,500,000.00. Site improvements will cost approximately \$830,296.00, all of which is eligible for reimbursement under TIF. Interior improvements and equipment costs, which are not reimbursable, will total approximately \$8,000,000.00 and “soft” costs (engineering, architecture, environmental, legal, etc.) are expected to total approximately \$1,000,000.00.

The Developer will fund the initial cost of construction of the Project, and receive reimbursement for eligible costs over the life of the TIF District. While its analysis is not a part of this study, the Developer has also requested that the City create a Community Improvement District (“CID”) to levy a \$.004 sales tax, to be used for CID eligible costs, for a period of 22 years. This study assumes that the Developer will have the financial capability to complete the construction of the Project and await reimbursement over the life of the District.

FEASIBILITY STUDY REVENUE ASSUMPTIONS

The feasibility study for this project incorporates a number of variables including:

1. Base Year Assessed value of the District;
2. City's estimate of the market value of the Price Chopper store upon completion;
3. Assumption of an assessment rate of 25.0%;
4. Assumption of 1.5% increase annually in market value during the study period;
5. Assumption that the total applicable mill levy will remain unchanged;
6. Assumption that the Price Chopper Project will be completed in 2021;
7. Assumption that current annual sales in the District are \$13,000,000.00; and
8. Assumption that annual sales upon completion of the Project will be a constant \$16,692,000.00.

This feasibility study forecasts incremental real property and sales tax revenues generated by the Project, based upon the above assumptions. The incremental property tax revenues are determined by projecting the annual tax revenues based on the estimated assessed value for the Project at the time of completion. The sales tax increment is based on historic sales and projected sales provided by the Developer.

Property Tax Rates: Real property tax rates may be adjusted every year. The following is the 2019/2020 base year ad valorem property tax rate assessed on properties within the District.

Taxing District	Tax Rate	TIF Captured	Not TIF Eligible
State of Kansas	1.5000	0	1.5000
Leavenworth County	37.1120	37.1120	0
City of Leavenworth	31.7540	31.7540	0
Unified School District No. 453	59.3310	59.3310	0
Totals	129.6970	128.1970	1.5000

Assessed Valuation and Sales – Incremental Real Property and Sales Tax

Revenues: The table that follows sets forth: the current (base) assessed value of the property within the District; the projected assessed values; the tax increment produced each year; projected sales; and projected sales tax increment.

	Appraised Value (Stabilized)	Assessed Value	Appraised Value (Current)	Current Base Assessed Value	Current Sales	Projected Sales
Price Chopper 2107 S. 4th St. Leavenworth, KS	\$5,000,000	\$1,250,000	\$2,103,300	\$651,750	\$13,000,000	\$16,692,000
TOTAL:	\$5,000,000	\$1,250,000	\$2,103,300	\$651,750	\$13,000,000	\$16,692,000
Commercial Assessment:		25%				

Year	Base Assessed Value	Projected Assessed Value	Projected Sales	Projected Sales Tax Increment Increase	City Sales Tax Increment	Total TIF Revenue
1	\$651,750	\$1,250,000	\$16,692,000	\$3,692,000	\$36,920	\$77,591
2	\$651,750	\$1,268,750	\$16,692,000	\$3,692,000	\$36,920	\$80,023
3	\$651,750	\$1,287,781	\$16,692,000	\$3,692,000	\$36,920	\$82,491
4	\$651,750	\$1,307,098	\$16,692,000	\$3,692,000	\$36,920	\$84,997
5	\$651,750	\$1,326,704	\$16,692,000	\$3,692,000	\$36,920	\$87,540
6	\$651,750	\$1,346,605	\$16,692,000	\$3,692,000	\$36,920	\$90,121
7	\$651,750	\$1,366,804	\$16,692,000	\$3,692,000	\$36,920	\$92,740
8	\$651,750	\$1,387,306	\$16,692,000	\$3,692,000	\$36,920	\$95,399
9	\$651,750	\$1,408,116	\$16,692,000	\$3,692,000	\$36,920	\$98,098
10	\$651,750	\$1,429,237	\$16,692,000	\$3,692,000	\$36,920	\$100,838
11	\$651,750	\$1,450,676	\$16,692,000	\$3,692,000	\$36,920	\$103,618
12	\$651,750	\$1,472,436	\$16,692,000	\$3,692,000	\$36,920	\$106,441
13	\$651,750	\$1,494,523	\$16,692,000	\$3,692,000	\$36,920	\$109,305
14	\$651,750	\$1,516,941	\$16,692,000	\$3,692,000	\$36,920	\$112,213
15	\$651,750	\$1,539,695	\$16,692,000	\$3,692,000	\$36,920	\$115,164
16	\$651,750	\$1,562,790	\$16,692,000	\$3,692,000	\$36,920	\$118,159
17	\$651,750	\$1,586,232	\$16,692,000	\$3,692,000	\$36,920	\$121,200
18	\$651,750	\$1,610,025	\$16,692,000	\$3,692,000	\$36,920	\$124,285
19	\$651,750	\$1,634,176	\$16,692,000	\$3,692,000	\$36,920	\$127,418
20	\$651,750	\$1,658,688	\$16,692,000	\$3,692,000	\$36,920	\$130,597
TOTALS					\$738,400	\$2,058,237

The base year 2020 assessed value of the property and improvements in the District is \$651,750.00. The 2022 assessed value for the District, which includes the completed Project, is anticipated to be \$1,250,000.00. The difference creates tax increment revenues beginning in 2022 of approximately \$40,671.00 per year, and with a conservative increase in appraised value each year thereafter of 1.5%, creating a total increment of \$1,319,837.00 over the 20 year period permitted by the Act, all of which is available to reimburse the eligible Project costs.

In addition, the Developer has requested the use of the City's 1% sales tax increment for reimbursement of eligible Project costs. Historic sales within the District are approximately \$13,000,000.00, but are expected to rise to approximately \$16,692,000.00 after Project improvements are made. Without adjustment for potential increases in sales and product price adjustments, the sales tax increment is projected to generate \$738,400.00 over the 20 year period.

The District is therefore anticipated to generate a total of \$2,796,637.00 in real estate tax and sales tax increment over the life of the 20 year period.

SUFFICIENCY OF REVENUES

Using conservative assumptions, it is expected that the estimated incremental real property tax revenue of \$2,058,237.00 and \$738,400.00 in incremental sales tax, totaling \$2,796,637.00, will be adequate to reimburse all of the eligible site work costs of \$655,296.00 and approximately 85% of the site acquisition costs. The addition of the revenue from the proposed CID will be more than adequate to cover the 15% shortfall in reimbursement of the acquisition cost and provide additional revenue for CID eligible costs. There are a number of

variables that may impact the eligible cost reimbursements, however the revenue projections are strong, and due to the fact that the Project is the renovation and improvement of an established grocery store with historic sales data, the Project appears economically feasible.

IMPACT ON OUTSTANDING SPECIAL OBLIGATION BONDS

There is no other impact because there are no special obligation bonds outstanding which are payable from the revenues described in K.S.A. 12-1774 (a) (1) (D), and amendments thereto.

FINANCIAL FEASIBILITY SUMMARY

Using conservative assumptions for the Project, outlined above, it is expected that the estimated incremental real estate and sales tax revenues will be adequate to reimburse most of the TIF eligible costs, all as outlined above.

EXHIBIT C

x = eligible for reimbursement
 Sample allocations by incentive category

Line Item	Est. Project Costs *	TIF Eligible	CID Eligible	TIF Eligible	CID Eligible	Private
Site Acquisition						
Purchase Price	\$2,500,000.00	X	X	\$2,500,000		
Survey	\$15,000.00	X	X	\$15,000		
Environmental/Soils	\$30,000.00	X	X	\$30,000		
Title Work	\$1,500.00	X	X	\$1,500		
Appraisal	\$2,500.00	X	X	\$2,500		
Legal & Closing Costs	\$10,000.00	X	X	\$10,000		
Subtotal - Site Acquisition	\$2,559,000.00			\$2,559,000		
Hard Costs						
Site Work - Demo, Grading, Utilities, Curbs, Sidewalks, Parking Lot, etc.	\$830,296.00	X	X		\$830,296	
Equipment	\$4,475,000.00		X			\$4,475,000
Building renovation	\$3,255,000.00		X			\$3,255,000
Tenant Improvements (Developer)	\$235,000.00		X			\$235,000
Subtotal - Hard Costs	\$8,795,296.00			\$0	\$830,296	\$7,965,000
Soft Costs						
Arch / Eng	\$450,000.00	X	X		\$450,000	
Legal	\$75,000.00	X	X		\$75,000	
Taxes Carry						
Leasing / Sales Commissions	\$0.00					
Developer & Project Management Fees	\$50,000.00					\$50,000
Contingency	\$200,000.00					\$200,000
Inspections	\$1,000.00	X	X		\$1,000	
Interest Carry	\$200,000.00	X	X		\$200,000	
Re-Surveys / Plats	\$10,000.00	X	X		\$10,000	
Subtotal - Soft Costs	\$986,000.00			\$0	\$736,000	
TOTAL PROJECT COSTS	\$12,340,296.00			\$2,559,000	\$1,566,296	\$7,965,000

EXHIBIT C
Page 2

*Project Costs shown herein are estimates only, and subject to change in the Developer's discretion.

**Allocations of incentives among Project Costs are for illustrative purposes only, and may be increased, decreased and shifted among line items designated as eligible.

EXHIBIT D PROJECTIONS

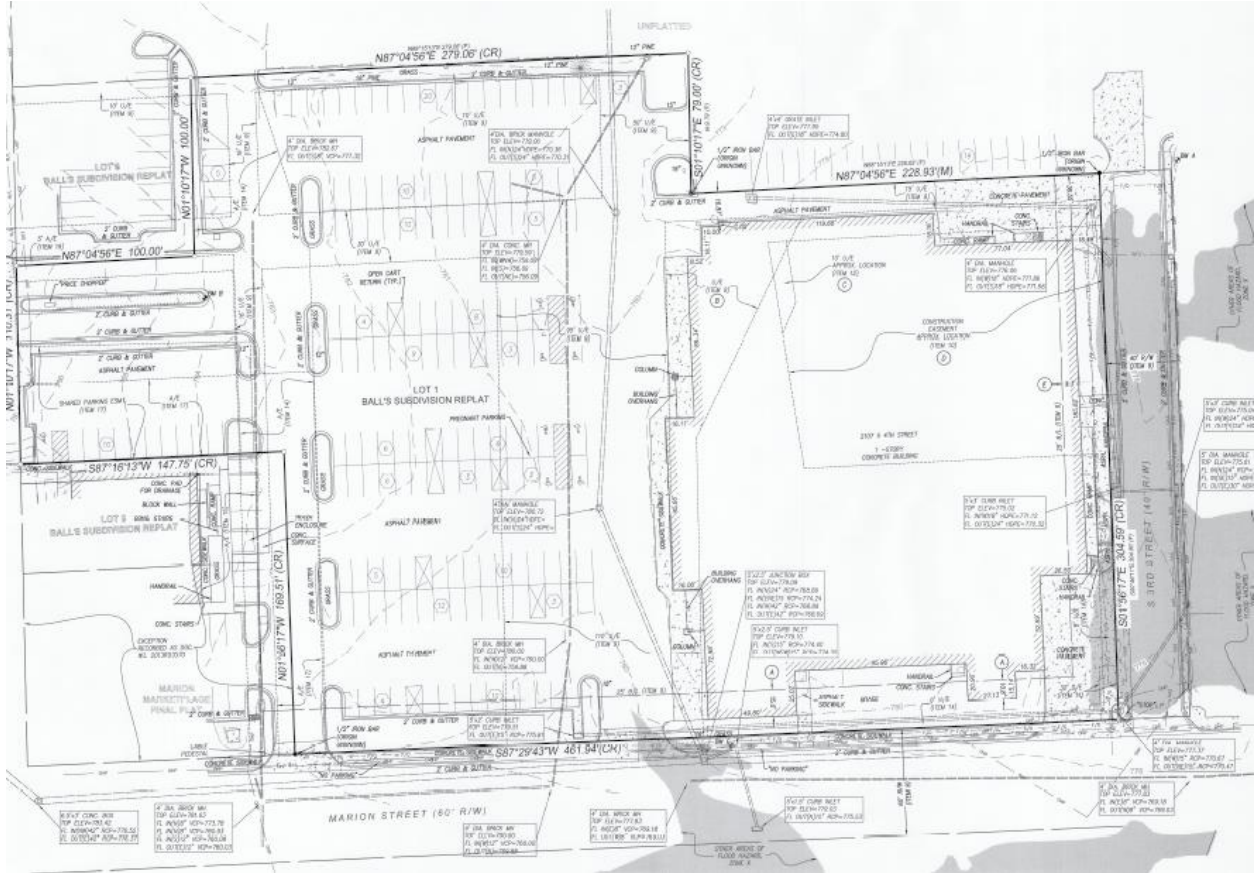
LEAVENWORTH PRICE CHOPPER - INCENTIVE REVENUE PROJECTIONS

TIF Proceeds (Reimbursement)	\$2,058,237					
CID Proceeds (Reimbursement)	\$1,468,896					
City Sales Tax (Reimbursement)	\$738,400					
Total:	\$3,527,133					

PROJECT COMPONENT	Appraised Value (Stabilized)	Assessed Value	Appraised Value (Current)	Current Base Assessed Value	Current Sales	Projected Sales	Stabilization Year
Price Chopper 2107 S. 4th St. Leavenworth, KS	\$5,000,000	\$1,250,000	\$2,103,300	\$651,750	\$13,000,000	\$16,692,000	2022
TOTAL:	\$5,000,000	\$1,250,000	\$2,103,300	\$651,750	\$13,000,000	\$16,692,000	#REF!
Commercial Assessment:		25%					

Year	Base Assessed Value	Projected Assessed Value	Projected Sales	Projected Sales Tax Increment Increase	City Sales Tax Increment	Total TIF Revenue	CID Revenue
1	\$651,750	\$1,250,000	\$16,692,000	\$3,692,000	\$36,920	\$77,591	\$66,768
2	\$651,750	\$1,268,750	\$16,692,000	\$3,692,000	\$36,920	\$80,023	\$66,768
3	\$651,750	\$1,287,781	\$16,692,000	\$3,692,000	\$36,920	\$82,491	\$66,768
4	\$651,750	\$1,307,098	\$16,692,000	\$3,692,000	\$36,920	\$84,997	\$66,768
5	\$651,750	\$1,326,704	\$16,692,000	\$3,692,000	\$36,920	\$87,540	\$66,768
6	\$651,750	\$1,346,605	\$16,692,000	\$3,692,000	\$36,920	\$90,121	\$66,768
7	\$651,750	\$1,366,804	\$16,692,000	\$3,692,000	\$36,920	\$92,740	\$66,768
8	\$651,750	\$1,387,306	\$16,692,000	\$3,692,000	\$36,920	\$95,399	\$66,768
9	\$651,750	\$1,408,116	\$16,692,000	\$3,692,000	\$36,920	\$98,098	\$66,768
10	\$651,750	\$1,429,237	\$16,692,000	\$3,692,000	\$36,920	\$100,838	\$66,768
11	\$651,750	\$1,450,676	\$16,692,000	\$3,692,000	\$36,920	\$103,618	\$66,768
12	\$651,750	\$1,472,436	\$16,692,000	\$3,692,000	\$36,920	\$106,441	\$66,768
13	\$651,750	\$1,494,523	\$16,692,000	\$3,692,000	\$36,920	\$109,305	\$66,768
14	\$651,750	\$1,516,941	\$16,692,000	\$3,692,000	\$36,920	\$112,213	\$66,768
15	\$651,750	\$1,539,695	\$16,692,000	\$3,692,000	\$36,920	\$115,164	\$66,768
16	\$651,750	\$1,562,790	\$16,692,000	\$3,692,000	\$36,920	\$118,159	\$66,768
17	\$651,750	\$1,586,232	\$16,692,000	\$3,692,000	\$36,920	\$121,200	\$66,768
18	\$651,750	\$1,610,025	\$16,692,000	\$3,692,000	\$36,920	\$124,285	\$66,768
19	\$651,750	\$1,634,176	\$16,692,000	\$3,692,000	\$36,920	\$127,418	\$66,768
20	\$651,750	\$1,658,688	\$16,692,000	\$3,692,000	\$36,920	\$130,597	\$66,768
21			\$16,692,000				\$66,768
22			\$16,692,000				\$66,768
TOTALS					\$738,400	\$2,058,237	\$1,468,896
NET PRESENT VALUE		6.00%			\$423,469	\$1,120,170	\$803,992
	Gross Bond Proceeds (NPV of Revenue Divided by DSCR)			125%	\$338,776	\$896,136	\$643,194
	Less: Bond Issuance			14%	(\$47,429)	(\$125,459)	(\$90,047)
	Net Bond Proceeds				\$291,347	\$770,677	\$553,147
						\$27,657	Administrative
						Mill Levy Rates	Captured
						State	15000
						County	37.1120
						City of Leavenworth	31.7540
						USD 453	59.3310
Notes:						Total:	129.6970

EXHIBIT E
Project Site



CITY OF LEAVENWORTH, KANSAS PLANNING COMMISSION

RESOLUTION NO. 2020-01

A RESOLUTION FINDING THAT THE PROJECT PLAN FOR THE PRICE CHOPPER REDEVELOPMENT DISTRICT PRESENTED SEPTEMBER 14, 2020, IS CONSISTENT WITH THE INTENT OF THE COMPREHENSIVE PLAN FOR THE DEVELOPMENT OF THE CITY OF LEAVENWORTH, KANSAS

BE IT RESOLVED by the City of Leavenworth, Kansas Planning Commission that the Project Plan for the Price Chopper Redevelopment District (the "District"), consisting of one Project Area coterminous with the District, submitted to the City pursuant to K.S.A. 12-1770 *et seq.* on August 13, 2020, and reviewed by the Planning Commission at its regularly scheduled meeting on September 14, 2020, is consistent with the comprehensive plan for the development of the City of Leavenworth, Kansas.

ADOPTED by the Planning Commission on September 14, 2020.

By (Sign): 

Printed Name: Michael J. Burke

Michael Burke, Planning Commission Chair

ATTEST:

By (Sign): 

Printed Name: JULIE HURLEY

Julie Hurley, Planning Commission Secretary

**POLICY REPORT
PUBLIC HEARING
CREATION OF A COMMUNITY IMPROVEMENT DISTRICT
SUPER MARKET DEVELOPERS, LLC (PRICE CHOPPER)**

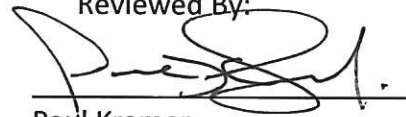
OCTOBER 27, 2020

Prepared By:



Carla K. Williamson, CMC
City Clerk

Reviewed By:



Paul Kramer
City Manager

ISSUE:

The issue before the Commission is a public hearing for the creation of a Community Improvement District (CID) 2107 S 4th Street (Price Chopper) in the City of Leavenworth. The estimated cost of the project is \$12,340,296.00 plus interest accrued and borrowed money.

BACKGROUND:

Petition and Notice:

- A petition signed by Super Market Developers, Inc. was filed with the City Clerk proposing the creation of a Community Improvement District.
- On September 22, 2020, the City Commission adopted Resolution B-2263 setting the Public Hearing as October 27, 2020 for the proposed Community Improvement District.
- Notice of Public Hearing, Resolution B-2263 was published once each week for two (2) consecutive weeks in The Leavenworth Times on October 2, 2020 and October 9, 2020.
- On October 9, 2020, Resolution B-2263 was sent via certified mail to all property owners within the Community Improvement District.
- The petition requests that the City levy a CID sales tax within the Improvement District. The petitioner is requesting a 0.40% sales tax CID for not more than twenty-two (22) years from the date the state director taxation begins collecting such tax or when the pay-as-you-go costs of the project have been paid.

ACTION REQUIRED:

- Following the public hearing, the City Commission may approve the CID by ordinance (first reading) by consensus.
- Second Consideration (second reading) will follow on November 10, 2020 to adopt the ordinance by majority vote.

ATTACHMENTS:

1. Draft Ordinance

(Published in *The Leavenworth Times* on _____, 2020)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LEAVENWORTH, KANSAS CREATING A COMMUNITY IMPROVEMENT DISTRICT IN THE CITY (PRICE CHOPPER CID); AUTHORIZING THE MAKING OF CERTAIN PROJECT IMPROVEMENTS RELATING THERETO; APPROVING THE ESTIMATED COSTS OF SUCH PROJECT IMPROVEMENTS; AND PROVIDING FOR THE METHOD OF FINANCING THE SAME.

WHEREAS, pursuant to K.S.A. 12-6a26 *et seq.*, as amended (the "Act"), cities and counties are authorized to create community improvement districts for economic development purposes and any other purpose for which public money may expended, and to levy a community improvement district sales tax and/or levy special assessments upon the property within such community improvement districts; and

WHEREAS, a petition (the "Petition") signed by or on behalf of Super Market Developers, Inc. ("Petitioners"), was filed with the City Clerk of the City of Leavenworth, Kansas (the "City") in accordance with the Act, which Petition proposed the creation of a community improvement district (the "District") under the Act and the imposition of a community improvement district (CID) sales tax therein (the "CID Sales Tax"), in order to assist in financing costs of the Project (defined below); and

WHEREAS, the Petition was signed by the required number of owners of record, whether resident or not, as required by the Act; and

WHEREAS, the City Commission of the City of Leavenworth, Kansas (the "City Commission") intends to create the District and to levy a community improvement sales tax therein in the amount of four-tenths of one percent (0.40%) (the "CID Sales Tax"); and

WHEREAS, the Act provides that prior to creating any community improvement district and imposing a community improvement district sales tax, the governing body shall, by resolution, direct and order a public hearing on the advisability of creating such community improvement district and the construction of such community improvement district projects therein, and to give notice of the hearing by publication at least once each week for two (2) consecutive weeks in the official City newspaper and by certified mail to all property owners within the proposed community improvement district, the second publication to be at least seven (7) days prior to the hearing and such certified mail sent at least ten (10) days prior to such hearing; and

WHEREAS, the City Commission adopted Resolution No. B-2263 on September 22, 2020, directing that a public hearing on the proposed District within the City be held on October 27, 2020, declaring its intent to impose the CID Sales Tax, and requiring that the Clerk for the City of Leavenworth, Kansas provide for notice of such public hearing as set forth in the Act; and

WHEREAS, notice of the public hearing containing the following information: (a) the time and place of the hearing, (b) the general nature of the Project, (c) the estimated cost of the Project, (d) the proposed method of financing the Project, (e) the proposed amount of the CID Sales Tax, (f) a map of the proposed District, and (g) a legal description of the proposed District, was mailed to all property owners within the proposed District on October 9, 2020, and published once each

week for two (2) consecutive weeks in *The Leavenworth Times*, the official City newspaper, on October 2, 2020 and October 9, 2020; and

WHEREAS, on October 27, 2020, the City Commission conducted a public hearing on the proposed District, the proposed Project, and estimated costs thereof and the method of financing the same, all in accordance with the Act; and

WHEREAS, the City Commission hereby finds and determines it to be advisable to create the District, authorize the Project, approve the estimated cost of the Project, and approve the method of financing the same, all in accordance with the provisions of the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LEAVENWORTH, KANSAS:

Section 1. Creation of District. The City Commission hereby finds and determines that it is advisable to create, in accordance with the provisions of the Act, the District within the City. Provided, that the City Commission's approval and creation of the District is conditioned and contingent upon the proposed developers of the Project, the above-named Petitioners, and the City of Leavenworth, Kansas, entering into and fully-executing a Development Agreement by no later than November 13, 2020, on terms which are mutually satisfactory to City and such developers. A map generally outlining the boundaries of the District is attached hereto as **Exhibit A** and incorporated herein by reference. The legal description of the District is set forth on **Exhibit B**, attached hereto and incorporated herein by reference.

Section 2. Authorization of Project. The general nature of the project to be funded by the proposed community improvement district (the "**Project**") consists generally of the redevelopment of the existing Price Chopper grocery store within the District and associated infrastructure improvements and other improvements, including potential environmental improvements, and all related expenses to redevelop and finance the redevelopment project, and any other items allowable under K.S.A. 12-6a26 *et seq.*, which Project is hereby authorized, subject to the terms of the above-described Development Agreement.

Section 3. Approval of Estimated Cost of the Project. The estimated or probable cost of the Project is approximately \$12,340,296.00, plus interest accrued on borrowed money, which is hereby approved.

Section 4. Method of Financing. It is proposed that the Project be financed through a combination of private equity, private debt, and CID pay-as-you-go financing (as defined in the Act). This method of financing is hereby approved.

Section 5. Imposition of CID Sales Tax. In order to provide for the payment of the Project, the City Commission hereby levies the CID Sales Tax within the District in an amount of 0.40% for a period of 22 years, as authorized under the Act, subject to the terms of the above-described Development Agreement.

Section 6. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the City Commission and publication once in the official City newspaper. Provided, that this Ordinance shall not be published unless and until the above condition regarding the Development Agreement has been satisfied. If the above condition has not been satisfied by November 13, 2020, this Ordinance shall not be effective, and shall be deemed revoked without further action on the part of the City Commission

**ADOPTED BY THE CITY COMMISSION OF THE CITY OF LEAVENWORTH, KANSAS
ON NOVEMBER 10, 2020.**

Myron J. "Mike" Griswold, Mayor

[SEAL]

ATTEST:

Carla K. Williamson CMC, City Clerk

EXHIBIT A
Map of District

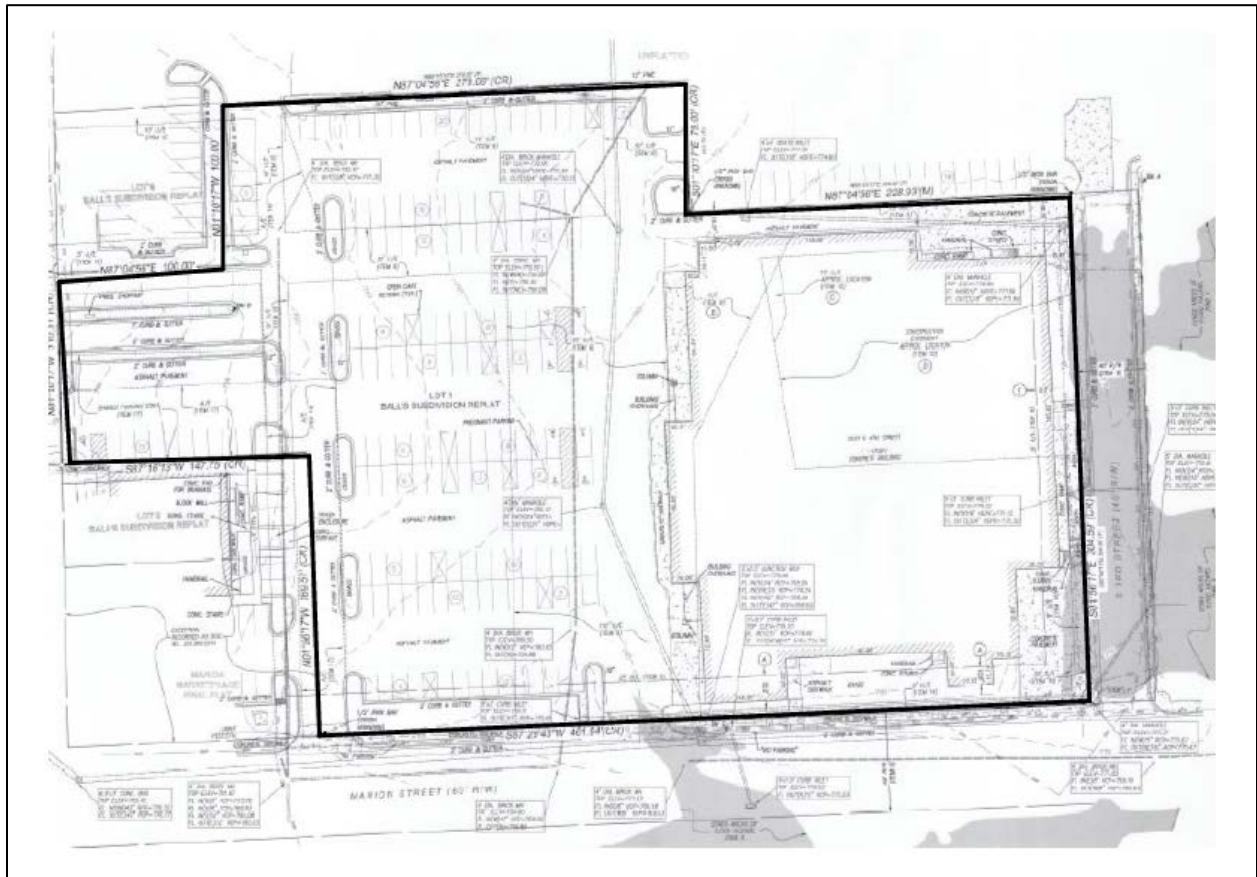


EXHIBIT B

Legal Description of District

Lot 1, BALL'S SUBDIVISION REPLAT, a subdivision in the City of Leavenworth, Leavenworth County, Kansas except that part conveyed by the deed recorded as Doc. No. 2015R03578


Parcel ID No 1010104002003020

POLICY REPORT PWD NO. 20-48

ADOPT 2019-2024 STORMWATER MANAGEMENT PROGRAM
FOR THE KDHE STORMWATER PERMIT

October 27, 2020

Prepared by:



Michael G. McDonald, P.E.,
Director of Public Works

Reviewed by:



Paul Kramer,
City Manager

ISSUE:

The City of Leavenworth has been required to have a Stormwater Management Program (SMP) since the early 2000s. Kansas Department of Health and Environment (KDHE) has issued a new permit for 2019-2024 that changes how the SMP is developed. The proposed new SMP is presented for review and approval.

BACKGROUND:

The background of the City of Leavenworth and stormwater management was reviewed with the Commission on April 21, 2020 and a draft Stormwater Management Program reviewed on June 2, 2020. The City held a public information meeting on October 1, 2020 at the Riverfront Community Center for interested persons to review and comment on the draft SMP.

The EPA/KDHE permit contains six statutory areas known as "Minimum Control Measures" (MCM) that must be addressed in the SMP. The activities used in each of the six areas are known as "Best Management Practices" or BMPs.

Minimum Control Measures

- Public Education and Outreach
- Public Participation and Involvement
- Illicit Discharge Detection and Elimination
- Construction Site Runoff Control
- Post Construction Runoff Control
- Pollution Prevention and Good Housekeeping

No changes are recommended from previous reviews and the public information meeting. The SMP document implements and continues a variety of programs in order to reduce pollutants by "the maximum extent practicable" (MEP). The use of MEP language is related to court cases prohibiting the EPA/KDHE from regulating streamflow water quality directly (in most situations), and provides an indirect method to regulate efforts that should favorably impact water quality.

The SMP uses selected BMPs for each of the six MCMs. Each of the BMPs has a point value, and the points vary according to date of implementation and how many years it is used. City staff is confident that what we are already doing will meet the point goals for the duration of the permit with some changes in City processes. The approved SMP will be implemented in 2021.

The SMP-identified BMPs that the City is planning to pursue are shown in the attached sheets. The summary descriptions are prepared by staff to reflect the actual language in the permit document.

		In general - for 2021 and 2022	
		Points Required	Committed Points Recommended
Minimum Control Measure			
1.	Public Education and Outreach	4	13
2.	Public Participation and Involvement	3	10
3.	Illicit Discharge Detection and Elimination	5	10
4.	Construction Site Runoff Control	4	10
5.	Post Construction Runoff Control	5	13
6.	Pollution Prevention and Good Housekeeping	4	15

It is not required that the City do more than meet the BMP points noted in the permit. KDHE has stated that the SMP can be modified if needed each year should the identified BMP efforts prove difficult to meet the goal. KDHE will also evaluate overall effort of the City related to stormwater on actions and BMP activity that are not identified as the "committed" points BMPs.

Proposed steps for upcoming study sessions:

1. Review regulatory process and expectations and, receive information from Commissioners and the public. (April 21, 2020)
2. Identify selected BMPs that will meet the KDHE points' totals and discuss with Commission. (June 2, 2020)
3. Prepare a draft SMP based on proposed BMPs and review with the Commission. (June 2, 2020)
4. Have opportunity to meet and discuss with the public outside of City Hall. (October 1, 2020)
5. Adopt the SMP in late summer 2020.(This policy report)

Several of the BMPs will require additional action by the City Commission in 2020 and 2021. This will generally be in the form of approving upgrades of the current design guidelines to more specific design requirements. It will also be necessary to create enforcement tools related to performance of erosion control measures, grease traps and similar water quality related activity.

The **Stormwater Management Program** document will consist of the following sections. These items are attached to this policy report or a link provided to them on City website.

- Introductory narrative
- Identification of the committed BMPs
- Identification of the bridges replaced by the City since 1980 (part of the narrative)
- Narrative related to Leavenworth from the FEMA Flood Studies

Staff will submit the final copies of the SMP to KDHE in February 2021. The City would be expected to begin implementing the various programs in January 2021, although we are already doing most of them anyway.

Approval can be accomplished by adopting a Resolution related to the Stormwater Management Program.

ATTACHMENTS:

- Policy Report No. 20-20 Review 2019-2024 KDHE Stormwater Permit & Stormwater Management Program (no attachments)
- Policy Report 20-25 – Review 2019-2024 DRAFT Stormwater Management Plan (no attachments)
- City of Leavenworth Stormwater Management Program consisting of:
 - Introduction
 - FEMA Narrative
 - BMPs Associated with 6 Minimum Control Measures
 - Listing of Bridges Replaced since 1980
- Link to 2019-2024 KDHE Stormwater Permit
https://www.leavenworthks.org/sites/default/files/fileattachments/public_works/page/149/npdes_stormwater_permit_23oct19.pdf
- Link to CURRENT KDHE Stormwater Management Program (2016)
https://www.leavenworthks.org/sites/default/files/fileattachments/public_works/page/149/stormwater_mgt_prog_23feb16.pdf

RESOLUTION NO. B-2267

A RESOLUTION ADOPTING THE 2020 STORMWATER MANAGEMENT PROGRAM AS THE OFFICIAL STORMWATER MANAGEMENT PROGRAM OF THE CITY OF LEAVENWORTH, KANSAS AND REPLACING THE 2016 STORMWATER MANAGEMENT PROGRAM ADOPTED FEBRUARY 23, 2016.

WHEREAS, the City of Leavenworth, Kansas (“City”), in accordance with requirements by the Environmental Protection Agency (EPA) and Kansas Department of Health and Environment (KDHE) prepared a Stormwater Management Program (“Program”) for the City; and

WHEREAS, the adoption of the 2020 Stormwater Management Program will replace the 2016 Stormwater Management Program adopted by Resolution B-2132 on February 23, 2016; and

WHEREAS, to meet federal and state guidelines, the City has implemented the Program in order to reduce pollutants by “the maximum extent practicable; and

WHEREAS, Minimum Control Measures (MCM) have been addressed as required using Best Management Practices (BMP); and

WHEREAS, the City conducted a series of public information meetings, social media posts and newspaper articles to inform the public and address any question by citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS, that the Governing herby adopts the 2020 Stormwater Management Program; and said program shall become the official guiding authority for actions by the Leavenworth City Commission and City Staff unless changed by official action.

BE IT FURTHER RESOLVED that the 2016 Stormwater Management Program and Resolution B-2132 are hereby repealed.

BE IT FURTHER RESOLVED that this Resolution shall take effect and be in force from and after its passage and approval, and an official copy of the “Program” shall be kept on file in the Office of the City Clerk and available for public inspection during normal business hours.

IT IS SO RESOLVED that this Resolution is passed and approved this 27th day of October, 2020.

CITY OF LEAVENWORTH, KANSAS

ATTEST:

Myron J. “Mike” Griswold, Mayor

Carla K. Williamson, City Clerk

(SEAL)

**City of Leavenworth
Stormwater Management Program**

Adopted by the City Commission October 27, 2020 (*Proposed*)

City of Leavenworth Stormwater Management Program

October 27, 2020

PROGRAM HISTORY

The City of Leavenworth was established in the 1850s along Three-Mile Creek and on the banks of the Missouri River. Since that time, the City has grown to include most of the Three-Mile Creek and Five-Mile Creek watersheds. (A map showing the aforementioned area is on the next page.)

There has been a history of flooding since the founding of the City, with notable examples and additional information in the attached Appendix. The most recent dramatic example was in October 2005 where an estimated 11 inches of rain fell in a four-hour period, causing significant property damage throughout the community. On July 6, 2015 over three inches fell in a one-hour period also causing significant damage.

It is understandable that the City focused efforts since at least the 1980s to improve stream capacity to reduce flooding. Key improvements include:

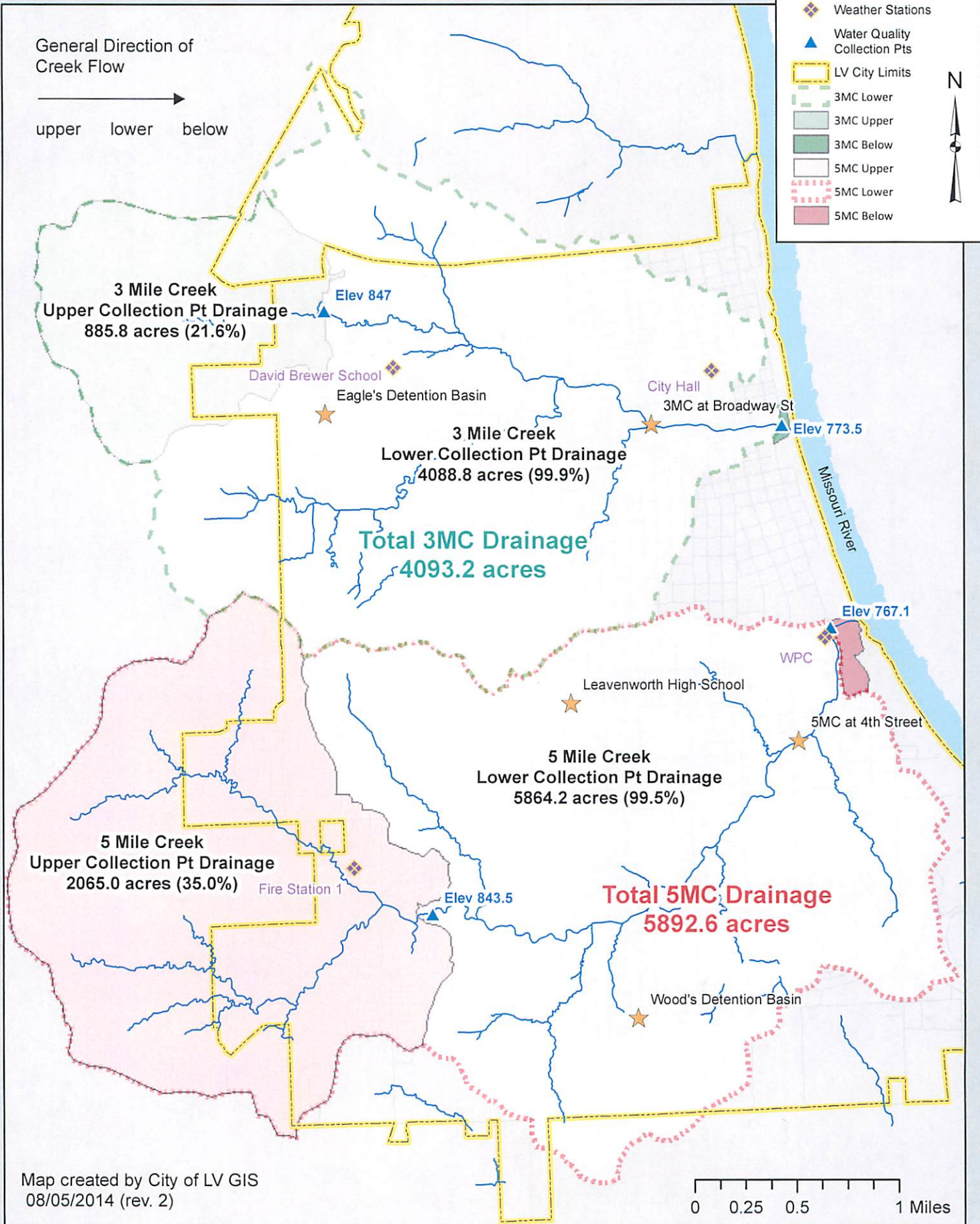
- Fifteen replaced major bridges.¹
- Channel improvements on Three-Mile Creek between Missouri River and Broadway including removal of railroad trestle west of 7th Street
- Stormwater Master Plan (1997)
- FEMA Floodplain Revisions on Three-Mile Creek, especially in the downtown area (2014 and 2015)
- Approved sales tax with dedicated stormwater funding (1995, 2005, 2015)
- Approved Stormwater Fee in 2018 (Implemented in 2019)

During the late 1980s, the Environmental Protection Agency (EPA) determined that stormwater discharges from urban areas were having a negative impact on the nation's waterways. In the 1990s, Congress expanded the Clean Water Act authority to regulate municipal stormwater discharges under the National Pollutant Discharge Elimination System (NPDES). Phase I regulations were implemented in 1990 for large municipalities and Phase II regulations were implemented in 1999 for smaller municipalities such as Leavenworth.

The City of Leavenworth received its first NPDES stormwater permit from the Kansas Department of Health and Environment (KDHE) in 2004, along with 58 other regulated entities. All regulated Phase II entities have the same six minimum requirements:

¹ Listing of replaced bridges since 1980 is attached to this report.

City of Leavenworth, KS Stormwater Management Data Collection



- Public Education and Outreach
- Public Participation and Involvement
- Illicit Discharge Detection and Elimination
- Construction Site Runoff Control
- Post Construction Runoff Control
- Pollution Prevention and Good Housekeeping

A new Five-Year NPDES permit was issued to City of Leavenworth in 2019 which includes the six minimum control measures. The intent of the permit is that the City will conduct programs and enact/enforce regulations that are generally expected to improve water quality entering the streams from the City.

A variety of activities have been identified by KDHE as being appropriate for the purpose of reducing pollution. These activities are often known by the term “Best Management Practice” (BMP). The City is required to participate in at least a sufficient number of these activities to meet the participation guidelines of the State between 2020 and 2024. This is accomplished by creation of this document – known as the “**Stormwater Management Program**” (SMP) in calendar year 2020, and carrying out the BMP items 2021 through 2024.

Staff has identified specific activities that will provide the required number of points for the duration of the permit. A table showing these activities and the associated point value is included in this document.

The City is required to submit an annual report to KDHE related to stormwater activities. This annual report is typically submitted in February of each year after a review by the City Commission of the Stormwater Management Program and of the Annual Report.

STORMWATER PROGRAM GOALS

The stormwater program of the City has two goals:

- Protect people and property from flood events
- Protect and enhance water quality

The City works to meet these goals by having a qualified staff and appropriate standards for design and construction of improvements.

STAFF

The Public Works Department staff includes engineers, inspectors, technicians, GIS mappers and project managers who review plans for all projects. The Community Development Department also reviews plans for compliance with zoning ordinances.

The Street Division has significant staffing and equipment resources to assist in addressing stormwater matters that may occur. There are two full-time stormwater employees who inspect, evaluate, clean and perform small repairs on existing

stormwater infrastructure. The Community Development Department has two full-time inspectors to evaluate zoning matters within the City including stormwater concerns. Employees of Water Pollution Control (wastewater) are actively engaged in maintaining the wastewater collection system to prevent sanitary sewer overflows of all types. They perform any water quality or water quantity measuring and testing work required.

Use of the GIS system to assist in managing stormwater has greatly increased in the last five years. The detailed system information is available online to the public. Additional GIS tools include internal development of dat8a loggers to enter field information on stormwater structures and locations.

PROGRAM TOOLS

The City uses a variety of tools to assist in the evaluation and management of stormwater issues. The primary entry point for information is the City of Leavenworth Web page. Three key locations are:

1. Stormwater Fee focused pages managed by the City Manager's Office at: www.leavenworthks.org/ctymanager/page/stormwater-projects
2. Stormwater Management Program pages on Public Works pages at: www.leavenworthks.org/publicworks
3. GIS site: www.gis.firstcity.org

The following documents and activities are a key part of the current program and are available or linked to online through the City website.

1. Stormwater Master Plan (1997 by Black & Veatch)
2. Stormwater Design Guidelines (March 2015)
3. American Public Works Association Section 5600 as a guideline (2011)
4. MARC/APWA BMP Manual as a guideline (2012)
5. Floodplain Management (20103CV000B, July 2015)
6. Requiring a "Land Disturbance Permit" for most construction activity (March 2015)
7. Various City Ordinances
8. Submit Annual Report to KDHE after review by City Commission

STORMWATER MANAGEMENT PROGRAM IMPLEMENTATION

City Staff has reviewed the KDHE list of activities related to the six minimum control measures. Several activities associated with each of the six minimum control measures have been identified as being appropriate for Leavenworth. The intent is that the City and residents participate in the identified activities to ensure the needs of the community are addressed and the City complies with the KDHE/NPDES requirements.

The new permit requirements focus obtaining point totals through measureable activities. *The majority of these identified activities are currently in place and do not require further action beyond more detailed descriptions and expectations for each*

activity. It is expected that this effort will be reviewed with the Commission as needed and at least annually during preparation of the annual report.

Additional actions by the City will be necessary to achieve all of the necessary points, primarily through adoption of more formal design guidelines and creating better enforcement mechanisms:

- Review and Adopt APWA 5600 in a greater capacity than simply a reference.
- Review and Adopt MARC BMP Manual in a greater capacity than simply a reference.
- Adopting additional resolutions or ordinances to enable better enforcement of the regulations.

Please do not hesitate to contact the Office of the City Engineer should you have any questions regarding this program.

Michael G. McDonald
City Engineer
Public Works Director
City Hall
100 N. 5th Street
Leavenworth, KS 66048
mmcdonald@firstcity.org
913-684-0375

Attachments

- FEMA Narrative on Flood Events from FIS 20103CV000B
- Stormwater Management Program Goals
- Listing of Replacement Bridges since 1980



**LEAVENWORTH COUNTY,
 KANSAS**
 AND INCORPORATED AREAS

COMMUNITY NAME	COMMUNITY NUMBER
BASEHOR, CITY OF	200187
EASTON, CITY OF	200188
LANSING, CITY OF	200189
LEAVENWORTH, CITY OF	200180
LEAVENWORTH COUNTY UNINCORPORATED AREAS	200186
LINWOOD, CITY OF	200191
TONGANOXIE, CITY OF	200192



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REVISED: July 16, 2015



Federal Emergency Management Agency

FLOOD INSURANCE STUDY NUMBER

20103CV000B

City of Leavenworth

The flood producing characteristics of Threemile, South Branch, and Fivemile Creeks are typical of small watersheds in the Midwest region. Past flood flows have usually been caused by short duration thunderstorms having high intensity rainfall. Conversely, flood problems associated with the Missouri River are usually caused by long protracted fronts occurring over large areas. There are no natural obstructions to flood flow in the Threemile Creek floodplain. Obstructions restricting floodwater flow have been created by man's continued encroachment on the Threemile Creek floodplain. Severe restrictions to flood flow have been created in the past by construction of many bridges located in the floodplain between Tenth Street and the mouth. In addition, a portion of the creek channel had been enclosed in a box culvert located under the railroad yards between Seventh Street and Broadway. Because of inadequate openings in these bridges and culvert, a cumulative aggravation of flood backwater occurred in the lower floodplain.

The City of Leavenworth embarked on a substantial effort to improved flooding conditions downstream of Tenth Street in the early 1980's. The bridge on Tenth Street was replaced in 1983, the bridge on Cherokee (west of Broadway) in 1981, and the bridge on Shawnee west of Tenth in 1985. The rail yard trestles were removed by 1988. In addition, new bridges have been constructed at Third Street, Sixth Street, Seventh Street, Broadway and Shawnee Streets since 1988. Construction of a pedestrian trail at creek level between Esplanade Street and 7th Street contributed to larger channel cross sections between Fourth Street and Seventh Street and generally improved flow characteristics. A new bridge at Second Street is expected to be constructed in 2015. A significantly larger natural open channel was constructed between 6th Street and Cherokee Streets in the early 1990's.

The improvements since the last FIS have had a significant impact on the critical area near Cherokee and Broadway Streets. At this location flood flows were impeded by small bridge openings at Cherokee Street and at Broadway Street that forced excess water out of banks through the developed floodplain area along Cherokee Street. Flow from this area attempting to return to the channel was further impeded by the now removed railroad yard culvert. Flooding at Cherokee Street occurs less often with the construction of the noted improvements.

Channel restrictions between Cherokee Street and Shawnee Street west of Broadway remain. These restrictions continue to pose a threat to structures along Miami St. between 8th St. and 10th St.

Since there is no stream gaging stations on Threemile Creek or its South Branch, documentation of flood problems affecting Leavenworth in the past rely completely upon historical accounts. Detailed investigations have been made of flooding which occurred in July 1958 and October 1961. In addition, fragmentary records of 11 additional floods have been found through a search of newspaper files. It appears that the maximum known flood prior to 1972 occurred in 1904. This flood had an estimated peak discharge of 7,000 cubic feet per second (cfs) at the mouth (between the discharge of a 50-year and 100-year flood), and 6,500 cfs at Seventh Street. The following composite accounts describe the July 1958 and October 1961 events experienced on Threemile Creek.

On July 30, 1958, more than 4 /12 inches of rain fell in the Leavenworth area. Damage estimated at \$30,000 was reported from businessmen and homeowners from the resulting flood on Threemile Creek. The downtown area was hardest hit, especially on Cherokee from Broadway to Seventh Street where the discharge of the flood was estimated at 4,300 cfs.

On October 13, 1961, three to four inches of rainfall fell in the Leavenworth area. The resulting flood on Threemile Creek exceeded bank full capacity at 7:00 PM, crested at about 9:00 PM, and receded to within-bank stages at 11:30 PM. The flood caused \$71,000 damage in Leavenworth, of which \$58,700 was damage to 24 business places and 16 residences, and the remainder was damage to transportation facilities and municipal property. The discharge at Seventh Street was estimated at 4,000 cfs.

The City of Leavenworth Public Works Department has identified the following significant flood events since 1972 (Reference 12). In all cases - water overtopped the bank upstream of Cherokee Street and flowed east along Cherokee Street, returning to the banks of the creek at 6th Street. Flooding of the 800 and 900 blocks of Miami also occurred in the same years noted below causing damage to residences and businesses. Water has been as high as two feet deep in Miami Street. The city has purchased several homes using “buy-out” programs, and worked with businesses to ensure that they take appropriate measures to minimize risks from flooding. Some of them ore notable events include:

- July 6-7, 1986 - 10.4 inches of rain fell, causing water to flow down Cherokee Street and floating several automobiles and trailers.
- May 15, 1990 - 4.4 inches of rain fell causing minor flooding.
- October 4th, 1998 - between six and eight inches of rain fell in a twelve hour period causing damage on Cherokee Street and areas upstream of Shawnee (west of Tenth Street). Damage was also noted in the 800 and 900 blocks of Miami Street.
- 1993 - Local heavy thunderstorms combined with an elevated water surface in Three-Mile Creek from record flooding on the Missouri River from record flooding on the Missouri River resulted in significant flooding along Cherokee Street.

- October 2nd, 2005 - a NWS gage recorded 5.6 inches of rain, but eyewitness accounts and anecdotal evidence supports between seven and eleven inches of rain falling in a four hour period in some locations. The resulting flood was identified as the worst in memory, and flooded structures between 11th Street and downstream to 6th Street. A new bridge was under construction at 6th Street, and the debris caused the complete collapse of the falsework. The floodwater and debris and falsework passed through the old railroad Bridge at Esplanade Street which acted as lens and focused the stream upon the mouth of the creek at the Missouri River. The jet of water undermined the sanitary sewer along the banks of the Missouri River. A hole that later measured as over forty feet deep appeared where the sewer had been buried twenty feet below the creek bottom. The sewers were repaired by late 2006 at a total cost of about \$1,000,000. Estimates of flow were later determined by Black & Veatch Engineers as being in excess of 7,500 cfs at Esplanade street.
- There has been no further flooding of Cherokee Streets between 2005 and October 2014.

Flood damage along South Branch of Three-Mile Creek has typically been much less severe than that along the Main Branch of Threemile Creek. Damage to road crossings and property near Eleventh Street as well as scouring is likely to take place during floods.

Severe restrictions from bridges across Five-Mile Creek have been addressed with new structures at Fourth Street, Second Avenue/Limit Street and Shrine Park Road since 1972. Inadequate openings of the older bridges had caused a cumulative aggravation by flood backwater in the floodplain.

Newspaper accounts provide most of the history of flooding on Fivemile Creek prior to the 1970's. These accounts reveal that flooding has occurred several times in the past. Notable floods were reported in June 1942, July 1958, October 1961, April 1969, and September 1970. Unfortunately, precise data regarding flood levels reached by these floods have not been documented.

The flood of July 30, 1958, had Fivemile Creek flooding Shrine Park Road, Limit Street and U.S. 73 at Black Bridge (Reference 1).

The flood of October 12, 1961, swept away cut brush laying in the vicinity of the sewage treatment plant at Second and Fivemile Creek (Reference 1).

On April 26, 1969, Fivemile Creek ran 10-12 inches deep across Shrine Park Road, just south of the entrance to the golf club. Along south Fourth Street the stream spread out for a half mile or more and at Second Street, in the vicinity of the sewage disposal plant, the creek rose to the edge of the street (Reference 1).

Heavy rains since 1988 often result in water flowing across Shrine Park Road at low areas north of the new bridge and across Tenth Avenue at Wellington Drive. These events also result in significant erosion and scouring of the creek bank. Water has crossed the bridge at Second Avenue and Limit Street on several occasions at depths up to six inches since 1988. One notable event occurred on October 4, 1998, when 4.74 inches of rain fell in two hours (measured in south Leavenworth), and it resulted in ten inches of water across Tenth Avenue at Wellington, 24 to 30 inches across Shrine Park Road north of the bridge, and six to eight inches across Limit Street (Reference 12). A new larger bridge at this site is completed (2014) and is expected to reduce and possible eliminate roadway flooding at this location.

The City of Leavenworth is above the floodplain of the Missouri River except for the areas where Threemile and Fivemile Creeks and other smaller right bank tributaries enter the Missouri River. Recorded damage to the city, caused by flooding from the Missouri River, occurred when an emergency levee failed during the April 1952 flood. The flood caused a total of \$125,200 damage in Leavenworth. The damages were \$12,000 to business property, \$12,600 to homes, and \$600 to public property. The Wastewater Treatment Plant had never been threatened by flooding until it was inundated in the 1993 Missouri River Flooding, with repair costs in excess of \$1 million required to restore service. The plant has been threatened to a level requiring sandbagging and other measures at least three additional times since 1993, most notably in 2011 due to releases from Corps of Engineers dams upstream when the levels were within six inches of the city closing the plant.

Second Street north of Five-Mile Creek is subject to standing water and flooding from high water in the Missouri River and is then closed to protect the public. This has happened at least five times since 1988.

The Riverfront Community Center (Union Railroad Depot) was protected from flooding in 1993 when nearly four feet of water from the Missouri River threatened the structure. Heroic efforts by the community created a sizable protective sandbag wall that prevented flooding, but the building suffered related damage requiring over \$300,000 in repairs. It has been necessary to construct flood protective measures at least three times since 1993 with expenses typically in excess of \$10,000 on each occasion. The City expects to construct a permanent floodwall with a FEMA grant in 2015 to reduce expenses and damage from future floods.

A combined effort of Leavenworth County, City of Leavenworth and City of Lansing resulted in a recording stream gage being installed at the Leavenworth Waterworks Intake structure on Dakota street in September 2012. This is expected to improve flood evaluation and forecast activities.

1. <u>PUBLIC EDUCATION & OUTREACH (ED & O)</u>	2021	2022	2023	2024
	4 Points Total		7 Points Total	
BMP PROGRAM				
POINTS				
<u>ED & O - 01</u> - Maintain a stormwater webpage for the permittee.	3	2	2	2
<u>ED & O - 02</u> - Distribute educational materials (either flyers, brochures, catalog mailings, handouts, or e-mails) addressing various pertinent stormwater public education topics.	2	2	2	2
<u>ED & O - 03</u> - Provide either training or educational materials to permittee identified businesses at high risk of contributing to stormwater pollution.	2	2	2	2
<u>ED & O - 04</u> - Apply notification, placard, covers/hatches with message, or stencil, on stormwater inlets to provide a message similar to “No Dumping – Drains to River”		2		2
<u>ED & O - 05</u> - Post the municipality’s MS4 permit and SMP document on either the stormwater web page or the municipal webpage.	1	1	1	1
<u>ED & O - 12</u> - Create a stormwater information brochure to provide to the public at public meetings and/or hearings.	1	1	1	1
<u>ED & O - 13</u> - Operate an adopt-a-highway program to utilize public volunteers to clean road right-of-way.	1	1	1	1
<u>ED & O - 15</u> - Hold a social media campaign addressing various pertinent stormwater public education topics.	2	2	2	2
<u>ED & O - 17</u> - Operate an adopt-a-street program to utilize public volunteers to clean street right-of-way.	1	1	1	1
TOTAL	15			

2. <u>PUBLIC INVOLVEMENT/PARTICIPATION (P I/P)</u>	2021	2022	2023	2024
	3 Points Total		6 Points Total	
BMP PROGRAM				
POINTS				
<u>P I/P - 01</u> - Hold a public hearing or public forum to notify the public about stormwater program activities and to solicit public comments regarding stormwater issues.	2	2	2	2
<u>P I/P - 03</u> - Hold park or stream bank clean-up events for public volunteers to aid municipal staff in removing trash, debris, or pollutant sources from the selected clean-up area.	3	3	3	3
<u>P I/P - 04</u> - Train either citizen watch groups, homeowner associations (HOAs), or public service groups to recognize illicit discharge activities and communicate observations to appropriate municipal staff.	2	2	2	2
<u>P I/P - 05</u> - Provide at least two events for residents to engage in cleanup activities and improve water quality in the municipality.	3	3	3	3
TOTAL	10			

3. <u>ILLICIT DISCHARGE DETECTION & ELIMINATION (IDD & E)</u>	2021	2022	2023	2024
	5 Points Total		7 Points Total	
BMP PROGRAM				
POINTS				
IDD & E - 04 - Implement a program to evaluate MS4 outfalls to identify illicit discharges.	1	1	1	1
IDD & E - 06 - Inspect, by televising pipelines or direct visualization of open channel drainage, 2% of the MS4 system within the permit area all conducted within a 12-month period to aid in identifying illicit discharges as well as evaluate the condition of the storm sewer lines/drainage channels-ditches.	3	3	3	3
IDD & E - 07 - Implement a Household Hazardous Waste Collection Program (HHWCP) or document others have implemented such a program to provide such service to all property owners or residents located within the permit area.	3	3	3	3
IDD & E - 10 - Inspect, 5% of the MS4 system Stormwater inlets and/or outfalls within the permit area all conducted within a 12-month period to aid in identifying illicit discharges.	3	3	3	3
TOTAL	10			

4. CONSTRUCTION SITE STORMWATER RUNOFF CONTROL (CSSRC)	2021	2022	2023	2024
	4 Points Total		6 Points Total	
BMP PROGRAM				
POINTS				
CSSRC - 01 - Implement a requirement for a Soil Erosion and Sediment Control (SESC) Plan for any land disturbance sites which are either equal to or greater than 1 acre or for which there is construction activity disturbing less than one acre which is part of a larger common plan of development or sale that in total disturbs one acre or more.	3	2	2	2
CSSRC - 02 - Develop and adopt a design manual for erosion and sediment control BMPs which are required to be used on sites which will be disturbed and are either equal to or greater than 1 acre or for which there is construction activity disturbing less than one acre which is part of a larger common plan of development or sale that in total disturbs one acre or more.	3	2	2	2
CSSRC - 04 - Develop a site plan review process which considers potential water quality impacts which may occur during construction as well as post construction impacts.	3	2	2	2
CSSRC - 07 - Acquire or develop a software tracking system to track inspections and related tasks.	1	1	1	1
TOTAL	10			

5. <u>POST-CONSTRUCTION STORMWATER MANAGEMENT IN NEW DEVELOPMENT & REDEVELOPMENT PROJECTS (P-C SM)</u>	2021	2022	2023	2024
	5 Points Total		7 Points Total	
BMP PROGRAM	POINTS			
P-C SM - 01 - Develop and adopt a custom design manual for Post-Construction Stormwater Management which specifies various structural BMPs which are required for new development and re-development construction sites which are greater than 1 acre or for which there is construction activity disturbing less than one acre which is part of a larger common plan of development or sale that in total disturbs one acre or more. (Points shown reflect adopting existing APWA/MARC manuals)	6	5	5	5
P-C SM - 03 - Develop and implement a program to ensure adequate long-term cleaning, operation and maintenance of all municipally owned or operated post-construction structural stormwater BMP facilities.	3	2	2	2
P-C SM - 05 - Develop and implement a program for inspection of permittee owned structural BMPs which includes implementation of needed maintenance to ensure long-term operation of the BMPs.	3	2	2	2
P-C SM - 06 - Develop and implement a program for inspection of known privately owned structural BMPs which includes providing the owner of the BMPs an inspection report which specifies needed maintenance to ensure long-term operation of the BMPs.	3	2	2	2
TOTAL	15			

6. <u>POLLUTION PREVENTION/GOOD HOUSEKEEPING FOR MUNICIPAL OPERATIONS (PP/GH)</u>	2021	2022	2023	2024
	4 Points Total		6 Points Total	
BMP PROGRAM	POINTS			
PP/G H - 01 - Install a screening device or method at a single municipal storm sewer outfall or on the storm sewer line immediately upstream of the outfall to reduce the discharge of floatables or other objects to receiving waters.	3	2	2	2
PP/GH - 03 - Develop a guidance document for municipal staff or third-party contractors which apply pesticides.	2	1	1	1
PP/GH - 05 - Implement a program for street sweeping in which the street sweepings are collected and disposed of properly or recycled/reused if possible.	3	2	2	2
PP/GH - 07 - Implement a program to inspect stormwater inlets to identify illicit discharges and clean drop inlets of accumulated debris.	1	1	1	1
PP/GH - 08 - Develop, implement and keep updated an online storm sewer map accessible to the public.	3	2	2	2
PP/GH - 12 - Install a stormwater treatment system for capture of either trash, sediment, or debris.	3	2	2	2
TOTAL	15			

CITY OF LEAVENWORTH, KANSAS
2019 BRIDGE INSPECTION OF MAJOR BRIDGES REPLACED SINCE 1980
TABLE 1: GENERAL BRIDGE INFORMATION


Local Bridge No./ NBI Number	Description	Year Built	Bridge Roadway Width (Ft)*	Traffic Volume (VPD) (2007)	Inventory Rating HS-Truck (Tons)	FHWA Sufficiency Rating ¹	Fracture Critical	Abutment Foundation Type	Pier Foundation Type	Geology Type	Underwater Inspection Type ²	Scour Critical ³	NBI Bridge Condition
A.92-2.45/ 415-400523515002	10th St. @ Three Mile Creek 33'-44'-33' Concrete	1983	33.1	7170	35.6	95.3	No	Unknown	Spread Footings	Unknown	I	No	Good
A.98-2.34/ 415400523530007	Shawnee St. @ S Branch of Three Mile Creek Single 24' x 10 RFB	1984	32	2450	36	99.8	No	NA	NA	Unknown	I	No	Good
A.98-2.69/ 415400523530008	Shawnee St. @ Three Mile Creek 30'-40'-30' Concrete Haunches Slab Spans	2007	36.5	2325	45.1	97.8	No	Piling	Piling	Stone	I	No	Good
B.09-2.30/ 5154005200000B9	Cherokee St. @ Trib. to Three Mile Creek 43.5' Precast Concrete Arch	2016	26.5	1870	32.1	98.0	No	Footing	NA	Unknown	I	No	Good
B.09-2.80/ 415400523526001	Cherokee St. @ Three Mile Creek 24.5'-31'-24.5' Concrete Flat Slab Spans	1981	40.4	3130	37.7	98.7	No	Steel Pile	Steel Pile	Limestone	I	No	Good
B.13-2.85/ 415400523519025	Broadway St. @ Three Mile Creek 48'-64'-48' Concrete Haunched Slab Spans	1991	40.4	4435	50.3	98.6	No	Steel Pile	Footings	Shale	I	No	Fair
B.13-2.96/ 415400523523023	7 th St. @ Three Mile Creek 34'-42'-34' Concrete Haunched Slab Spans	1991	40	5725	39.7	97.5	No	Steel Pile	Steel Pile	Bedrock	I	No	Good
B.13-3.08/ 415400523525942	6 th St. @ Three Mile Creek 35'-46'-35' Concrete Haunched Slab Spans	2007	27.5	1035	62.4	83.1	No	Piling	Piling	Unknown	I	No	Good
B.15-3.33/ 415400523531005	3 rd St. @ Three Mile Creek 40'-50'-40' Prestressed Concrete Girder Spans	1988	39.4	2795	54.6	97.7	No	Steel Pile	Spread Footings	Shale	I	No	Fair
B.15-3.42/ 415400523533004	2 nd St. @ Three Mile Creek 40' Concrete Arch Deck Span	2017	27	1100	41.4	83.0	No	Unknown	NA	Unknown	I	No	Good
C.16-3.69/ 415400523533003	2 nd St. @ Five Mile Creek 33'-44'-33' Concrete Haunched Slab Spans	1981	36.1	2900	38.7	86.7	No	Steel Pile	Steel Pile	Shale	I	No, POA in place	Fair
C.97-3.30/ 415400523527970	Limit St. @ Five Mile Creek 36'-48'-36' Haunched Slab Spans	2014	44.0	8600 (2012)**	58	82.0	No	Steel Pile	Steel Pile	Unknown	I	No	Fair
D.00-1.48/ 415400523210990	Limit St. @ Trib. to Five Mile Creek Single 20' x 12' RFB	2014	24	3500 (2012)**	51.9	99.9	No	NA	NA	Unknown	I	No	Good
D.32-3.00/ 415400523521006	Shrine Park Rd. @ Five Mile Creek 40'-50'-40' Concrete Haunched Slab Spans	1993	34.1	5500	25.2	86.8	No	Steel Pile	Steel Pile	Bedrock	II	No	Good
D.51-2.5/ 415400523213851	10 th Ave. @ Five Mile Creek Double 16' x 12' RFB	1980	50	7105	21.8	63.4	No	NA	NA	Unknown	I	No	Fair

POLICY REPORT PWD NO. 20-20

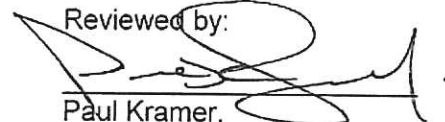
REVIEW 2019-2024 KDHE STORMWATER PERMIT
AND STORMWATER MANAGEMENT PROGRAM

April 21, 2020

Prepared by:


Michael G. McDonald, P.E.,
Director of Public Works

Reviewed by:


Paul Kramer,
City Manager

ISSUE:

The City of Leavenworth has been required to have a Stormwater Management Program (SMP) since the early 2000s. KDHE has issued a new permit for 2019-2024 which changes how the SMP is developed.

BACKGROUND:

This requirement came from national environmental efforts beginning in the 1970s, and the resulting court cases being resolved in late 1990s. The EPA stormwater program is administered by KDHE for all cities in Kansas. The current permit (2019-2024) is included on the City webpage below. The current SMP document is attached to this Policy Report. Additionally – an excellent background document has been prepared by the National Association of Clean Water Agencies that describes the difficulties in the overall implementation of national stormwater policy.

- **Stormwater Management Program:**
https://www.leavenworthks.org/sites/default/files/fileattachments/public_works/page/4591/leavenworthstormwatermgmtprogram_23feb16.pdf
- **Current Permit**
https://www.leavenworthks.org/sites/default/files/fileattachments/public_works/page/149/npdes_stormwater_permit_23oct19.pdf
- **Background**
<https://www.nacwa.org/docs/default-source/news-publications/White-Papers/2018-03-07permittingguide.pdf>

The SMP lists a series of activities that the City is expected to implement in order to reduce pollutants by “the maximum extent practicable” (MEP). The use of MEP language is related to court cases prohibiting the EPA/KDHE from regulating streamflow water quality directly (in most situations), and provides an indirect method to regulate efforts that should favorably impact water quality.

There are six statutory areas known as “Minimum Control Measures” (MCM) that must be addressed in the SMP. The activities used in each of the six areas are known as “Best Management Practices” or BMPs.

Minimum Control Measures

- Public Education and Outreach
- Public Participation and Involvement
- Illicit Discharge Detection and Elimination
- Construction Site Runoff Control*
- Post Construction Runoff Control
- Pollution Prevention and Good Housekeeping

Reports are to be submitted to KDHE on an annual basis that evaluate the effectiveness of the SMP and BMPs. The City has submitted reports since at least 2004, and these are available on the web site: <https://www.leavenworthks.org/publicworks/page/annual-stormwater-reports>

The current KDHE Stormwater Permit was issued in late 2019 after being delayed almost a year as EPA and KDHE resolved their conflicts. The permit has meaningfully changed in many aspects although the six primary factors remain the same. The EPA has been moving towards being a data-driven agency for over a decade. This impacts permitting and reporting as programs are required to be less "verbal" and more "Yes/No" or "points based". This permit is an example of that.

KDHE has identified BMPs for each of the six MCMs. Each of the BMPs has a point value, and the points vary according to date of implementation and how many years it is used. The City is required to meet several point totals at various times in the permit. City staff is confident that what we are already doing will meet the point goals for the duration of the permit.

It is interesting to note that:

1. No other BMPs are allowed to be created, and ones in the permit cannot be revised. This may change over the life of the permit.
2. KDHE has informed our office that if it appears the City is dropping programs due to "excess" points in the SMP annual report, it would likely result in a sternly-worded letter at a minimum.
3. Some BMPs are extremely narrowly focused and are intended for specific locations that may have difficulty meeting points goals otherwise.

It is the intent of the permit that the City create a new SMP in 2020 to implement in 2021. The practical truth is that it will look a lot like the current SMP and activities. KDHE and EPA have both stressed to City staff the importance of public involvement in this process. There is no requirement for a "Public Hearing", but opportunities for input are expected to be available.

This Policy report is to provide some background on the process, and set some milestones for the next few months. The goal is to have an adopted SMP by late 2020.

Proposed steps for upcoming study sessions, perhaps monthly:

1. Review regulatory process and expectations, receive information from Commissioners and the public. (This policy report).
2. Identify selected BMPs that will meet the KDHE points totals and discuss with Commission.
3. Prepare a draft SMP based on proposed BMPs and review with the Commission
4. Have opportunity to meet and discuss with the public (assuming no COVID issues) outside of City Hall.

After the work noted above – prepare a final draft for review at a regular meeting. It would then be appropriate to place this in Ordinance form for first consideration.

ATTACHMENTS:

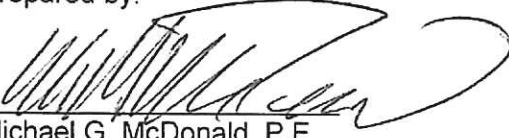
City of Leavenworth Stormwater Management Program

POLICY REPORT PWD NO. 20-25

REVIEW 2019-2024 DRAFT STORMWATER MANAGEMENT PROGRAM
FOR THE KDHE STORMWATER PERMIT

June 2, 2020

Prepared by:


Michael G. McDonald, P.E.,
Director of Public Works

Reviewed by:


Paul Kramer,
City Manager

ISSUE:

The City of Leavenworth has been required to have a Stormwater Management Program (SMP) since the early 2000s. Kansas Department of Health and Environment (KDHE) has issued a new permit for 2019-2024 that changes how the SMP is developed. A draft of the new SMP is presented for review.

BACKGROUND:

The background of the City of Leavenworth and stormwater management was reviewed with the Commission on April 21, 2020. A copy of that policy report is attached.

To meet federal and state guidelines the City is required to implement programs in order to reduce pollutants by "the maximum extent practicable" (MEP). The use of MEP language is related to court cases prohibiting the EPA/KDHE from regulating streamflow water quality directly (in most situations), and provides an indirect method to regulate efforts that should favorably impact water quality.

The permit contains six statutory areas known as "Minimum Control Measures" (MCM) that must be addressed in the SMP. The activities used in each of the six areas are known as "Best Management Practices" or BMPs.

Minimum Control Measures

- Public Education and Outreach
- Public Participation and Involvement
- Illicit Discharge Detection and Elimination
- Construction Site Runoff Control
- Post Construction Runoff Control
- Pollution Prevention and Good Housekeeping

KDHE has identified BMPs for each of the six MCMs. Each of the BMPs has a point value, and the points vary according to date of implementation and how many years it is used. The City is required to meet several point totals at various times in the permit. City staff is confident that what we are already doing will meet the point goals for the duration of the permit with some changes in City processes. It is the intent of the permit that the City create a new SMP in 2020 to implement in 2021. The practical truth is that it will look a lot like the current SMP and activities.

Staff has examined the various activities offered as BMPs by KDHE. The staff goal was to identify sufficient BMPs to have approximately twice the value of the required points to include in the SMP. This will allow for point redundancy if individual BMPs fall short of the goals. Staff also chose to not include every BMP that reflects current activity to avoid BMP record keeping overload.

The recommendations for BMPs that the City should "commit" to in the SMP are shown in the attached sheets. The summary descriptions are prepared by staff to reflect the actual language in the permit document.

		In general - for 2021 and 2022	
		Points Required	Committed Points Recommended
Minimum Control Measure			
1.	Public Education and Outreach	4	13
2.	Public Participation and Involvement	3	10
3.	Illicit Discharge Detection and Elimination	5	10
4.	Construction Site Runoff Control	4	10
5.	Post Construction Runoff Control	5	13
6.	Pollution Prevention and Good Housekeeping	4	15

It is not required that the City do more than meet the BMP points noted in the permit. KDHE has stated that the SMP can be modified if needed each year should the identified BMP efforts prove difficult to meet the goal. KDHE will also evaluate overall effort of the City related to stormwater on actions and BMP activity that are not identified as the "committed" points BMPs.

Proposed steps for upcoming study sessions:

1. Review regulatory process and expectations, receive information from Commissioners and the public. (April 21, 2020)
2. Identify selected BMPs that will meet the KDHE points' totals and discuss with Commission. (This policy report)
3. Prepare a draft SMP based on proposed BMPs and review with the Commission. (This policy report)
4. Have opportunity to meet and discuss with the public (assuming no COVID issues) outside of City Hall.
5. Adopt the SMP in late summer 2020.

Several of the BMPs will require additional action by the City Commission in 2020 and 2021. This will generally be in the form of approving upgrades of the current design guidelines to more specific design requirements. It will also be necessary to create enforcement tools related to performance of erosion control measures, grease traps and similar water quality related activity.

The Stormwater Management Program document will consist of the following sections. A draft of all of these items is attached to this policy report.

- Introductory narrative
- Identification of the committed BMPs
- Identification of the bridges replaced by the City since 1980 (part of the narrative)
- Narrative related to Leavenworth from the FEMA Flood Studies

Staff will continue to work on developing the final version of the SMP. The goal is to have opportunity for public input prior to asking the Commission to approve the final version. In a general sense, the SMP should be complete in late summer and submitted to KDHE in February 2021. The City would

be expected to begin implementing the various programs in January 2021, although we are already doing most of them anyway.

After the work noted above – prepare a final draft for review at a regular meeting. It would then be appropriate to place this in ordinance form for first consideration.

ATTACHMENTS:

- Policy Report No. 20-20 Review 2019-2024 KDHE Stormwater Permit & Stormwater Management Program
- City of Leavenworth **DRAFT** Stormwater Management Program
 - Introduction
 - FEMA Narrative
 - BMPs Associated with 6 Minimum Control Measures
 - Listing of Bridges Replaced since 1980
- Link to 2019-2024 KDHE Stormwater Permit
https://www.leavenworthks.org/sites/default/files/fileattachments/public_works/page/149/npdes_stormwater_permit_23oct19.pdf
- Link to CURRENT KDHE Stormwater Management Program (2016)
https://www.leavenworthks.org/sites/default/files/fileattachments/public_works/page/149/stormwater_mgt_prog_23feb16.pdf

**POLICY REPORT PWD NO. 20-51
ADOPT THE CITY OF LEAVENWORTH
MANUAL OF INFRASTRUCTURE STANDARDS**

October 27, 2020

Prepared by:



Michael Hooper,
Deputy Director of Public Works

Reviewed by:



Michael G. McDonald, P.E.
Director of Public Works

Paul Kramer,
City Manager

ISSUE:

Adopt the City of Leavenworth Manual of Infrastructure Standards

BACKGROUND:

At the October 20th Commission Study Session, the Commission reviewed the draft document which outlines the design expectations for infrastructure within the City. Within the document are the basic dimensions and design considerations for street, sidewalk, storm sewers and other public infrastructure focusing on providing uniform guidelines for all improvements. As outlined in the study session discussion, the document will provide:

- An initial set of expectations of the City to developers so that they may obtain realistic estimates of the cost of a project.
- Simplifying choices for developers on smaller projects.
- Reduced maintenance costs of road and other infrastructure to the citizens of the City.

The proposed manual will provide higher design standards for City infrastructure which will result in overall better infrastructure, improved decision making and estimating by smaller developers, and provide flexibility for larger projects with the ability to discuss alternate proposals.

RECOMMENDATION:

Staff recommends the City Commission approve the proposed "City of Leavenworth Manual of Infrastructure Standards" as presented and reviewed at the October 20th study session.

ATTACHMENTS:

October 20, 2020 Policy Report, No. 20-50

RESOLUTION NO. B-2268

A RESOLUTION ADOPTING THE CITY OF LEAVENWORTH, MANUAL OF INFRASTRUCTURE STANDARDS DATED OCTOBER 27, 2020.

WHEREAS, the City of Leavenworth, Kansas (“City”), has prepared a Manual of Infrastructure Standards (“Manual”) to identified the basic dimensions and design considerations for street, sidewalk, storm sewer and other public infrastructure; and

WHEREAS, the proposed “Manual” was reviewed with the City Commission at the October 20, 2020 Study Session; and

WHEREAS, from time to time revisions and updates may be made to the “Manual” as needed and approved by the Governing Body.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS, that the Governing herby adopts the October 27, 2020 Manual of Infrastructure Standards; and said “Manual” shall become the official guiding authority for actions by the Leavenworth City Commission and City Staff unless changed by official action.

BE IT FURTHER RESOLVED that the “Manual” and that this Resolution shall take effect and be in force from and after its passage and approval and an official copy shall be kept on file in the Office of the City Clerk and available for public inspection during normal business hours.

IT IS SO RESOLVED that this Resolution is passed and approved this 27th day of October, 2020.

CITY OF LEAVENWORTH, KANSAS

{SEAL}

Myron J. “Mike” Griswold, Mayor

ATTEST


Carla K. Williamson, City Clerk

**POLICY REPORT PWD NO. 20-50
REVIEW CITY OF LEAVENWORTH DRAFT
MANUAL OF INFRASTRUCTURE STANDARDS**

October 20, 2020

Prepared by:

Michael Hooper,
Deputy Director of Public Works



Michael G. McDonald, P.E.
Director of Public Works

Reviewed by:



Paul Kramer,
City Manager

ISSUE:

Review the draft of the Manual of Infrastructure Standards

BACKGROUND:

Staff has been working to accumulate design expectations for infrastructure into a single document. A draft document has recently been completed. It is not intended to be a comprehensive technical reference, but rather a statement of expectations related to basic infrastructure. The City relies on American Public Works Association (APWA) and Kansas Department of Transportation (KDOT) technical publications for many design details.

The draft Infrastructure Manual identifies the basic dimensions and design considerations for street, sidewalk, storm sewers and other public infrastructure. The document is focused on providing uniform guidelines for all improvements.

- Providing an initial set of expectations of the City to developers so that they may obtain realistic estimates of the cost of a project.
- Simplifying choices for developers on smaller projects.
- Reducing maintenance costs of road and other infrastructure to the citizens of the City.

Key policy changes that are proposed in the document are:

1. Asphalt thickness is substantially increased for all new streets
2. Valley gutter width and concrete thickness
3. A "Sidewalk Bond" is required to ensure all sidewalks are constructed on vacant lots within subdivisions after two years

City staff had an informal meeting with the local engineers, contractors, and developers to seek input this year. There were minor revisions based on this meeting. Concerns raised by the developer and contractor that were not changed on key issues are noted below:

1. The standard minimum asphalt thickness specified on residential, collector, and arterial roadways remains as proposed in the manual. This is to provide long-term pavement life, reduce pavement failures by poor or erratic subgrade conditions, and to better withstand heavy loads from moving trucks, trash trucks, construction equipment, etc.
 - a. Residential – 8" of asphalt
 - b. Collector – 10" of asphalt
 - c. Arterial – 12" of asphalt

Thickness of asphalt on City streets was as little as 2 inches in the 1970s and 1980s. This has gradually been increased by staff over the years to the current proposal. Recent

developments such as West Glen 1 & 2 were constructed with 4 inches of asphalt. Recent City projects such as the Ottawa Street Reconstruction Project and the Choctaw Street Reconstruction Project were constructed with 8 inches of asphalt and the Business Park was constructed with 12" of asphalt.

Developers may choose to use the standard thickness or provide a detailed geo-technical evaluation of soil types and construction methods for individual projects for review by the City Engineer's office. Improvements in asphalt material, subgrade preparation and construction methods may result in a recommendation for a different "pavement cross section" which may include a reduced asphalt thickness.

2. The requirement of using a triaxial geogrid in the roadway section remains as proposed in the manual. Geogrid is used to stabilize poor soil conditions to allow construction of the gravel and asphalt layers above the subgrade. These high-strength plastic grids are typically available in a triangular (tri-axial) shape or a square (bi-axial) shape. Staff has used both products on projects and the experience has shown that a tri-axial geogrid experiences less "migration" of the gravel through the openings than the bi-axial geogrids during placement and compaction of the gravel.

Developers may choose to use the standard tri-axial grid recommendation or commit to a more aggressive inspection of the bi-axial grid during construction, and agree to repair any failed grid or subgrade locations.

Staff did a survey of various cities throughout the region to ascertain the roadway standards used. Results of the survey are attached. The proposed asphalt thickness, AB-3 subgrade, and soil subgrade specifications proposed by the City are essentially the same throughout the region with some minor exceptions.

Providing the higher standards noted should result in overall better infrastructure, improved decision making and estimating by smaller developers, and provides flexibility for larger projects to discuss alternate proposals.

RECOMMENDATION:

Staff recommends the City Commission review and comment on the draft "Manual of Infrastructure Standards" which shows the basic dimensions and design considerations of the City's public infrastructure. This will be brought back a regular Commission meeting for review.

ATTACHMENTS:

Draft Infrastructure Manual
Pictures of geogrid placement
Various City Street Designs Survey

*Policy Report No. FIN-20-06
Presentation of Revised Investment Policy*

October 27, 2020

Prepared By:



Ruby Maline
Finance Director

Approved By:



Paul Kramer
City Manager

Issue:

Consider revisions to the Investment Policy to add to the types of investments in which the City may participate.

Background:

Kansas statutes authorize cities to invest cash that is not immediately needed for their intended purposes.

The City's investment policy incorporates the types of investments that are authorized by state statutes. However, during the past year, some of the local banks offered investments in Certificates of Deposit Registry Service (CDARS)-type programs. The CDARS-type program and other qualifying reciprocal deposit programs allows for a participating institution to arrange for the allocation of deposits in excess of the Federal Deposit Insurance Corporation (FDIC) insurance limit of \$250,000 among other participating institutions in amounts that would be eligible for FDIC coverage.

Kansas statutes allow cities to invest in CDARS-types of investments if:

- "1) the participating institution has a main or branch office in the City;
- 2) if the bank within the City receives reciprocal deposits for other institutions in an amount equal to the amount of funds being placed by the City;
- 3) if the other banks issuing certificates of deposit of the City are located throughout the United States; and
- 4) if each certificate of deposit issued by out-of-county banks is in an amount that is eligible for full FDIC coverage."

At the time of these offerings, the City's investment policy didn't allow for these types of investments. In order to participate in the CDARS-type investments, the City's policy requires the approval of the City Commission and the State Municipal Investment Pool Board.

The City policy requires that the following objectives be met:

- 1) Safety-the principal amount of the investment must remain intact
- 2) Liquidity-the investment must remain convertible to cash with minimal loss of principal or interest
- 3) Yield-the rate of return-it is desirable to maximize the rate of return, but it is less important than safety and liquidity
- 4) Local investments-the reason for the reciprocating investments is to ensure that an equal amount that leaves the City is returned to promote investments in the local community

Action:

Approve the Resolution No. B-2269 adopting the Revised Investment Policy.

RESOLUTION NO. B-2269

A RESOLUTION ADOPTING THE CITY OF LEAVENWORTH, INVESTMENT POLICY REVISED AND APPROVED OCTOBER 27, 2020.

WHEREAS, the City of Leavenworth, Kansas (“City”), has prepared an Investment Policy (“Policy”); and

WHEREAS, K.S.A. 12-1675 et seq. allows cities to invest monies that are not immediately needed for their intended purposes; and

WHEREAS, from time to time revisions and updates are made to the policy; and

WHEREAS, the proposed revised “Policy” was reviewed with the City Commission at the October 20, 2020 Study Session.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS, that the Governing herby adopts the October 27, 2020 Investment Policy; and said “Policy” shall become the official guiding authority for actions by the Leavenworth City Commission and City Staff unless changed by official action.

BE IT FURTHER RESOLVED that the previous version of the “Policy” are hereby repealed and void and that this Resolution shall take effect and be in force from and after its passage and approval. An official copy of the “Policy” shall be kept on file in the Office of the City Clerk and available for public inspection during normal business hours.

IT IS SO RESOLVED that this Resolution is passed and approved this 27th day of October, 2020.

CITY OF LEAVENWORTH, KANSAS

{SEAL}

Myron J. “Mike” Griswold, Mayor

ATTEST

Carla K. Williamson, City Clerk

CITY OF LEAVENWORTH, KANSAS
INVESTMENT POLICY
10/27/2020

INTRODUCTION

K.S.A. 12-1675 allows cities to invest moneys that are not immediately needed for their intended purposes. The intent of the Investment Policy is to define the parameters within which funds are to be managed. The policy establishes the framework for the City's investment activities that ensures effective and conservative fiscal investment management of the City's funds. These guidelines are intended to be flexible enough to allow city staff to function properly within the parameters of their responsibility and authority, yet specific enough to safeguard the funds adequately.

POLICY

It is the policy of the City of Leavenworth, Kansas, to invest public funds in a manner that will provide the highest return on investments and maximum security while meeting the daily cash flow demands of the entity, and conforming to all state and local statutes governing the investment of public funds.

SCOPE

This investment policy applies to all financial assets of the City. The financial assets of all funds, including the General Fund, Special Revenue Funds, Capital Projects Funds, Proprietary Funds, Internal Service Funds and Fiduciary Funds, and any other funds that may be created from time to time, except for those assets held in trust and bond fund investments, shall be administered in accordance with the provisions of this policy. Assets held in trust will be subject to the Trust Investment Policy. Bond Fund investments will be subject to the Debt Management Policy. This policy also does not apply to those intergovernmental revenues that contain restrictions on investment earnings.

PRUDENCE

The standards to be used by investment officials shall be the "prudent person" standard and shall be applied in the context of managing the overall portfolio. The prudent person standard states "Investment shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived." Investment officers acting in accordance with written procedures and the investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

OBJECTIVES

The primary objectives, in priority order, of the City's investment activities shall be:

- A. **Safety:** Safety of principal is the foremost objective of this investment policy. Investments of the City shall be undertaken in a manner that seeks to ensure the preservation of the principal in the overall portfolio. Safety risks include credit risk (the risk of loss due to the failure of the security) and interest rate risk (the risk that the market value of securities in the portfolio will fall due to changes in market interest rates).
- B. **Liquidity:** The City's investment portfolio will remain convertible into cash with minimal loss of principal or interest to enable the City to meet all reasonably anticipated cash flow requirements sufficiently.
- C. **Yield:** The rate of return on the City's investments, while an important source of revenue, is less important than safety or liquidity. Typically, the safer the investment, the lower the rate of return on those investments. K.S.A. 12-1675(b)(2) identifies investments in which cities may participate.
- D. **Local investments:** K.S.A. 12-1675(b)(2) also addresses the institutions in which cities may invest funds with the intention of promoting further investment into the local community. These are specifically identified in the section entitled "Authorized and Suitable Investments."

INVESTMENT AUTHORITY

City Commission

The City Commission holds the responsibility for approval of the City of Leavenworth Investment Policy. The City Commission shall authorize the City Manager to manage the City's investment program according to City Ordinances, the City Resolution approving this policy, and State Statutes.

City Manager

The City Manager will review any modifications to the Investment Policy and submit them to the City Commission as appropriate. The City Manager has final management responsibility for the investment program.

Finance Director

The Director of Finance has direct management responsibility of the investment program. The Finance Director shall report to the City Manager on a periodic basis, as appropriate, concerning the status of the City's investment program. The Finance Director will review and receive prior approval from the City Manager before undertaking any major changes in the City's investment practices. The Finance Director shall establish written procedures for the operation of the

investment program consistent with this investment policy. Employees authorized to make investment decisions are as follows: City Manager, Finance Director, and/or Finance Director's authorized designee.

ETHICS AND CONFLICTS OF INTEREST

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. All authorized investment officials shall disclose to the City Clerk any material financial interest in financial institutions that conduct business with the City.

AUTHORIZED FINANCIAL INSTITUTIONS

The Finance Director will maintain a list of financial institutions from which the City may purchase investment securities and in which funds may be deposited. This list shall be reviewed and approved annually by the City Commission. All such financial institutions must supply the Finance Director with audited financial statements on a yearly basis.

AUTHORIZED AND SUITABLE INVESTMENTS

In accordance with K.S.A. 12-1675(b)(2), the Finance Director is authorized to invest in the following securities:

- Direct obligations of or obligations that are insured as to principal and interest by the United States or any agency thereof
- Savings deposits, demand deposits, time deposits, open accounts, certificates of deposit, or time certificates of deposits with maturities of not more than two (2) years
- State Municipal Investment Pool
- Municipal bonds issued by any municipality of the state of Kansas
- Repurchase agreements for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof
- Any investments made with a depository institution must be made with banks, savings and loan associations, and savings banks which have a main or branch office located in Leavenworth County or the City of Leavenworth
- Temporary notes of the City of Leavenworth

K.S.A. 12-1675(b)(2) and K.S.A.12-1675(f) also allows for Certificate of Deposit Account Registry Service (CDARS)-type programs. The CDARS and other qualifying reciprocal deposit programs allows for a participating institution to arrange for the allocation of deposits in excess of the FDIC insurance limit of \$250,000 among other participating institutions in amounts that would be eligible for FDIC coverage if:

“(1) the Kansas participating institution has a main or branch office located in Leavenworth;

- (2) the Leavenworth bank receives reciprocal deposits from other institutions in an amount equal to the amount of funds placed by the City;
- (3) the other banks issuing certificates of deposit of the City are located throughout the United States; and
- (4) each certificate of deposit issued by out-of-county banks is in an amount that is eligible for full FDIC coverage.”

When selecting a depository, the City will place investment priority on local institutions whose interest rates are equal to or greater than the investment rate as defined in K.S.A. 12-1675(a) before placing investments in the CDARS or CDARS-type programs.

COLLATERALIZATION

In order to reduce custodial credit risk (which is the risk that the City may not be able to recover its deposits in the event of the depository institution failure) collateral is required on all City investments and funds on deposit held in authorized financial institutions. Collateral is not required on investments which are covered by Federal Deposit Insurance Corporation (FDIC) and direct obligations of the U.S. government. In order to anticipate market changes and provide a level of security for all funds, the collateralization level will be 100% of current value of principal and accrued interest.

Collateral may consist of the following:

1. Direct obligations of, or obligations that are insured as to principal and interest by, the United States of America or any agency thereof and obligations, including but not limited to letters of credit, and securities of United States sponsored corporations which under federal law may be accepted as security for public funds; and
2. Municipal bonds of the State of Kansas and political subdivisions thereof that are eligible for the deposit of public funds and approved by the State Bank Commissioner.

SAFEKEEPING AND CUSTODY

An independent third party with whom the City has a current custodial agreement will always hold collateral securities. A clearly marked evidence of ownership (safekeeping receipt) must be supplied to the City and retained. Pledged collateral shall not be released until an acceptable re-pledging of collateral is made and confirmed to the Finance Director or designee in the event of a transfer of collateral. The independent external auditor shall review safekeeping procedures annually.

DIVERSIFICATION

It is the policy of the City to diversify its investment portfolio by security type and maturity. Assets held in the cash fund and other investment funds shall be diversified to eliminate the risk of loss that result from over concentration of assets in a specific maturity or a specific class of securities.

MAXIMUM MATURITIES

To the extent possible, the City will attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the City will not invest in securities maturing more than two (2) years from the date of purchase. However, the City may invest reserve funds in securities exceeding two (2) years if the maturities of such investments are made to coincide as nearly as possible with the expected use of the funds.

INTERNAL CONTROL

The Finance Director shall establish a system of written internal controls to assure compliance with state laws and this policy. The controls shall be designed to prevent the loss of public funds due to fraud, error, misrepresentation by third parties, unanticipated market changes or imprudent actions by employees or officers of the City. An annual, independent audit review shall provide internal control by assuring compliance with state laws and this policy.

INTEREST ALLOCATION

Interest earned on investments will be allocated according to Kansas Statutes, specific fund requirements, and based on level of participation in the investments.

PERFORMANCE STANDARDS

The investment portfolio will be designed to obtain a market average rate of return during budgetary and economic cycles taking into account the City's investment risks, constraints and cash flow needs.

MARKET YIELD

The basis used by The Finance Director to determine whether market yields are being achieved shall be the 91-day U.S. Treasury Bill rate or the amount established by the State Municipal Investment Pool.

REPORTING

The Finance Director or designee shall compile monthly investment reports showing type of investment, institution, rate of interest, term, maturity date, and projected interest earnings at maturity. Interest earnings reports and collateral reports for each financial institution shall also be prepared.

REVIEW OF POLICY

The Finance Director shall review the policy on an annual basis with the City Manager, and any modifications made thereto must have prior approval of the City Commission.

Policy Report

Amendment to 1994 Price Chopper Lease Agreement
Oct. 27, 2020

Prepared by:



Paul Kramer
City Manager

Background:

In 1994, the City entered into a lease agreement with Four B. Corp for use of a piece of City property immediately adjacent/north of where Price Chopper is located. The purpose of the lease was for Four B Corp to use the property for parking for Price Chopper. The terms of the lease are outlined in the attached lease agreement.

Subject:

As part of the Price Chopper redevelopment project, Super Market Developers LLC, has assumed control of the Price Chopper property and the development. To reflect this change in control of the development and, in this case, the lease holder of the City property included in the lease, Four B Corp and Super Market Developers LLC are requesting that the lease be assigned to Super Market Developers LLC.

Based on the 1994 agreement, the City must provide consent for an assignment of the lease to a new party.

Action:

The City Commission provides consent for the assignment of the attached property lease from Four B Corp., to Super Market Developers LLC.

ATTACHMENTS:

Lease agreement

Memorandum of Lease

Assignment of Assumption of Parking Area Lease Agreement

#20 GROUND LEASE

PARKING AREA / LEASE AGREEMENT

THIS PARKING AREA / LEASE AGREEMENT ("Lease") is made and entered into this 14TH day of NOVEMBER, 1994, by and between the City of Leavenworth, Kansas, a municipal corporation, in the State of Kansas, hereinafter referred to as the "City," and FOUR B CORP., a Kansas corporation, hereinafter referred to as "Lessee."

WITNESSETH

WHEREAS, Lessee operates a Price Chopper Food Store in Leavenworth, Kansas at a location commonly known as 2107 South 4th Street (the "Store");

WHEREAS Lessee has agreed in principal with the City to lease a tract of land owned by the City and located north of the Store, as legally described on Exhibit A attached hereto (the "Leased Premises");

WHEREAS Lessee desires to construct a parking lot on the Leased Premises for use by its employees at the Store;

WHEREAS the parties acknowledge that some part of the Leased Premises has previously been used as a landfill and City maintenance shop location; and

WHEREAS the City and Lessee have agreed that the City shall retain all liability and responsibility in connection with any existing environmental contamination to the Leased Premises, if any;

NOW THEREFORE it is agreed by and between the parties as follows:

- 1) The City hereby leases to Lessee, and Lessee hereby leases from the City, on the terms and conditions set forth in this Lease, the Leased Premises for One Dollar (\$1.00) per year for a period of time equal to the shorter of: (i) such time as Lessee or its successor operates a food supermarket at the location commonly referred to as 2107 South 4th Street or (ii) fifty years. The City hereby acknowledges receipt of a payment in the amount of Fifty Dollars (\$50.00) as a non-refundable lease payment for the full term of the Lease.
- 2) Lessee shall at its cost construct the parking lot, intersection, storm drainage, access road and other real improvements shown on the attached Exhibit B which is incorporated herein by reference, in the four following phases (each a "Phase"):
 - a) PHASE I will include the construction of the surface parking lot in accordance with the plans and specifications previously verbally approved by the City and shall be completed prior to December 31, 1994.
 - b) PHASE II will include the intersection connecting the parking lot into Third Street and shall be completed prior to December 31, 1995.
 - c) PHASE III will include concrete slab removal and storm drainage improvements immediately north of the parking lot and shall be completed prior to December 31, 1996.

- d) PHASE IV will include the access road as shown on the plans, which ties into the intersection of Third Street and the parking lot, extends north and then west to the northwest corner of the parking lot and shall be completed prior to December 31, 1997.
- 3) The City retains the right of access across the Leased Premises, as reflected on Exhibit B, to the City Waste Water Treatment Plant and other City property to the north of the Leased Premises. It is specifically recognized by Lessee that in an emergency the City's egress and ingress requirements to the Leased Premises may cause disruption of the use of the Leased Premises by Lessee and its agents, representatives, employees and customers and Lessee shall hold the City harmless from any claims for said disruption.
- 4) Lessee shall construct a wood or chain link fence along the boundary of the Leased Premises. Said fence to be constructed in the manner reasonably approved by the Public Works Director of the City in accordance with the Cities rules and regulations. The gate for the fence shall be supplied by the City at its sole cost and expense.
- 5) The City shall remain liable for and shall indemnify, defend and hold harmless Lessee and its officers, directors, agents, employees and shareholders from and against any loss, damage, expense, including, without limitation, reasonable attorneys fees and costs of

litigation (collectively "Damages"), incurred or sustained by Lessee and arising by reason of (i) the existing presence on the Leased Premises of any substance or material that is, or may in the future be, defined, listed in or otherwise classified pursuant to, any applicable laws or regulations as a "hazardous substance," "hazardous waste" or "toxic substance," or (ii) any spills, discharges or releases of any materials or substances on the Leased Premises prior to or during the term of this Lease, other than those caused by or resulting from the activities, actions or omissions (when Lessee has a duty to act) of Lessee. Lessee will have no claim for damages against the City solely as a result of any disruption to Lessee's use of the Leased Premises in the event the City is required to do any environmental or hazardous material or other clean up to the Leased Premises. The City shall, as promptly as possible, pay for or make repairs to any improvements described on Exhibit B attached which are constructed by Lessee on the Leased Premises if said improvements are removed or disrupted in connection with any clean up effort or remediation of the Leased Premises.

- 6) Lessee shall be responsible for the use of the surface of the Lease Premises and shall indemnify and hold harmless the City from any liability claims arising out of accidents or injuries or other use of the surface area of the Leased Premises.

- 7) Lessee shall be responsible for payment of any property taxes that may be levied against the Leased Premises.
- 8) The City hereby grants to Lessee a right of first refusal to purchase the Leased Premises. If at any time during the term of this Lease the City receives an offer to purchase the Leased Premises (an "Offer"), the City shall deliver a copy of the Offer to Lessee and thereafter Lessee shall have 30 days to notify the City whether it desires to purchase the Leased Premises from the City on the same terms and conditions contained in the Offer. If within 30 days following its receipt of the Offer Lessee fails to notify the City that it intends to purchase the Leased Premises on the same terms and conditions contained in the Offer, the City shall have the right to sell the Leased Premises to the party submitting the Offer, on the same terms and conditions contained in the Offer.
- 9) This Lease shall not be modified except in writing signed by the parties hereto or their respective successors or assigns.
- 10) In the event any portion of this Lease is deemed unenforceable or invalid, the remainder of this Lease shall not be affected thereby.
- 11) Lessee shall have no right to assign any right, title or interest in and to the Leased Premises without the written consent of the City, which shall not be unreasonably withheld.

- 12) In the event Lessee fails to construct the real improvements to the Leased Premises in accordance with the terms of this Lease and does not cure such breach within 30 days following written notice of same from the City, Lessee shall forfeit all right, title and interest under this Lease and all real improvements to the Leased Premises shall become the property of the City.
- 13) Except as expressly set forth in Paragraph 5 above, Lessee agrees to pay all costs associated with the construction, maintenance, repair, replacement, removal and or relocation of improvements upon the Lease Premises and shall not permit any liens to be created against the Leased Premises. To insure the performance of its obligations hereunder, prior to commencing any work on any Phase of the improvements, Lessee shall deliver a performance bond to the City in an amount equal to the amount of the improvements (as described on Exhibit B) to be built by Lessee in connection with such Phase.
- 14) Lessee agrees that all use of the Leased Premises shall be in accordance with the applicable statutes, rules, regulations and ordinances, as the case may be, of the City of Leavenworth Kansas, the State of Kansas and the federal government.
- 15) Upon termination of this Lease, all real improvements located on the Leased Premises shall become the property of the City.

16) The City agrees that Lessee shall have the right to record a copy of this Lease with the register of deeds for Leavenworth County, Kansas.

17) Wherever possible, each provision of this Lease shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Lease shall be prohibited by or declared invalid under applicable law, such provision shall be void and of no effect and the remaining provisions of this Lease shall remain in full force and effect.

IN WITNESS WHEREOF the parties have hereto placed their hands the day and year first above written.

FOUR B CORP.

CITY OF LEAVENWORTH, KANSAS

By *John F. Ball*
John F. Ball
President

By *Frank Minnis*
Frank Minnis
Mayor

ATTEST:

Carol Sadler
Carol Sadler, City Clerk

STATE OF KANSAS)
) *WANDOTTE*) SS.
COUNTY OF ~~LEAVENWORTH~~)

BE IT REMEMBERED that on this 14th day of November, 1994, before me the undersigned, a Notary Public in and for the County and State aforesaid, came John F. Ball, the president of Four B Corp., who is the person known to me to be the same person who executed the within instrument, and such person duly acknowledged the execution of same to be the act and deed of said corporation.

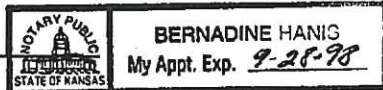
IN WITNESS WHEREOF, I have hereto set my hand and affixed my official seal, the day and year last above written.



NOTARY PUBLIC

MY COMMISSION EXPIRES:

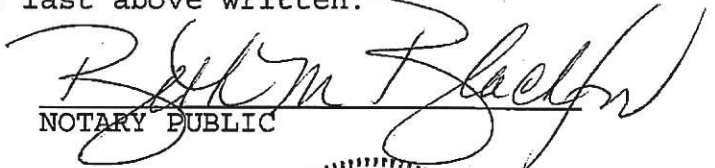
9/28/98



STATE OF KANSAS)
)) SS.
COUNTY OF LEAVENWORTH)

BE IT REMEMBERED that on this 20th day of September, 1994, before me the undersigned, a Notary Public in and for the County and State aforesaid, came Frank Minnis, Mayor of the City of Leavenworth, Kansas, who is personally known to me to be such officer and is personally known to me to be the same person who executed as such officer, the within instrument on behalf of the City of Leavenworth and such person duly acknowledged the execution of same to be the act and deed of said municipality.

IN WITNESS WHEREOF, I have hereto set my hand and affixed my official seal the day and year last above written.



NOTARY PUBLIC

MY COMMISSION EXPIRES:

4-6-1996

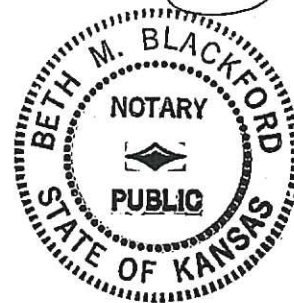


EXHIBIT A

**PRICE CHOPPER LEGAL ON PARKING LOT LEASED FROM
THE CITY OF LEAVENWORTH, KANSAS**

A tract of land in the Northeast $\frac{1}{4}$ of Section 1, Township 9 South, Range 22 East in the City of Leavenworth, Leavenworth County, Kansas more fully described as follows:

Beginning at a point 421.06 feet N $88^{\circ} 15' 13''$ E from the SW corner of said NE $\frac{1}{4}$. Thence N $88^{\circ} 15' 13''$ E 228.93 feet; thence N $00^{\circ} 46' 00''$ W - 129.96 feet; thence S $88^{\circ} 15' 12''$ W 227.19 feet; thence South 130.00 feet to the point of beginning.

(Space above reserved for the Register of Deeds' recording information)

Title of Document: MEMORANDUM OF PARKING AREA / LEASE AGREEMENT

Date of Document: October 27, 2020

Grantor(s): CITY OF LEAVENWORTH, KANSAS
Grantee(s): SUPER MARKET DEVELOPERS, INC.

Grantee's Address: 5000 Kansas Avenue
Kansas City, Kansas 66106

Legal Description: See **Exhibit A** attached hereto

MEMORANDUM OF PARKING AREA / LEASE AGREEMENT

THIS MEMORANDUM OF PARKING AREA / LEASE AGREEMENT, made and entered into as of October 27, 2020, by and between the CITY OF LEAVENWORTH, a municipal corporation organized under the laws of the State of Kansas (the “**Grantor**” and “**City**”), whose mailing address is 100 N 5th Street, Leavenworth, KS 66048, and SUPER MARKET DEVELOPERS, INC., a Missouri corporation (the “**Grantee**” and “**Lessee**”), whose mailing address is 5000 Kansas Avenue, Kansas City, Kansas 66106.

WITNESSETH:

1. That the City rents, leases and lets unto the Lessee and the Lessee hereby rents, leases and hires from the City, for the rentals, and upon and subject to the terms and conditions set forth in a certain Lease dated as of November 14, 1994, as amended, the property described and set forth on *Exhibit A* attached hereto and made a part hereof (“**Leased Premises**”) for a basic term, commencing on September 14, 1994 (referred to herein as the “**Lease**”) and terminating upon the terms set forth in the Lease.

2. The Lessee is given the right and option under the provisions of said Lease to purchase the Leased Premises at the time and in the manner described in said Lease.

3. The covenants, agreements and conditions herein and in said Lease contained shall run with the Leased Premises and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

4. This Memorandum of Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

*[Remainder of page left blank intentionally
Signature pages to follow]*

IN WITNESS WHEREOF, the City has caused this Memorandum of Lease to be signed by an authorized official, such signature to be attested by an authorized officer, and its official seal to be applied, as of the date first above written.

CITY:

THE CITY OF LEAVENWORTH, KANSAS

By: _____
Myron Griswold, Mayor

[SEAL]

ATTEST:

Carla Williamson, City Clerk

STATE OF KANSAS)
) SS.
COUNTY OF LEAVENWORTH)

The foregoing instrument was acknowledged before me on _____, 2020, by Myron Griswold, Mayor, and Carla Williamson, City Clerk, respectively, of the City of Leavenworth, Kansas, a municipal corporation and political subdivision of the state of Kansas.

Notary Public
Typed or printed name: _____

My Appointment Expires: _____

IN WITNESS WHEREOF, the Lessee has caused this Memorandum of Lease to be signed by an authorized officer, such signature to be attested by an authorized representative as of the date first above written.

LESSEE:

SUPER MARKET DEVELOPERS, INC., a Missouri corporation

By: _____
Printed Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 2020, by _____, as _____ of SUPER MARKET DEVELOPERS, INC., a Missouri corporation.

Notary Public
Typed or printed name: _____

My Appointment Expires: _____

EXHIBIT A

DESCRIPTION OF LEASED PREMISES

The following described real estate in Leavenworth County, Kansas:

A tract of land in the Northeast $\frac{1}{4}$ of Section 1, Township 9 South, Range 22 East in the City of Leavenworth, Leavenworth County, Kansas more fully described as follows:

Beginning at a point 421.06 feet N $88^{\circ} 15' 13''$ E from the SW corner of said NE $\frac{1}{4}$. Thence N $88^{\circ} 15' 13''$ E 228.93 feet; thence North $00^{\circ} 46' 00''$ W – 129.96 feet; thence S $88^{\circ} 15' 12''$ W 227.19 feet; thence South 130.00 feet to the point of beginning.

**ASSIGNMENT AND ASSUMPTION OF
PARKING AREA / LEASE AGREEMENT**

This Assignment and Assumption of Parking Area / Lease Agreement (this “**Assignment**”), dated October 27, 2020 (the “**Effective Date**”), is between **FOUR B CORP.**, a Kansas corporation (“**Assignor**”), and **SUPER MARKET DEVELOPERS, INC.**, a Missouri corporation (“**Assignee**”)

BACKGROUND

A. The City of Leavenworth, Kansas, a municipal corporation (“**City**”) entered into that certain Parking Area / Lease Agreement dated November 14, 1994 (the “**Lease**”), demising certain premises described on Exhibit A attached hereto (the “**Leased Premises**”), with Assignor as Lessee.

B. Assignor has sold the real property adjacent to the Leased Premises to Assignee, and now wishes to assign the Lease to Assignee, and Assignee wishes to assume all of Assignor’s duties under the Lease.

Assignor and Assignee therefore agree as follows:

1. **Assignment and Delegation.** Assignor hereby assigns, transfers and conveys to Assignee, all of Assignor’s right, title and interest in and to the Lease to Assignee and delegates all of Assignor’s duties, obligations, and liabilities in and under the Lease to Assignee accruing after the Effective Date.

2. **Acceptance and Assumption.** Assignee hereby accepts the assignment, transfer and conveyance of the improvements located on the Leased Premises and Assignor’s right, title and interest in and to the Lease and the delegation of Assignor’s interest in the Lease and assumes all of the obligations, duties and liabilities of Assignor that arise, accrue or are incurred under the Lease on or after the Effective Date.

3. **Indemnity.** Assignor will indemnify and hold Assignee harmless from and against any and all claims, losses, causes of action, damages, costs and expenses (including reasonable attorney fees) relating to or arising out of any act, occurrence, omission, event or condition relating to the Lease or the Leased Premises that occurred before the Effective Date.

4. **Status of Lease.** Assignor represents and warrants that it is not in default under the Lease, has no claims against the City for breach of the Lease or for any other reason relating to the Lease and, to the knowledge of Assignor, the City has no claims related to the Lease against it.

5. **Attorney Fees.** In the event a suit or action is instituted to enforce or interpret any provision of this Assignment, the prevailing party will be entitled to recover from the other party, the prevailing party’s attorneys’ fees and disbursements and court costs incurred, in addition to all other amounts provided by law.

6. **Defined Terms.** Capitalized words and terms not otherwise defined herein shall have the meanings set forth in the Lease.

7. **Successors and Assigns.** This Assignment will bind and inure to the benefit of the respective successors and assigns of Assignor and Assignee.

8. **Governing Law.** This Assignment shall be governed and construed in accordance with the laws of the State of Kansas.

Assignor and Assignee have executed this Assignment as of the Effective Date.

ASSIGNOR/GRANTOR:

FOUR B CORP., a Kansas corporation

By: _____
Printed Name: _____
Title: _____

ASSIGNEE/GRANTEE:

SUPER MARKET DEVELOPERS, INC., a Missouri corporation

By: _____
Printed Name: _____
Title: _____

CONSENT TO ASSIGNMENT

Pursuant to Paragraph 11 of the Lease, the City of Leavenworth, Kansas, as Lessor, hereby consents to the foregoing assignment.

CITY OF LEAVENWORTH, KANSAS
a municipal corporation

By: _____

Myron J. "Mike" Griswold

Title: Mayor

Date: October 27, 2020

Exhibit A

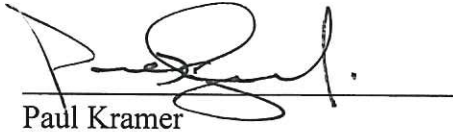
Legal Description

A tract of land in the Northeast $\frac{1}{4}$ of Section 1, Township 9 South, Range 22 East in the City of Leavenworth, Leavenworth County, Kansas more fully described as follows:

Beginning at a point 421.06 feet N $88^{\circ} 15' 13''$ E from the SW corner of said NE $\frac{1}{4}$.
Thence N $88^{\circ} 15' 13''$ E 228.93 feet; thence North $00^{\circ} 46' 00''$ W – 129.96 feet; thence
S $88^{\circ} 15' 12''$ W 227.19 feet; thence South 130.00 feet to the point of beginning.

Policy Report
Super Market Developers Development Agreement
October 27, 2020

Prepared by:



Paul Kramer
City Manager

Background:

Discussions about a complete renovation of Price Chopper, located at 2107 S. 4th Street, started in 2017. Those initial talks stalled and were rekindled in March 2020 when Super Market Developers/Associated Wholesale Grocers (AWG) became involved in the project. Over the following months, the City worked with AWG's development team on a process that would lead to a comprehensive interior and exterior renovation of this important grocery store in the City of Leavenworth.

From the outset, it was clear that for the \$12 million redevelopment project to happen, an economic development incentive package would be required. The aspects of that incentive package, including Industrial Revenue Bonds (IRBs), a Community Improvement District (CID) and Tax Increment Financing District (TIF), are in process and have been presented at various stages in numerous public meetings. The IRBs are independent of the development agreement, but the exact terms of the CID and TIF incentives must be agreed upon in a development agreement before the development tools can be put in place.

Financial information regarding the costs of the project, as well as the proposed incentive levels have been provided by the development team, reviewed by the City, and form the basis for the terms of the proposed development agreement. As City staff and the development team worked on establishing incentive districts, project plans and satisfying the various statutory requirements of the CID, IRBs and TIF district, the teams concurrently worked on an overall development agreement.

Subject:

The comprehensive development agreement presented for City Commission consideration outlines the terms and conditions of the project, the City's involvement and the obligations and responsibility of all parties. Among the aspects of most interest, however, are the parameters of the incentives and the benchmarks required to access incentives. A summary of those sections include:

Incentive levels

Using the vetted pro forma financial information submitted by AWG as a baseline, City staff proposed caps and limitations on the various incentives. All incentives for this project are pay-as-you-go, meaning they are rebated collections above the revenue streams already collected by

the City on this specific property. There also is no City issued debt related to this project. Expenses that are eligible for reimbursement from TIF and CID revenues are outlined in “Exhibit C” of the development agreement and are in accordance with what is allowed by state statute.

The CID funding cap for the project is proposed at \$1,566,296 or 22 years, whichever occurs first. The cap number is based on AWG revenue projections submitted prior to negotiation of the development agreement.

The TIF funding cap for the project is proposed at \$2,559,000, or 20 years, whichever occurs first. The cap number is also based on AWG project cost projections submitted prior to negotiation of the development agreement.

All collected funds will be remitted quarterly and require paid invoices for “Eligible Project Costs” as are outlined in the development agreement and summarized in “Exhibit C.”

Benchmarks

This project does not include new construction, which typically provides the standard development benchmarks of demolition, permits, foundation, certificate of occupancy, etc. In order to ensure that the entirety of the project was completed before the developer would be able to access incentive reimbursement, the development agreement requires both full completion and a timeframe by which completion must be met to access incentives. The language reads:

“Developer must achieve substantial completion of the Project and the Developer Work within eighteen (18) calendar months after the Effective Date, subject only to Excusable Delays. Developer acknowledges and agrees that Developer shall not be entitled to receive reimbursement for any Project Costs until substantial completion of the entire Project has been achieved.”

For the purpose of clarity, “substantial completion” means:

“...the point at which the whole of the Project is sufficiently complete, in accord with the construction contract documents, so that the owner may have beneficial use or may occupy the Project or such definable portion thereof for the use for which it is designed and intended, without regard to occupancy permits that may be issuable under applicable law.”

If the development performs well, it would be expected that the incentive tools would end before their statutory limits.

Action:

To approve or deny the included development agreement between the City and Super Market Developers.

ATTACHMENTS:

Development Agreement

DEVELOPMENT AGREEMENT
between the
CITY OF LEAVENWORTH, KANSAS
and
SUPER MARKET DEVELOPERS, INC.
DATED AS OF October 27, 2020

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into as of the 27th day of October, 2020 (the "**Effective Date**"), by and between the **CITY OF LEAVENWORTH, KANSAS**, a municipal corporation organized according to Kansas law (the "**City**") and **SUPER MARKET DEVELOPERS, INC.**, a corporation organized and existing according to Missouri law (the "**Developer**"). The City and the Developer are hereinafter collectively referred to as the "**Parties**" and each a "**Party**."

RECITALS

A. The Developer acquired in March of 2020 certain real property in the City of Leavenworth, Kansas commonly known as 2107 South 4th Street, Leavenworth, Kansas 66048, as legally described in Exhibit A and depicted on Exhibit B (the "**Property**").

B. The Developer seeks to improve the Property by renovating and improving an existing grocery store and all associated site work, infrastructure, utilities, storm water control, access, landscaping, lighting, parking facilities, and any other items allowable under the TIF Act or the CID Act (as those terms are defined below) (collectively, the "**Project**").

C. The Parties agree that construction and improvement of the Project is to their mutual benefit.

D. The City has authority to undertake tax increment financing pursuant to the Kansas Tax Increment Redevelopment Act, as set forth in K.S.A. 12-1770 *et seq.* (the "**TIF Act**") in order to finance, in part, the development of the Project.

E. The City has authority to create a community improvement district ("**CID**"), pursuant to the Kansas Community Improvement District Act, as set forth in K.S.A. § 12-6a26 *et seq.* (the "**CID Act**"), for the purpose of financing certain public and private improvements as defined therein.

F. To promote the general and economic welfare of the City and facilitate the construction and improvement of the Project, the City has authorized tax increment financing and authorized the creation of a CID and the imposition of the CID Sales Tax (as such term is defined herein), for the Project.

G. On August 11, 2020, pursuant to the TIF Act, after proper notice and hearing, and through the adoption of Ordinance No. 8135, the City formed the Price Chopper Redevelopment District (the "**Redevelopment District**"), which includes all of the Property and none other.

H. The Developer presented information necessary for, and assisted in the preparation of, the Tax Increment Financing Redevelopment Project Plan for the Price Chopper Redevelopment District (the "**Project Plan**"). The City and Developer presented the Project Plan to the Planning Commission of the City of Leavenworth, Kansas (the "**Planning Commission**") and, on September 14, 2020, the Planning Commission determined that the Project Plan is consistent with the intent of the comprehensive plan for development of the City.

I. On September 22, 2020, the governing body of the City adopted Resolution No. B-2262, setting October 27, 2020, for a public hearing to consider adoption of the Project Plan.

J. On November 10, 2020, pursuant to the TIF Act and through the adoption of Ordinance No. [REDACTED], the governing body of the City approved the Project Plan, which ordinance, subject to the terms of this Agreement, provides for Pay-As-You-Go Reimbursement of Project Costs from the capture of: (i) 100% of the allowable Incremental Real Property Taxes (defined below) generated from the real property and improvements within the Project Area for the duration of the twenty (20) year TIF term; and (ii) 100% of the Incremental Sales Taxes generated within the Project Area for the duration of the twenty (20) year TIF term.

K. On or about May 20, 2020, the Developer submitted a petition (the "**CID Petition**") to the City requesting the formation of a community improvement district ("**CID**"), which includes the Property and is coterminous with the boundaries of the Project Area, as described in the CID Petition (the "**CID District**").

L. On September 22, 2020, the governing body of the City adopted Resolution No. B-2263, giving notice of a public hearing on October 27, 2020, regarding the advisability of creating the CID District.

M. On November 10, the governing body of the City approved the creation of the CID District through the adoption of Ordinance No. [REDACTED] (the "**CID Ordinance**"), which CID Ordinance, subject to the terms of this Agreement, approved certain public and private improvements related to the Project and within the CID District to be financed with Pay-As-You-Go Reimbursement (as defined herein) from the imposition of an additional four tenths of one percent (.4%) sales tax on all taxable sales within the CID District (the "**CID Sales Tax**"), to commence as provided in this Agreement.

N. The Parties now desire to enter into this Agreement to formalize the development and financing of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Developer hereby state, confirm and agree as follows:

ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1 Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement. The terms defined in this Article include the plural as well as the singular.

B. All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with general accounting principles, consistently applied.

C. All references in this Agreement to designated "Articles," "Section" and other subdivisions are to be the designated Articles, Sections and other subdivisions of this instrument as originally executed.

D. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

E. The Article and Section headings herein are for convenience only and shall not affect the construction of this Agreement.

F. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section. The resolutions and ordinances of the City introduced and adopted by the City Commission which approve the Project Plan and the creation of the CID District, and the provisions of the CID Act and TIF Act (as defined herein and as amended), are hereby incorporated herein by reference and made a part of this Agreement, subject in every case to the specific terms hereof.

Section 1.2 Definitions of Words and Terms. Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement and the following meanings: "**Affiliate**" means any subsidiary or affiliate which is owned or controlled by the Developer or one or more of its principals (such principal or principals having at least a 51% ownership interest in the Developer entity); or any entity which is owned or controlled by the Developer or one or more of its principals (such principal or principals having at least a 51% ownership interest in the Developer entity); or an entity that owns or controls the Developer.

"**Agreement**" means this Development Agreement, as amended from time to time.

"**Applicable Law and Requirements**" means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by Governmental Authorities.

"**Base Year Assessed Valuation**" means the assessed valuation of the Property for the calendar year 2020.

"**Base Year Sales Taxes**" means the amount of Sales Taxes received by the City from the City's imposition of its general sales tax within the Property for the calendar year 2019.

"**Certificate of Project Costs**" means a certificate, substantially the form attached hereto as **Exhibit E**, to request reimbursement of Project Costs.

"**CID Act**" means K.S.A. 12-6a26 *et seq.*

"**CID Revenue**" means net sales tax revenue generated from the CID Sales Tax received by the City from the State.

"**CID Sales Tax**" shall have the meaning set forth in Recital M.

"**CID Sales Tax Fund**" means the separate fund established by the City for deposit of the CID Sales Tax received from the State, net of amounts retained by the State pursuant to the CID Act, collected within the CID District, and that is used to reimburse Project Costs pursuant to the CID Act and this Agreement.

"**City**" means the City of Leavenworth, Kansas.

"**City Administrative Fee**" means an annual amount equal to the aggregate of (i) 3% of the CID Revenue, and (ii) 3% of the TIF Revenue, but not to exceed \$5,000 per annum in the aggregate.

"**City Expenses**" shall have the meaning set forth in Section 3.3.

"**City Event of Default**" means any event or occurrence defined in Section 6.1B of this Agreement.

"**City Representative**" means the City Manager of the City, and such other person or persons at the time designated to act on behalf of the City in matters relating to this Agreement.

"**Developer**" means Super Market Developers, Inc., a corporation organized and existing under the laws of the State of Missouri, and its permitted successors and assigns.

"**Developer Event of Default**" means any event or occurrence defined in Section 6.1A of this Agreement.

"**Developer Representative**" means any Officer of Developer, or such other person or persons who represent to the City that they have been designated by the Developer in matters relating to this Agreement; provided, that Developer shall at all times be and remain responsible for any statements, representations, warranties, or certifications made by the Developer Representative, and any errors, omissions, or misstatements made by such designated Developer Representative.

"**Developer Work**" shall have the meaning set forth in Section 3.1.

"**Event of Default**" means a City Event of Default or a Developer Event of Default as defined in Article VI of this Agreement.

"**Excusable Delay**" means any delay in the performance of obligations under this Agreement which is beyond the reasonable control and without the fault of the Party affected and which the affected Party may not overcome despite good faith efforts and diligence, caused by damage or destruction by fire or other casualty, strike, war, riot, sabotage, act of public enemies, epidemics, pandemics, default of another party, freight embargoes, acts of God, including earthquake, adverse weather conditions such as, by way of illustration and not limitation, severe rain, snow or ice storms or below freezing temperatures of abnormal degree or abnormal duration, freezing temperatures that prevent

the prudent installation of concrete or similar materials, tornadoes, floods, or other causes beyond the reasonable control or fault of the affected Party which in fact prevents the Party so affected from discharging its respective obligations hereunder.

"Financing Cost" means interest at the Prime Rate plus one percent (1%), compounded semiannually, incurred by the Developer in connection with private financing (which may include loans or other indebtedness) to pay Project Costs, including interest costs and fees associated with such private financing or the refunding or refinancing of any such private financing, from the time such costs are incurred until the time such costs are reimbursed from Project Funds.

"Governmental Approvals" means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, architectural review, environmental regulatory or public health regulatory approvals or permits, or other subdivision, zoning or similar approvals required for the implementation of the Project and consistent with Applicable Law and Requirements and this Agreement.

"Governmental Authorities" means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any type of any governmental unit (federal, state or local) whether now or hereafter in existence.

"Incremental Real Property Taxes" means that amount of Real Property Taxes collected from the Property that is in excess of the amount of Real Property Taxes collected from the Base Year Assessed Valuation.

"Incremental Sales Taxes" means that amount of Sales Taxes received by the City from the City's imposition of its general sales tax (currently at the rate of two percent (2.0%)) within the Property that is in excess of the amount of Sales Taxes collected from the Base Year Sales Taxes.

"Pay-As-You-Go Reimbursement" means the reimbursement of Project Costs with TIF Revenue and CID Revenue from the City to the Developer, from time to time as such expenses are documented and funds are available in the TIF Revenue Fund and the CID Sales Tax Fund, respectively and as further provided in this Agreement.

"Permitted Subsequent Approvals" means the building permits and other governmental approvals customarily obtained prior to construction which have not been obtained on the date that this Agreement is executed, which the City or other governmental entity has not yet determined to grant.

"Prime Rate" means the prime rate reported in the "Money Rates" column or any successor column of *The Wall Street Journal*, currently defined therein as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks, or any successor thereto. If *The Wall Street Journal* ceases publication of the Prime Rate, then "Prime Rate" shall mean the "prime rate" or "base rate" announced by U.S. Bank, National Association, Kansas City, Missouri.

"**Project**" has the meaning set forth in the Recitals of this Agreement and includes the acquisition by Developer of the Property and construction of Developer Work pursuant to this Agreement, as described in the Project Plan.

"**Project Area**" shall mean the Property and any additional property identified in the Project Plan.

"**Project Budget**" means the preliminary budget for the development of the Project, attached hereto as **Exhibit C**.

"**Project Costs**" means all costs, to the extent authorized (whether under the TIF Act, CID Act or otherwise) that are associated with the Project, and consisting of, acquisition costs, architectural and engineering costs, legal expenses, utility and infrastructure improvement fees and costs, signage and pylon costs, landscaping costs, inspection and testing expenses, roof and structural costs, parking lot repair and improvement costs, vertical improvement costs, ongoing rehabilitation costs, survey costs, geotechnical costs, environmental costs, taxes, insurance and appraisal costs, Financing Costs and Public Costs.

"**Project Funds**" means, collectively, the CID Sales Tax Fund and the TIF Revenue Fund.

"**Project Plan**" means the Tax Increment Financing Redevelopment Project Plan for Price Chopper, prepared pursuant to the TIF Act and approved as described in Recital J, the terms of which are incorporated herein by this reference.

"**Public Assistance Cap**" means the maximum amount of TIF Revenue and CID Revenue available for Project Costs, which, in the aggregate, shall not exceed Four Million One Hundred Twenty-Five Thousand Two Hundred Ninety-Six and No/100 (\$4,125,296.00), plus Financing Costs; provided, that the CID Revenue available for Project Costs shall itself be capped at \$1,566,296.00 (the "**CID Revenue Cap**").

"**Public Costs**" means the City Administrative Fee and City Expenses.

"**Real Property Taxes**" means all taxes levied on an ad valorem basis upon land and improvements within the Project Area, excluding property taxes exempt or excluded from capture under the TIF Act or other applicable law.

"**Sales Taxes**" means revenue received by the City from the City's imposition of its general sales tax (currently at the rate of two percent (2.0%)) which are collected from taxpayers doing business within the Project Area.

"**State**" means the state of Kansas.

"**TIF Act**" means the tax increment finance act contained in K.S.A. 12-1770 et seq.

"**TIF Revenue**" means, to the extent actually collected: (i) the Incremental Real Property Taxes; and (ii) the Incremental Sales Taxes.

"**TIF Revenue Fund**" means the separate fund established by the City for deposit of the TIF Revenue, created pursuant to the TIF Act and Section 3.5A hereof, and that is used to reimburse Project Costs pursuant to the TIF Act and this Agreement.

ARTICLE II
PURPOSE OF AGREEMENT
REPRESENTATIONS AND ACQUISITION OF PROJECT SITE

Section 2.1 Purpose of Agreement. The City hereby acknowledges that the completion of the Project is of significant importance to the City's economic development goals and further acknowledges that the City has authorized cooperation with Developer in the development of the Project. **Representations of City.** The City makes the following representations and warranties which to the best of the City's actual knowledge, are true and correct on the date hereof: *Due Authority.* The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, subject to the limitations expressed herein or otherwise imposed by law, and this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions.

B. *No Defaults or Violation of Law.* The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which the City is now a party, and do not and will not constitute a default under any of the foregoing.

C. *No Litigation.* To the best of the City's knowledge, there is no litigation, proceeding or investigation pending or, to the knowledge of the City, threatened against the City with respect to the Project or this Agreement. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of the terms and provisions of this Agreement.

D. *No Default.* No default or City Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice or both, would constitute a default or an event of default in any material respect on the part of the City under this Agreement.

Section 2.3 Representations of the Developer. The Developer makes the following representations and warranties, which to the best of the Developer's actual knowledge, are true and correct on the date hereof: *Due Authority.* The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings.

B. *No Defaults or Violation of Law.* The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any organizational restriction or of any agreement or instrument to which the Developer is now a party, and do not and will not constitute a default under any of the foregoing.

C. *No Litigation.* No litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Project or the Developer which would have a materials and adverse impact on the Project or this Agreement, including the Developer's obligations hereunder. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer of the terms and provisions of this Agreement.

D. *No Default.* No default or Developer Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument to which the Developer is a party or by which the Developer is or may be bound.

ARTICLE III CONSTRUCTION AND FINANCING REIMBURSEMENT OF PROJECT COSTS

Section 3.1 Developer Work. Subject to the terms and conditions of this Agreement, the Developer shall construct, or cause to be constructed, the Project (collectively, the "**Developer Work**" for purposes of this Agreement). The Developer agrees that any and all Developer Work will be performed and completed according to Applicable Law and Requirements and as provided in this Agreement. Developer must achieve substantial completion of the Project and the Developer Work within eighteen (18) calendar months after the Effective Date, subject only to Excusable Delays. Developer acknowledges and agrees that Developer shall not be entitled to receive reimbursement for any Project Costs until substantial completion of the entire Project has been achieved. **Project Budget.** Attached as **Exhibit C** is the Project Budget setting forth in detail the total estimated cost of the Project and designating by category Project Costs and costs to be wholly or partially financed by Developer. **Reimbursement of City Expenses.** The City shall be reimbursed from Project Funds for third-party professional fees and expenses, including legal and audit, incurred by the City in connection with the creation of the CID and approval of the Project Plan, and this Agreement, and also including consultants engaged by the City, to implement, administer and enforce this Agreement (the "**City Expenses**"). City Expenses shall include any documented and applicable portion of fees or increased fees from City's auditors in connection with the implementation and administration of this agreement and the funds established hereunder. The City shall use reasonable efforts to provide written notice to the Developer of the intent to

incur City Expenses at least fifteen (15) days prior to incurring such expenses, with a general description of expected costs, but failure of the City to provide such notice shall in no event be deemed a City Event of Default under this Agreement. The City shall submit to the Developer an itemized statement of actual reimbursements received for City Expenses on a regular periodic basis, but no more often than quarterly. **City Administrative Fee.** The City shall collect the City Administrative Fee on all the net CID Sales Tax and TIF Revenue received by the City. The City Administrative Fee shall be used to cover the administration and other City costs incurred for the duration of this Agreement and shall be in addition to the costs identified in Section 3.3. **Term; Creation of Project Funds.** *TIF Project Plan.* The term of the Project Plan shall commence upon publication of Ordinance No. [REDACTED] and expire on the earlier of (i) the date this Agreement is otherwise terminated under its terms, (ii) the date that the Public Assistance Cap is met, or (iii) a date occurring twenty (20) years after publication of Ordinance No. [REDACTED] (the "**TIF Term**"). During the TIF Term, the City shall establish and maintain the TIF Revenue Fund. All TIF Revenue received by the City shall be deposited into the TIF Revenue Fund for the purpose of reimbursing *first*, the City for Public Costs, and *second*, the Developer for other Project Costs as provided in the TIF Act and this Agreement. The City shall have sole control of disbursements from the TIF Revenue Fund, subject to the City's obligations under this Agreement. The TIF Revenue Fund shall contain two (2) separate segregated accounts: (i) 100% of Incremental Real Property Taxes shall be deposited into the Real Property Taxes Account within the TIF Revenue Fund; and (ii) 100% of the Incremental Sales Taxes shall be deposited into the Sales Tax Account within the TIF Revenue Fund. Incremental Real Property Taxes and Incremental Sales Taxes so deposited and any interest earned on such deposits will be used for the payment or reimbursement of Project Costs, in the manner set forth in this Agreement, subject always to the Public Assistance Cap.

B. *CID District.* The term of the CID District shall commence on the date the director of taxation for the State begins collecting the CID Sales Tax within the CID District and expire on the earlier of (i) the date this Agreement is otherwise terminated under its terms, (ii) the date that the Public Assistance Cap is met, (iii) the date the CID Revenue Cap is met, or (iv) a date occurring twenty-two (22) years following the date the director of taxation for the State begins collecting the CID Sales Tax within the CID District (the "**CID Term**"). During the CID Term, the City shall establish and maintain a separate fund and account known as the CID Sales Tax Fund. All CID Sales Tax Revenues received by the City shall be deposited into the CID Sales Tax Fund for the purpose of reimbursing *first*, the City for Public Costs, and *second*, the Developer for other Project Costs, as provided in the CID Act and this Agreement. The City shall have sole control of disbursements from the CID Sales Tax Fund, subject to the City's obligations under this Agreement.

Section 3.6 Pay-As-You-Go Funding of Project Costs. The City agrees to reimburse the Developer for Project Costs from the TIF Revenue Fund and the CID Sales Tax Fund on a Pay-As-You-Go Reimbursement basis in accordance with this Agreement. During the TIF Term, the City shall collect Incremental Real Property Taxes and Incremental Sales Taxes as set forth below, unless this Agreement shall be earlier terminated: *Real Property Taxes.* Subject to Developer's obligation to pay Real Property Taxes as provided in this Agreement, the parties hereby understand and agree that one hundred percent (100%) of the Incremental Real Property Taxes shall be available to Developer for Project Costs, subject to the Public Assistance Cap.

B. *Sales Taxes.* In addition to the Real Property Taxes described herein, and pursuant to K.S.A. 12-1774(a), as amended, Sales Taxes shall be allocated to, and paid by, the collecting officer to the City Treasurer or other designated financial officer of the City. Sales Taxes shall be determined in accordance with the following procedures, subject to the TIF Act. An amount equal to one hundred percent (100%) of the City's portion of the Incremental Sales Tax generated within the Project Area shall be available to Developer for Project Costs, subject to the Public Assistance Cap.

Section 3.7 Interim Construction Financing – Issuance of Industrial Revenue Bonds – Sales Tax Exemption for Construction Materials and Taxable Labor Only.

Developer may make application to the City, at Developer's sole cost and expense, for the issuance by the City of private placement taxable IRBs for the sole purpose of qualifying for a sales tax Project Exemption Certificate pursuant to K.S.A. 79-3606(b). If approved by the City the IRBs will be purchased by the Developer or its lender. The term of the IRBs will not exceed five years. If approved, City shall cooperate with Developer in securing the sales tax Project Exemption Certificate. The IRBs shall not constitute a debt or general obligation of the City, the State or any political subdivision thereof, shall be payable solely from the revenues described in the IRB bond documents, and shall not constitute or give rise to or impose upon the City, the State or any political subdivision thereof a pecuniary liability or a charge upon its general credit or taxing powers. Under no circumstances shall the City be obligated to extend credit support to any issuance of IRBs. **Reimbursement of Project Costs from the Project Funds.** All requests for reimbursement or payment of Project Costs from the Project Funds shall be made in a Certificate of Project Costs in substantially the form attached hereto as **Exhibit D**, which Certificate shall be signed by the Developer Representative. The Developer shall provide itemized invoices, receipts, any lien waivers from vendors, contractors or subcontractors, and evidence of completion of Developer Work, or other information reasonably requested by the City to confirm that such costs were incurred, and are eligible for reimbursement under this Agreement. The Developer may submit electronic documentation, provided that, if requested by the City, original documents will also be delivered to the City by mail or hand delivery or by reputable national overnight mail services (e.g., Federal Express or UPS). Certificates of Project Costs may be submitted not more frequently than once every calendar quarter and payment of approved Project Costs shall occur once per calendar quarter.

B. The City reserves the right to have its engineer or other agents or employees inspect all work in respect of which a Certificate of Project Costs is submitted, to examine the supporting documentation and other records relating to all expenses related to the invoices to be paid to determine that (1) the request constitutes reimbursement for Project Costs reimbursable from the appropriate Project Funds under this Agreement; (2) the expense was incurred; (3) no Developer Event of Default is outstanding, and no fact or circumstance exists which upon notice and the passage of time, would ripen into a Developer Event of Default; and (4) there is no fraud on the part of the Developer. The City may request and obtain from the Developer and other parties such other information as is reasonably necessary for the City to evaluate compliance with the terms of this Agreement.

C. The City shall have thirty (30) days after receipt of a Certificate of Project Costs and accompanying documentation referred to in subsections A and B above to review

and respond by written notice to the Developer indicating acceptance of the Certificate, disapproving the Certificate, or documenting any deficiency in such Certificate. Provided, that Developer acknowledges and agrees that Developer shall not be entitled to receive reimbursement for any Project Costs until substantial completion of the entire Project has been achieved. If the submitted Certificate and supporting documentation are acceptable, the City shall approve the Certificate and make, or cause to be made, direct reimbursement of Project Costs paid by Developer from the appropriate Project Funds, if sufficient funds are available in the appropriate Project Fund, and in the event the Project Fund or Project Funds are at that time insufficient to reimburse the Developer for such approved Project Costs, the City shall promptly reimburse the Developer on the first (1st) day of each calendar quarter as funds become available. If the City notifies the Developer of any deficiency or of its disapproval of, or requests additional documentation not originally requested as provided in subsection A above relating to, a Certificate of Project Costs, the Developer shall have the opportunity to provide such additional documentation, cure any deficiency or demonstrate that no deficiency exists and respond in writing to the City. City shall notify Developer within ten (10) business days of the receipt of Developer's response of its acceptance of the response or of any remaining deficiency. If an outstanding deficiency remains, the City shall reimburse the Developer for any approved Project Costs described in such Certificate, minus the disputed amount and the balance of the disputed amount shall carry forward until the deficiency is cured or otherwise resolved.

Section 3.9 Limitation on City's Payment Obligations. The City's obligations to reimburse Project Costs under this Agreement shall be limited by the amounts received by the City and properly deposited in the TIF Revenue Fund and the CID Sales Tax Fund as provided in the TIF Act and the CID Act, respectively, and this Agreement. City's obligations under this Agreement shall be subject to any requirements or limitations imposed by or provided under the Kansas Cash Basis Law (K.S.A. 10-1101, *et seq.*) or the Kansas Budget Law (K.S.A. 79-1935), both as amended. **Right to Inspect and Audit.** The Developer agrees that, up to two (2) years after a Certificate of Project Costs is submitted to the City for reimbursement, with reasonable advance notice and during normal business hours, the City shall have the right and authority to review, audit, and copy, from time to time, all the Developer's books and records relating to such costs (including, but not limited to, general contractor's sworn statements, general contracts, subcontracts, material purchase orders, waivers of lien, and paid receipts and invoices, which relate to such cost). **Sales Tax Information.** Developer agrees that it will use reasonable commercial efforts to provide, and that it will use reasonable commercial efforts to, by appropriate agreement, require all parties holding or operated by, through, or under it, or otherwise operating from the Project Area, to provide to the City: (i) documentation of sales tax receipts for each such business in the Project Area, indicating the type and amount of the Sales Taxes paid by such business; and (ii) true and correct copies of all sales tax and use tax returns filed with the State with respect to sales in, on, or from the Project Area, the same to be provided simultaneously with, or within ten (10) days after such filing.

B. For any and all portions of the Project Area which are leased and operated by operators or other third parties who are not Affiliates of Developer, Developer shall use good faith attempts to negotiate lease, covenants or other applicable agreements requiring that such businesses operating within the Project Area provide within a reasonable period of time (but in no event more than ten (10) days after filing), the City with true and correct

copies of all sales tax and use tax returns filed with the State with respect to sales in, on or from the Project Area for each business in the Project Area . Developer will not be responsible for enforcement of such provision nor subject to any remedy hereunder for non-compliance with these provisions. If applicable and upon request, Developer shall, to the extent allowed by Applicable Laws and Requirements, provide to the Kansas Department of Revenue the names of all vendors operating in, on or from the Project Area, their Kansas sales tax identification number, and their dates of operation.

ARTICLE IV GENERAL COVENANTS

Section 4.1 Use Restriction. At all times while this Agreement is in effect, consistent with the Project Plan and the CID Petition, the parties intend that the Project will operate primarily as a grocery store, provided that Developer may also use portions of the Project for other retail, restaurant and/or other commercial use(s), public space, open space and/or similar, related or appurtenant uses, or other uses (including, but not limited to, commercial, mixed-use, residential, non-profit, governmental and/or community use(s)). Provided, however, that, notwithstanding the foregoing or anything in this Agreement to the contrary, nothing herein shall be construed as imposing any continuous operation requirements. Further provided, that if the Project's primary use is not a grocery store (not including temporary closures due to casualty, remodeling, etc.), or if the Project should not continuously operate primarily as a grocery store (not including temporary closures due to casualty, remodeling, etc.), then even if the foregoing should not constitute a Developer Event of Default, the City may, in its sole and absolute discretion, (i) amend this Agreement to permit the changed use, but only after the Project Plan has been amended in accordance with the TIF Act, or (ii) without such amendment, exercise any remedy set forth in Section 6.2(A)(1) or Section 6.2(A)(2) of this Agreement. **Operation of Project.** The Project shall be constructed and operated in compliance with all Applicable Laws and Requirements. The Developer shall secure or cause to be secured any and all permits which may be required by the City and any other governmental agency having jurisdiction for the construction and operation of the Developer Work, including but not limited to, obtaining all necessary rental licenses and paying any necessary fees to obtain required permits and licenses. **Taxes, Assessments, Encumbrances and Liens.** For that portion of the Project owned by the Developer or any Affiliate, the Developer shall pay or cause to be paid when due all real estate taxes and assessments within the Project. The Developer shall be permitted to contest the validity or amounts of any tax, assessment, encumbrance or lien as permitted by laws of the state of Kansas. The Developer shall promptly notify the City in writing of a protest of real estate taxes or valuation of the Developer's property within the Project Area and/or the CID District. Subject to the Developer's right to contest in good faith any mechanics' liens, as discussed below, the Developer agrees that no mechanics' or other liens shall remain against the Property, for labor or materials furnished in connection with any acquisition, construction, additions, modifications, improvements, repairs, renewals or replacements so made. The Developer shall not be in default under this Agreement if mechanics' or other liens are filed or established and the Developer contests in good faith such mechanics' liens, and in such event, Developer may permit the items contested to remain undischarged and unsatisfied during the period of contest and appeal from determination of such contest. The Developer agrees to indemnify and hold harmless the City in the event any liens are filed against the Property as a result of acts of the Developer, its agents or independent contractors, unless such liens are filed as a result of willful misconduct or negligence by the City or its officers, employees

or agents. **Covenant for Non-Discrimination.** The Developer agrees, with respect to this Agreement and the Project, that it will observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.*) and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex, national origin, ancestry or age and further covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, familial status, marital status, age, handicap, national origin, sexual orientation, gender identity, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property. The covenant established in this Section shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns and any successor in interest to the Property or any part thereof. The covenants contained in this Section shall remain for so long as this Agreement is in effect.

Indemnification. The Developer agrees to indemnify and hold the City, its employees, agents and independent contractors and consultants (collectively, the "**City Indemnified Parties**") harmless, from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and attorneys' fees incurred or suffered by or claimed against any of the City Indemnified Parties by any person or entity by reason of injury, death, loss or damage to any person, property, or business which arises or is alleged to have arisen due to the negligence or willful misconduct of the Developer, its employees, agents or independent contractors and consultants in connection with the management, design, development, redevelopment and construction of the Project. This Section 4.5 shall survive the expiration or termination of this Agreement.

Insurance. Developer agrees to maintain or cause its tenant(s) to maintain reasonable insurance in connection with the Project for an entity of Developer's size and financial capacity, including, but not limited to, commercial general liability insurance covering the Property and Developer's use thereof with a combined single limit for property damage and bodily injury of not less than \$1,000,000.

Non-liability of Officials, Employees and Agents of the City. No recourse shall be had for the payment or reimbursement of any Project Costs or for any claim based thereon or upon any representation, obligation, covenant or agreement contained in this Agreement against any past, present or future official, officer, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officials, officers, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

Construction of the Project. The Developer shall have the sole responsibility to contract for the design and construction of the Developer Work, subject to Applicable Laws and Requirements.

Evidence of Completion. Upon substantial completion of the Developer Work, the Developer shall deliver or cause to be delivered to the City Representative an engineer's certificate certifying that the same has been completed substantially in conformance with this Agreement (including the Project Plan incorporated by reference herein) and the plans approved by the City, if evidence of such substantial completion thereof has not been previously provided to the City.

B. For purposes of this Section, "substantial completion" means the point at which the whole of the Project is sufficiently complete, in accord with the construction contract documents, so that the owner may have beneficial use or may occupy the Project

or such definable portion thereof for the use for which it is designed and intended, without regard to occupancy permits that may be issuable under applicable law.

Section 4.10 Modifications. The construction of the Project may be modified or revised by written consent of the City and Developer to provide for other improvements generally consistent with the Project Plan and CID Petition. Substantial changes as defined by the TIF Act may require amendment of the Project Plan as provided by the TIF Act. **Public Bidding Not Required.** Notwithstanding the fact that certain of the improvements herein, including portions of the Developer Work, will be financed or reimbursed in whole or in part with public funding sources and will be deemed public improvements, public bidding for the Project, and any component thereof, will not be required; however, all plans for public improvements shall require approval of City staff and comply with City inspection and testing requirements.

ASSIGNMENT; TRANSFER

Section 5.1 Transfer and Assignments. *Transfers and Assignments, Generally.* The qualifications and identity of the Developer are of particular concern to the City. It is in part because of the Developer's qualifications and identity that the City has entered into this Agreement with the Developer. Therefore, the Developer shall not assign or transfer all or any of its rights, duties or obligations under this Agreement nor convey fee title to any portion of the Property prior to completion of the Developer Work (except as described below) without the prior written approval of the City Representative. The City Representative shall provide such consent, and shall not unreasonably withhold, condition, or delay such consent, unless a proposed assignee does not have qualifications and financial responsibility, as reasonably determined by the City Representative, necessary and adequate to operate the Project and to otherwise fulfill the obligations of the Developer being assigned. Any proposed assignee of one or more obligations under this Agreement shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer being assigned. Notwithstanding the foregoing, no tenant or pad site owner of a portion of the Property that is not an Affiliate of Developer shall be bound by any obligation of Developer or any other obligation hereunder solely by virtue of being a tenant or owner of a portion of the Property; provided, however, that no transferee or owner of Property, except the Developer, shall be entitled to any rights whatsoever or claim upon the proceeds of the Project Funds, except as specifically authorized in writing by the Developer and approved by the City.

B. *Permitted Transfers and Assignments.* Notwithstanding anything herein to the contrary, the Developer shall not be required to obtain prior written approval of the City for assignments, transfers and conveyances of any, all or substantially all of Developer's rights and duties under this Agreement and in and to the Property owned by the Developer (i) to an Affiliate, or (ii) for financing purposes, which expressly includes, but is not limited to, collateral assignments of the Developer's rights to reimbursement from the TIF Revenue Fund and/or the CID Sales Tax Revenue Fund to secure indebtedness of the Developer to finance the Project or Property owned by Developer; or (iii) to Four B Corporation, a corporation, or other entity owned or controlled by David Ball (principal of Four B Corporation) (collectively, "**Permitted Transfer**"). In the event of a Permitted Transfer, the Developer shall provide written notice of the same to the City within five (5) business days of such transfer and shall provide evidence satisfactory to the City that the transferee is an entity described above, so that City consent is not required.

C. *Transfer of Obligations.* With the exception of Permitted Transfers, which do not require the prior written approval of the City, any proposed assignee of one or more obligations under this Agreement shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer being assigned, and, with the exception of Permitted Transfers, the Developer shall not be relieved from any obligations set forth herein or any liabilities arising hereunder unless and until the City specifically agrees to release the Developer from its obligations under this Agreement. The Developer agrees to record all such assignments in the office of the Register of Deeds of Leavenworth County, Kansas, in a timely manner following the execution of such assignments.

D. *Assumptions of Developer Obligations.* The respective obligations of the City and the Developer under this Agreement, unless earlier satisfied, shall inure to and be binding upon the heirs, executors, administrators, successors and assigns (permitted or approved under this Section) of the respective Parties, and this Agreement shall be construed as a covenant running with the land.

ARTICLE VI DEFAULTS AND REMEDIES

Section 6.1 Event of Default. *Developer Event of Default.* Subject to Section 6.4, a "**Developer Event of Default**" shall mean a default in the performance of any obligation or breach of any covenant or agreement of the Developer in this Agreement, and continuance of such default or breach for a period of thirty (30) days after City has delivered to Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such thirty (30) day period, but can reasonably be expected to be fully remedied and the Developer is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the Developer shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

B. *City Event of Default.* Subject to Section 6.4, a "**City Event of Default**" shall mean a default in the performance of any obligation or breach of any other covenant or agreement of the City in this Agreement, and the continuance of such default or breach for a period of thirty (30) days after there has been given to the City by the Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such thirty (30) day period, but can reasonably be expected to be fully remedied and the City is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the City shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

Section 6.2 Remedies Upon a Developer Event of Default. Upon the occurrence and continuance of a Developer Event of Default, the City shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

1. The City shall have the right to terminate this Agreement or terminate the Developer's rights under this Agreement.

2. The City may refuse to make any disbursements from the CID Sales Tax Revenue Fund or the TIF Revenue Fund until such Event of Default is cured.

3. The City may pursue any available remedy at law or in equity by suit; action, mandamus, injunction or other proceeding to enforce the duties and obligations of the Developer as set forth in this Agreement; to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer Event of Default. Notwithstanding anything in this Agreement to the contrary, the City is prohibited from pursuing, seeking, or obtaining specific performance against the Developer to compel construction of the Project, or any portion thereof, and the Developer shall not be liable for any special, punitive, remote or consequential damages, including (without limitation) lost tax revenues.

B. If the City has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the City, then and in every case the City and the Developer shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the City shall continue as though no such proceeding had been instituted.

C. Any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the City of any specific default by the Developer shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

Section 6.3 Remedies Upon a City Event of Default. Upon the occurrence and continuance of a City Event of Default the Developer shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

1. The Developer shall have the right to terminate this Agreement or the Developer's obligations under this Agreement;

2. The Developer may pursue any available remedy at law or in equity by suit; action, mandamus, injunction or other proceeding to enforce and compel the performance of the duties and obligations of the City as set forth in this Agreement; to enforce or preserve any other rights or interests of the Developer under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the Developer resulting from such City Event of Default.

Such remedies shall be cumulative. Notwithstanding anything in this Agreement to the contrary, the City shall not be liable for any special, punitive, remote or consequential damages, including (without limitation) lost profits.

B. If the Developer has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Developer, then and in every case the Developer and the City shall subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the Developer shall continue as though no such proceeding had been instituted.

C. Any delay by the Developer in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this paragraph shall not operate as a waiver of such rights or limit such rights in any way. No waiver in fact made by the Developer of any specific default by the City shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

Section 6.4 Excusable Delays; Extension of Times of Performance. Neither the City nor the Developer shall be deemed to be in default of this Agreement because of an Excusable Delay and all performance and other dates specified in this Agreement shall be extended, where the Party seeking the extension has acted diligently and delays and defaults are due to Excusable Delays. Any Party affected by an Excusable Delay shall use diligent effort to remove the cause or condition of the Excusable Delay and shall notify the other Party as soon as it discovers the cause or condition of Excusable Delay. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and the Developer, to which each Party shall reasonably agree at the request of another Party. **Legal Actions.** Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Leavenworth County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.

INTENTIONALLY OMITTED

ARTICLE VIII GENERAL PROVISIONS

Section 8.1 Development of Project. *Scope.* The Project shall be developed within and subject to Applicable Law and Requirements, as any of the forgoing may be amended.

B. *Governmental Approvals.* The Project shall be subject to Governmental Approvals from Governmental Authorities having jurisdiction over the Project.

C. *City Approval of Zoning, Planning, Platting.* The City agrees to consider and act on zoning, planning and platting applications submitted by the Developer related to the Project in due course and in good faith.

D. *City and Other Governmental Permits.* Before beginning construction or development of any buildings, structures or other work or improvement related to the

Project, the Developer shall, at its own expense, secure or cause to be secured any and all Governmental Approvals (excepting Permitted Subsequent Approvals) applicable to such construction, development or work. The City will cooperate with and provide all usual assistance to Developer in securing such permits and approvals and diligently and in good faith process, review and consider all such permits and approvals as may be required by law.

E. *Rights of Access.* For the purpose of ensuring compliance with this Agreement, representatives of the City shall have the right of access to the Property (to the extent such Property is owned by Developer), without charge or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, for the inspection of the work being performed in constructing, improving, repairing and installing the Project. Representatives of the City shall comply with all applicable safety rules in so doing. Except in case of emergency, before making such access, representatives of the City shall make a good faith effort to check in with the Developer's on-site manager or other Developer representative prior to any such access. The City representatives shall carry proper identification, shall come upon the Property at their risk, shall insure their own safety and shall not interfere with construction activity, except in the enforcement of Applicable Laws and Requirements.

F. *Local, State and Federal Laws.* The Developer shall carry out the provisions of this Agreement in conformity with all Applicable Laws and Requirements.

Section 8.2 Mutual Assistance. The City and the Developer agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement. City further agrees to provide certification that no default exists hereunder by Developer in a mutually agreeable form, upon the reasonable request of Developer. **No Partnership.** Nothing contained herein shall be construed as creating a partnership between the Developer and the City. **Time of Essence.** Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation. **Amendments.** This Agreement may be amended only by the mutual consent of the Parties, by the adoption of a resolution or ordinance of the City approving said amendment, as provided by law, and by the execution of said amendment by the Parties or their successors in interest. **Agreement Controls.** The Parties agree that the Project will be implemented as agreed in this Agreement. This Agreement specifies the rights, duties and obligations of the City and Developer with respect to constructing the Project, the payment of Project Costs and all other methods of implementing the Project. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and are a full integration of the agreement of the Parties. **Conflicts of Interest.** No member of the City's governing body or of any branch of the City's government that has any power of review or approval of any of the Developer's undertakings shall participate in any decisions relating thereto which affect such person's personal interest or the interests of any corporation or partnership in which such person is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict disclose, in writing, to the City the nature of such interest

and seek a determination with respect to such interest by the City and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

B. The Developer warrants that it has not paid or given and will not pay or give any officer, employee or agent of the City any money or other consideration for obtaining this Agreement. The Developer further represents that, to its best knowledge and belief, no officer, employee or agent of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision making process or gain insider information with regard to the Project, has or will have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof for work to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure

Section 8.8 Term. Unless earlier terminated as provided herein, this Agreement shall remain in full force and effect until the later of expiration of: (i) the TIF Term, and (ii) the CID Term. In the event this Agreement is terminated prior to the expiration of the CID Term, the City shall take any and all actions necessary to cease imposition of the CID Sales Tax and terminate the CID District. **Validity and Severability.** It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State, and that the unenforceability (or modification to conform to such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable. **Required Disclosures.** The Developer shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developer in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading. **Tax Implications.** The Developer acknowledges and represents that (i) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (ii) the Developer is relying solely upon its own tax advisors in this regard. **Authorized Parties.** Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval, notice or consent of the City or the Developer is required, or the City or the Developer is required to agree or to take some action at the request of the other Party, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the City Manager and for the Developer by any principal or officer of the Developer so authorized; and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither Party shall have any complaint against the other as a result of any such action taken. The City Manager may seek the advice, consent or approval of the City Commission before providing any supplemental agreement, request, demand, approval, notice or consent for the City pursuant to this Section. **Notice.** All notices and requests required pursuant to this Agreement shall be sent as follows: To the City:

City of Leavenworth, Kansas
Attn: City Manager
100 N. 5th Street
Leavenworth, Kansas 66048
pkramer@firstcity.org

With a copy to:

Lathrop GPM LLP
Attn: David E. Waters
10851 Mastin Boulevard, Building 82, Suite 1000
Overland Park, KS 66210
dwaters@lathropgpm.com

With a copy to:

Philip B. Wolfe
Nichols and Wolfe Chartered
2715 SW 29th Street, Suite A
Topeka, KS 66614
(785) 233-4151
phil@pbwolfelaw.com

To the Developer:

Super Market Developers, Inc.
Attn: General Counsel
5000 Kansas Avenue
Kansas City, Kansas 66106
Awglegal@awginc.com

With a copy to:

Spencer Fane LLP
Attn: Lewis A. Heaven, Jr.
6201 College Boulevard, Ste 500
Overland Park, Kansas 66211
Pheaven@spencerfane.com

or at such other addresses as the Parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof, or by electronic mail with hardcopy to follow on the next business day. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

Section 8.14 Kansas Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one

and the same agreement. Hand signatures transmitted by electronic mail in portable document format (PDF) or similar format are also permitted as binding signatures to this Agreement.

[Signature Page Follows Directly]

IN WITNESS WHEREOF, this Agreement is executed by City and Developer effective as of the Effective Date.

CITY:

CITY OF LEAVENWORTH, KANSAS
a Kansas municipal corporation

[seal]

By _____
Myron J. "Mike" Griswold, Mayor

ATTEST:

By: _____
Carla Williamson, CMC, City Clerk

APPROVED AS TO FORM:

David E. Waters, City Attorney

ACKNOWLEDGEMENT

STATE OF KANSAS)
) ss.
COUNTY OF LEAVENWORTH)

Now on this _____ day of _____, 2020, before me, a notary public in and for said county and state, came Myron J. "Mike" Griswold and Carla Williamson, Mayor and City Clerk, respectively, of the City of Leavenworth, Kansas, a Kansas municipal corporation duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Kansas, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires:

DEVELOPER:

SUPER MARKET DEVELOPERS, INC., a corporation

By _____
David E. Smith, President and Chief Executive Officer

ACKNOWLEDGEMENT

STATE OF KANSAS _____)
) ss.
COUNTY OF _____)

Now on this _____ day of _____, 2020, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came David E. Smith, President and Chief Executive Officer of Super Market Developers, Inc., who is personally known to me to be the same person who executed the within instrument on behalf of said entity and who duly acknowledged the execution of the same to be the act and deed of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires:

EXHIBIT A

[Legal Description of Property]

**Lot 1, BALL'S SUBDIVISION REPLAT, a subdivision in the City of Leavenworth,
Leavenworth County, Kansas except that part conveyed by the deed recorded as Doc. No.
2015R03578**

Parcel ID No 1010104002003020

EXHIBIT B

[Depiction of Property]

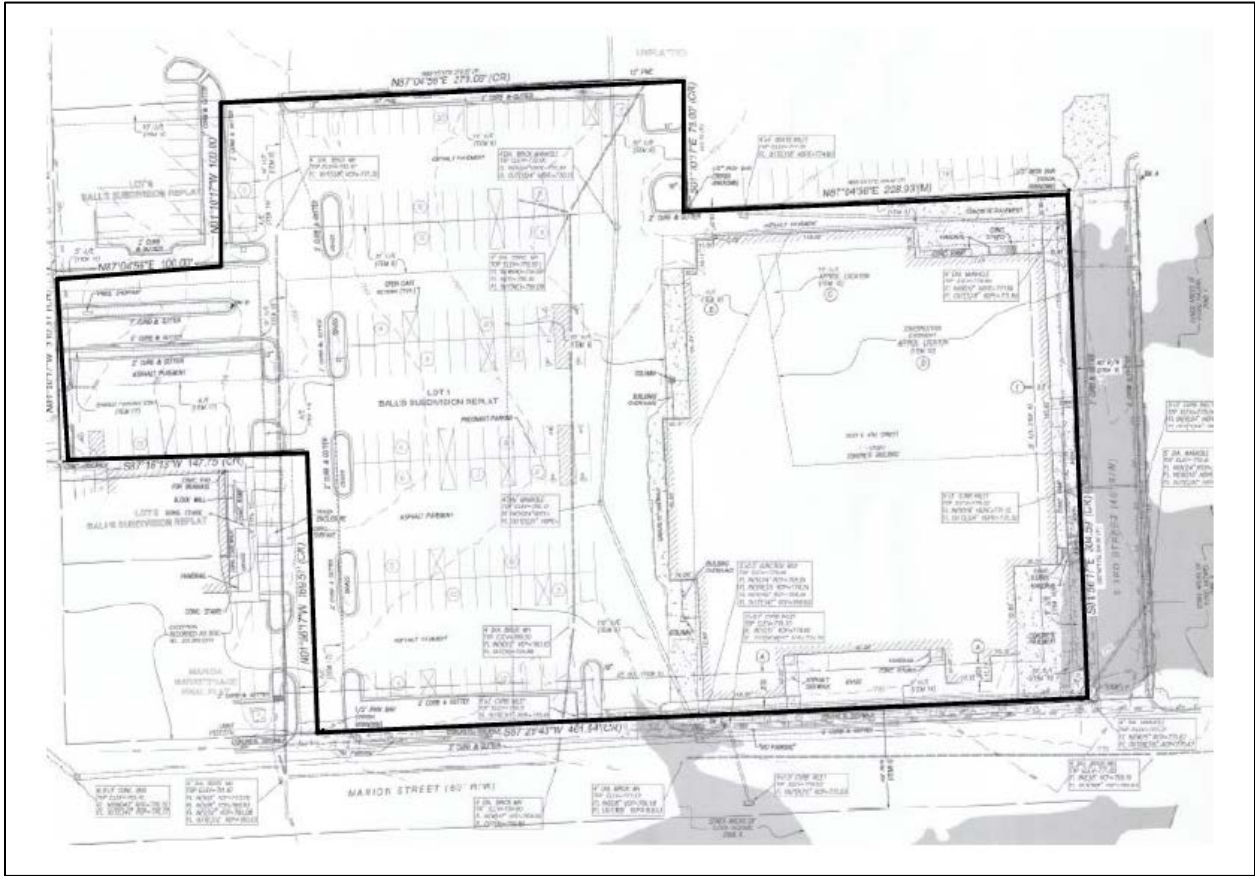


EXHIBIT C

[Project Budget]

		X = eligible for reimbursement by		Sample Allocations*** by incentive category		
		incentive category**				
Line Item	Est. Project Costs *	TIF Eligible	CID Eligible	TIF Eligible	CID Eligible	Private
Site Acquisition						
Purchase Price	\$2,500,000.00	X	X	\$2,500,000		
Survey	\$15,000.00	X	X	\$15,000		
Environmental/Soils	\$30,000.00	X	X	\$30,000		
Title Work	\$1,500.00	X	X	\$1,500		
Appraisal	\$2,500.00	X	X	\$2,500		
Legal & Closing Costs	\$10,000.00	X	X	\$10,000		
Subtotal - Site Acquisition	\$2,559,000.00			\$2,559,000		
Hard Costs						
Site Work - Demo, Grading, Utilities, Curbs, Sidewalks, Parking Lot, etc.	\$830,296.00	X	X		\$830,296	
Equipment	\$4,475,000.00		X			\$4,475,000
Building renovation	\$3,255,000.00		X			\$3,255,000
Tenant Improvements (Developer)	\$235,000.00		X			\$235,000
Subtotal - Hard Costs	\$8,795,296.00			\$0	\$830,296	\$7,965,000
Soft Costs						
Arch / Eng	\$450,000.00	X	X		\$450,000	
Legal	\$75,000.00	X	X		\$75,000	
Taxes Carry						
Leasing / Sales Commissions	\$0.00					
Developer & Project Management Fees	\$50,000.00					\$50,000
Contingency	\$200,000.00					\$200,000
Inspections	\$1,000.00	X	X		\$1,000	
Interest Carry	\$200,000.00	X	X		\$200,000	
Re-Surveys / Plats	\$10,000.00	X	X		\$10,000	
Subtotal - Soft Costs	\$986,000.00			\$0	\$736,000	
TOTAL PROJECT COSTS	\$12,340,296.00			\$2,559,000	\$1,566,296	\$7,965,000

EXHIBIT D

[Form Certificate of Project Costs]

CERTIFICATE OF PROJECT COSTS

To: City Manager
Leavenworth, Kansas

RE: Development Agreement for the Price Chopper Redevelopment District and
Coterminous Community Improvement District

Terms used in this Certificate and not otherwise defined here shall have the meanings given them in the Development Agreement dated as of _____, 2020 ("Agreement") between the City of Leavenworth, Kansas and Super Market Developers, Inc..

In connection with the Agreement, the undersigned Developer Representative hereby certifies that, to the best of his or her actual knowledge:

1. Each item listed in Schedule 1 hereto is a Project Cost and was incurred in connection with the Project.
2. These costs shown on Schedule I have been paid by the Developer and are reimbursable under the Agreement from the specific Project Fund identified on Schedule I.
3. Itemized invoices, receipts or other evidence of such costs are enclosed.
4. Each item listed in Schedule 1 has not previously been paid or reimbursed from money derived from any Project Fund, and no part thereof has been included in any other certificate previously filed with the City.
5. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
6. All necessary permits and approvals required for the work for which this certificate relates were issued and were in full force and effect at the time such work was being performed.
7. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement and the approved plans for the work.
8. The Developer is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes a Developer Event of Default under the Agreement.
9. All of the Developer's representations set forth in the Agreement remain true and correct

as of the date hereof.

Dated this ____ day of _____, _____.

SUPER MARKET DEVELOPERS, INC.
By: Developer Representative

By _____
Name (Printed) _____
Title _____

Approved for payment this ____ day of _____, _____.

By _____

SCHEDULE I OF CERTIFICATE OF PROJECT COSTS

[List of Project Costs]

City of Leavenworth, Kansas
Parks & Recreation Department
2020 RC Mower
POLICY REPORT NO. P&R 07-20

October 27, 2020

PREPARED BY:


Brian Bailey
Park Superintendent

REVIEWED BY:


Steve Grant
Parks and Recreation Director


Paul Kramer
City Manager

ISSUE:

The Parks Department and Storm Water Operation Department of the sewer fund is requesting approval to purchase one TK-60XP Tracked 60” Rotary Mower, manufactured and furnished to our specifications, utilizing a cooperative purchasing program standard set forth by the Finance Department.

BACKGROUND:

For many years the Parks Department and Storm Water Operation Department have attempted to mow various areas that are extremely dangerous or extremely hard to mow due to natural condition. It is difficult for our crews as well as contracted crews to safely mow these areas for fear of mowers sliding down the hillside or potentially rolling over, as well as other areas continually too wet year-round for equipment to access. The TK-60XP (RC Mower) is a remote controlled mower on tracks. One employee can stay safe operating this mower from the top of a steep incline, or while standing out of the marshy area. This mower is able to mow a hill up to 50 degrees grade or mow across marshy, wet areas without a getting stuck. Examples of areas within the city where this mower will be utilized include South Esplanade Park, Cody Park creek bank, Leavenworth Centennial Bridge abutment and Eagles Park retention pond, among many others. With this specialized mower we will be able to properly and safely maintain areas throughout the city that cause safety concerns due to slope, or are simply unable to be maintained due to moisture.

After reviewing available purchasing options, staff has selected the HGACBuy Cooperative Purchasing program. This program is used throughout our region for the purchase of equipment. This program allows us to purchase equipment that meets our needs through a

manufacturer with a proven record of customer service in the Kansas region, and it ensures that we are receiving the best possible price while guaranteeing that standard governmental purchasing practices are followed.

Staff developed a set of specifications for a slope type mower that would keep staff safety the top priority. The new mower will be equipped with the ability to perform all aspects of maintenance required by the Parks Department and Storm Water Operation Department. The slope mower on the HGACBuy cooperative bid that meets these requirements is the TK-60XP Tracked 60" Rotary Mower in the amount of \$58,989.00. Key Equipment & Supply in Kansas City, Kansas is the local dealer for this mower.

RECOMMENDATION:

Staff recommends the purchase of one (1) TK-60XP Tracked 60" Rotary Mower in the amount of \$58,989.00 from HGACBuy Contract No.: GR20AAF1.

BUDGET IMPACT:

Half of the purchase will come from the CIP Sales Tax and half will come from the Sewer Fund.

ATTACHMENTS:

HGACBuy Contract No.: GR20AAF1

Photos and Information Sheet



CONTRACT PRICING WORKSHEET
For Standard Equipment Purchases

Contract No.:

GR20AAF1

Date Prepared:

10/6/2020

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents should be emailed to veronica.johnson@h-gac.com. Therefore please type or print legibly.

Buying Agency:	City of Leavenworth (KS)	Contractor:	Embankscape Equipment LLC dba RC Mowers
Contact Person:		Prepared By:	Jessica Korthals
Phone:		Phone:	(480) 848-8904
Fax:		Fax:	
Email:		Email:	jkorthals@rcmowersus.com

Product Code:	TK-60XP	Description:	Tracked 60" Rotary Mower, 50 Degrees Max Slope
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A. Product Item Base Unit Price Per Contractor's H-GAC Contract: 57950

B. Published Options - Itemize below - Attach additional sheet if necessary - Include Option Code in description if applicable
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
		Swinging Break Away Brush Blades	289
HGACBUY THE SMART PURCHASING SOLUTION			
			Subtotal From Additional Sheet(s):
			Subtotal B: 289

C. Unpublished Options - Itemize below - Attach additional sheet if necessary
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
			Subtotal From Additional Sheet(s):
			Subtotal C: 0

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).	For this transaction the percentage is:	0%
--	---	----

D. Total Cost before any other applicable Charges, Trade-Ins, Allowances, Discounts, Etc. (A+B+C)

Quantity Ordered:	1	X Subtotal of A + B + C:	58239	=	Subtotal D:	58239
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E. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

Description	Cost	Description	Cost
		Freight	750
			Subtotal E: 750

Delivery Date:	2 Weeks ARO	F. Total Purchase Price (D+E):	58989
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TK-60XP

REMOTE-OPERATED SLOPE MOWER

RC MOWERS

DESIGNED + BUILT IN THE USA



SAFER, FASTER & MORE PROFITABLE.

Our largest and most powerful machine. Designed for extreme jobs.

IDEAL FOR:

- Hillside & steep-incline maintenance
- Wetland & swamp preservation
- Retention or water treatment ponds
- Dam & levy embankments
- Landfill slope preservation
- Roadside mowing



KEY FEATURES

REMOTE CONNECTIVITY UP TO
1000ft

LIGHT-WEIGHT AND
LOW GROUND
PRESSURE (2.2 PSI)

CUTS BRUSH UP
TO 2 INCHES IN
DIAMETER

60"
CUTTING WIDTH

4.5
MPH MOWING SPEED

REMOTE
TILT/DROP
AUTO SHUTDOWN

FUEL BOOST FOR
CONTINUOUS FUEL
FLOW ON SLOPE

35
HORSEPOWER

SLOPE CLIMB:

50
DEGREES

TK-60XP

MOWER SPECIFICATIONS



DESIGNED + BUILT IN THE USA

DIMENSIONS

WEIGHT

1,856 LBS

LENGTH

93"

WIDTH

86"

HEIGHT

49.5"

DRIVETRAIN

- Kawasaki® FX1000V
- Air-Cooled
- Heavy-Duty Air Cleaner
- 35 Horsepower
- 999cc Engine Displacement
- Hydro-Gear® ZT-5400 Transaxles
- 13.4 Gallon Fuel Capacity

TRACKS

- Rubber Molded over Steel Links
- Steel Cords
- 9" Wide (230mm x 72mm x 44mm)
- Tread Style 'J'

PERFORMANCE

- 5.3 MPH Transport Speed
- 4.5 MPH Mowing Speed
- 2.5 Acres Per Hour
- 50 Degree Slope Climb Ability

MOWING DECK

- Fabricated 7ga. Steel
- 1/4" Spindle Reinforcement
- Ogura® Electric Clutch
- 60" Cutting Width
- 2.2 to 6.5" Cutting Heights

WARRANTY

- 2 Years or 400 Hours



EXPERIENCE THE RCM DIFFERENCE

Our American-made, remote-operated slope mowers offer a smarter, safer way to maintain steep slopes and extreme landscapes. Bringing technology to bear with traditional problems, we create smart mowers that deliver game-changing opportunities – including safer working conditions, more capabilities, better work environments, versatility, new revenue streams, and the ability to attract, hire, and retain talented workers.



Customer Support: 920-634-2227 • www.rcmowersusa.com

POLICY REPORT
First Consideration Ordinance
2020-33-SUP
611 Miami

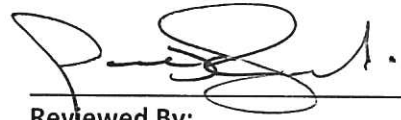
OCTOBER 27, 2020

SUBJECT:

Place on first consideration an ordinance to approve 2020-33-SUP.



Prepared By:
Julie Hurley,
Director of Planning and
Community Development



Reviewed By:
Paul Kramer,
City Manager

NATURE OF REQUEST

The applicant, Joseph McKee, is requesting a Special Use Permit to allow a two-family dwelling in the R1-6 zoning district, located at 611 Miami. Two-family dwellings are allowed in the R1-6 zoning district with the approval of a Special Use Permit.

Mr. McKee is in the process of renovating the inside of the 1,908 square foot single-family dwelling to sustain an addition unit to create a two-family dwelling. Staff was made aware of the renovation project by the building inspections department in August 2020.

COMMISSION FINDINGS

The Commission may recommend issuance of a special use permit whenever it finds that:

1. The proposed special use complies with all applicable provisions of this ordinance.
Staff believes that this application complies with all provisions of City of Leavenworth Development Regulations.
2. The proposed special use at the specified location will contribute to and promote the economic development, welfare or convenience of the public.
The property fills a need in the community by providing a two-family housing option.
3. The special use will not cause substantial injury to the value of other property in the neighborhood in which it is located.
Staff does not feel that the proposed use will cause any substantial injury to the value of other property in the neighborhood.
4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.
No new structures. The property owner is renovating interior of the house. This will not impact the development and use of neighboring property.

Notification was sent to property owners within 200' of the subject property, as required by Kansas statute. Since notifications were mailed, staff has received no comments or inquiries. The Planning Commission considered this item at their October 5, 2020 meeting and voted unanimously to recommend approval of the Special Use Permit.

STAFF RECOMMENDATION:

Staff recommends approval of the Special Use Permit request based on the analysis and findings included herein.

ACTION/OPTIONS:

- Place an ordinance on first consideration to approve the Special Use Permit request to allow a two-family dwelling in the R1-6 zoning district.
- Deny the Special Use Permit request to allow a two-family dwelling in the R1-6 zoning district.

(Summary Published in the Leavenworth Times on _____, 2020)

ORDINANCE NO. _____

AN ORDINANCE ALLOWING A SPECIAL USE FOR A TWO-FAMILY DWELLING IN A R1-6 ZONING DISTRICT LOCATED AT 611 MIAMI STREET IN THE CITY OF LEAVENWORTH, KANSAS.

WHEREAS, under the Appendix A of the City Code of Ordinances, Development Regulations, of the City of Leavenworth, Kansas, the Governing Body of the City of Leavenworth is given the power to locate special uses in each zoning district by ordinance within said City; and

WHEREAS, the City Planning Commission, after fully complying with the requirements of the Ordinances of the City of Leavenworth, Kansas, held a public hearing on the 5th day of October, 2020 in the Commission Room, 1st Floor of City Hall, 100 N. 5th Street, Leavenworth, Kansas, the official date and time set as was published in the Leavenworth Times newspaper and mailed to all property owners within 200 feet of the said property on the 10th day of September 2020; and

WHEREAS, the City Planning Commission did hear on the 5th day of October 2020 in the Commission Room, 1st Floor of City Hall, 100 N. 5th Street, Leavenworth, Kansas and upon a motion made, duly seconded, and passed, the City Planning Commission adopted findings of fact and recommended approval of the request for a two-family dwelling in a R1-6 zoning district located at 611 Miami Street, Leavenworth, Kansas; and

WHEREAS, upon a roll call vote duly passed, the Governing Body adopted the findings of fact and conclusions to allow special use for a two-family dwelling for the property described herein in Section 1.

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

Section 1. That a special use permit be issued for a two-family dwelling on the following described property:

Lots 27 and 28, Block 77, Leavenworth City Proper, Leavenworth County, Kansas; and more **commonly referred to as 611 Miami Street**, Leavenworth, Kansas.

Section 2: That this Ordinance shall take effect and be in force from and after its passage by the Governing Body, and its publication once in the official City newspaper.

PASSED AND APPROVED by the Leavenworth City Commission of the City of Leavenworth, Kansas on this ____ day of _____2020.

Myron J. "Mike" Griswold, Mayor

{Seal}

ATTEST:

Carla K. Williamson, CMC, City Clerk

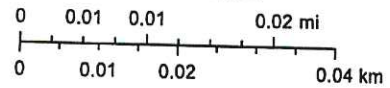
611 Miami St Aerial Map



9/29/2020, 9:55:24 AM

1:1,128

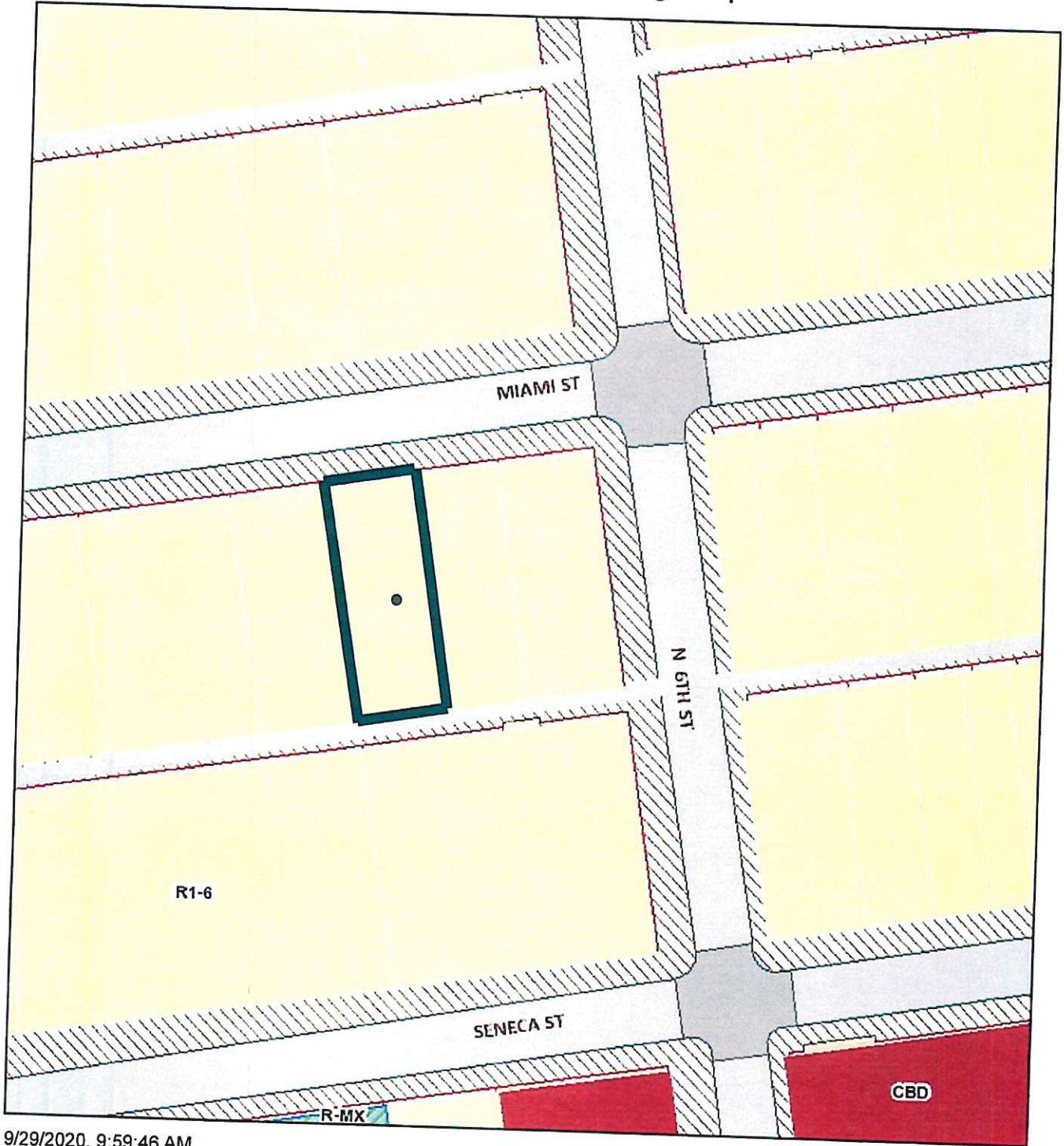
- Override 1
- Green: Band_2
- Parcels (City Owned)
- Blue: Band_3
- Parcels_Current
- East_of_River_Blank
- Address (Points)
- Streets
- Ortho 2018
- Red: Band_1
- Lansing City Limits



Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

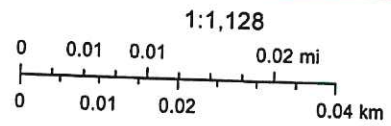
Web AppBuilder for ArcGIS

611 Miami St Zoning Map



9/29/2020, 9:59:46 AM

- | | |
|-----------------------|------|
| Override 1 | IMP |
| Zoning_CURRENT | NBD |
| CBD | OBD |
| GBD | PUD |
| I-1 | R-MF |
| I-2 | |



Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

Web AppBuilder for ArcGIS



SPECIAL USE PERMIT
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

Case No.: 2020-33 SUP
 Application No. 8108
 Fee (non-refundable) \$350.00
 Filing Date 8-19-20
 Received By _____
 Publication Date 9-10-20
 Hearing Date 10-5-20

As provided in Section 2.04 of the 2016 Development Regulations, application is hereby made for a SPECIAL USE PERMIT for the operation of a: duplex in R1-L6 zoning district
 in accordance with the attached site plan on the following described property:

Address:	<u>611 Miami</u>		
Legal Description:	<i>(Attach a full legal description provided by the Register of Deeds Office)</i>		
Real Estate PID #:			
Zoning:	<u>R1-L6</u>	Historic District:	

I/We, the undersigned, depose and state we are the owners of the above described property:

Name(s) of Owner (print):	<u>Joseph McKee</u>		
Owner Address:	<u>520 S. 4th Leavenworth, KS 66048</u>		
Contact No.	<u>913-240-4983</u>	Email:	<u>mckeeconstructionllc@ksa@gmail.com</u>
Signature of Owner(s):	<u>Joseph McKee</u>		

State of Kansas

County of Leavenworth (SEAL)



Signed or attested before me on: August 18, 2020 By: Joseph McKee

Notary Public Ann Blockburger Ann M. Blockburger

My Appointment Expires: 07/21/2023

If business is operated by someone other than the owner, provide name and address of operator(s).

Name of Lessee:			
Address:			
Contact No.		Email:	

NOTE: All signatures must be in ink. Signature of owner(s) must be secured and notarized.

Check list below...

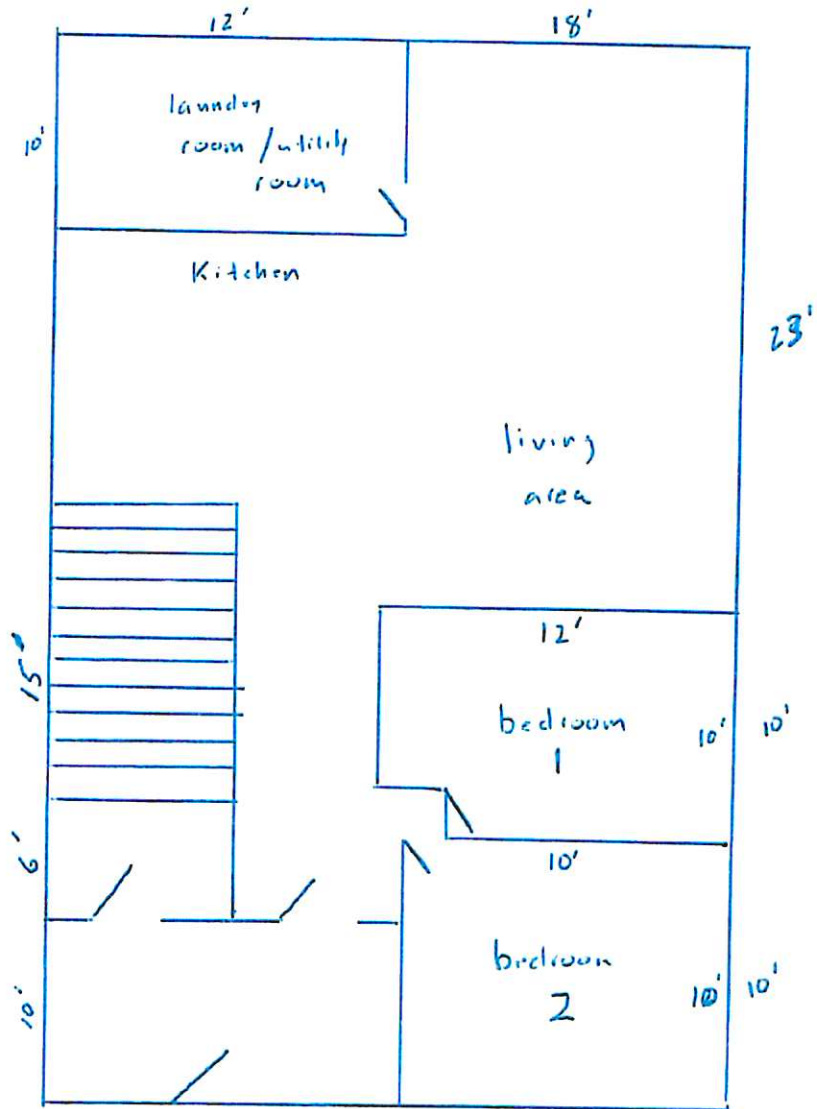
- Non-Refundable Fee of \$350.00 is due at time of application
- City will provide list of owners for property within two hundred (200) feet of the subject property
- Attach **full** legal description (must be provided by the Register of Deeds Office)
- Site Plan drawn to scale (See General Instructions)
- Supporting documentation (See General Instructions)

main level
611 Miami

South

* This is main level. The upstairs is on the back of this

East



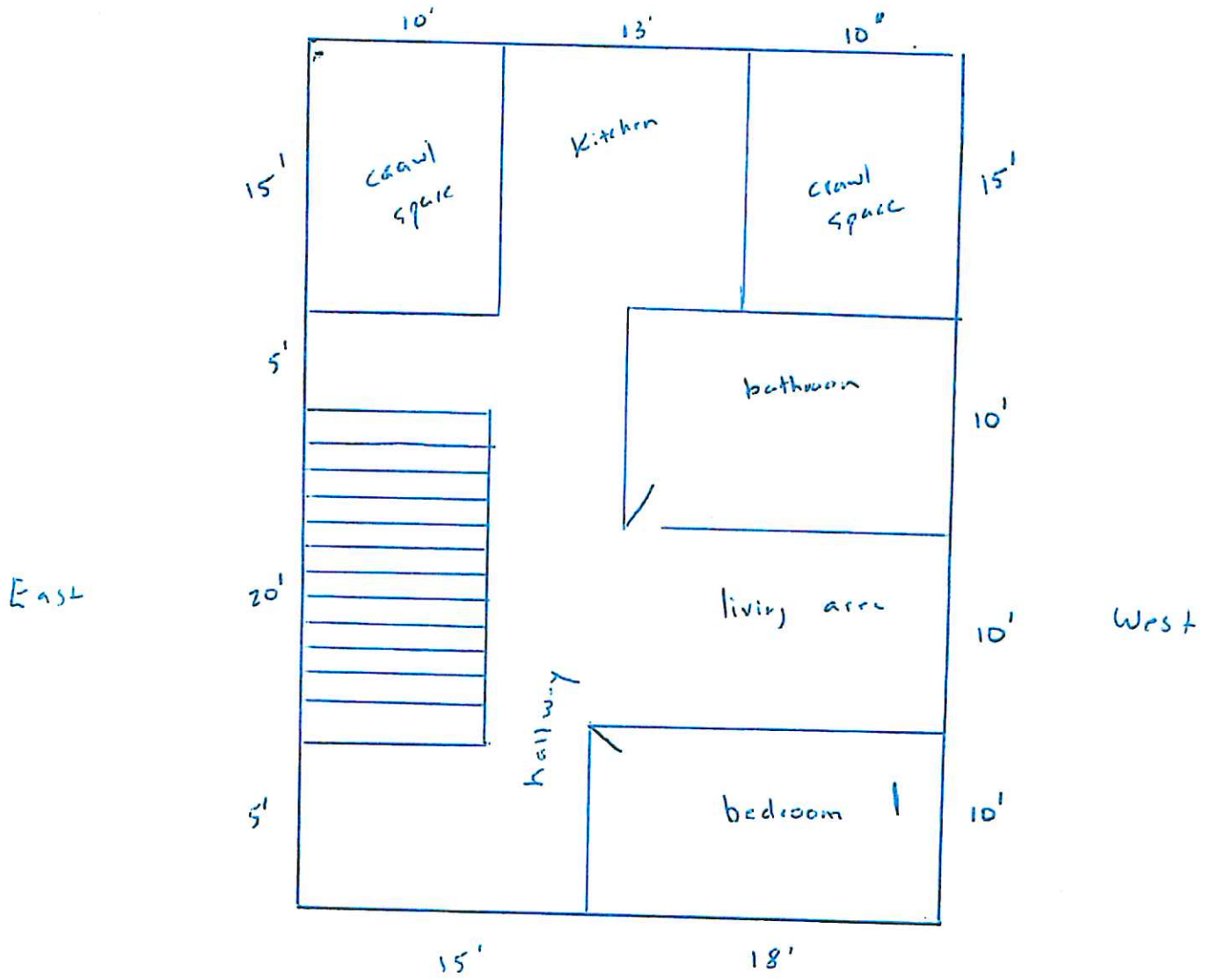
West

North

upstairs 611 Miami

South

[your-rent-online](#)



North

**POLICY REPORT
FIRST CONSIDERATION ORDINANCE
AUTHORIZING THE ISSUANCE OF TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2020 SUPER MARKET DEVELOPERS, INC. PROJECT**


Carla K. Williamson, CMC City Clerk

OCTOBER 27, 2020


Paul Kramer, City Manager

ISSUE:

First Consideration for:

AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF LEAVENWORTH, KANSAS OF NOT TO EXCEED \$12,000,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2020 (SUPER MARKET DEVELOPERS, INC. PROJECT), TO PROVIDE FUNDS TO ACQUIRE, CONSTRUCT AND EQUIP A PROJECT FOR SUPER MARKET DEVELOPERS, INC., AND AUTHORIZING AND APPROVING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS.

BACKGROUND:

- At the May 26, 2020 Regular Meeting the City Commission adopted and approved Resolution B-2251; *"A resolution expressing the intent of the City of Leavenworth, Kansas, to issue its federally taxable industrial revenue bonds in the maximum principal amount of \$12,000,000 to both finance various improvements benefitting Super Market Developers, Inc., and promote, stimulate and develop the economic welfare of both the city and the State of Kansas."*
- On May 29, 2020 the City Clerk requested a Project Exemption Certificate (PEC) from the Kansas Department of Revenue for use by Super Market Developers Inc. for their project. The PEC allows Super Market Developers Inc. to exempt purchases of items purchased for the construction of the project from sales tax.
- As required by law, a Public Notice was published on October 16, 2020 in the Leavenworth Times providing notice of the issuance of the Industrial Revenue Bonds.

ACTION:

Consensus by the Governing Body to place on first consideration.

ATTACHMENTS:

- Resolution B-2251
- Draft Ordinance
- Affidavit of Publication of Public Notice

RESOLUTION NO. B-2251

A RESOLUTION EXPRESSING THE INTENT OF THE CITY OF LEAVENWORTH, KANSAS, TO ISSUE ITS FEDERALLY TAXABLE INDUSTRIAL REVENUE BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$12,000,000 TO BOTH FINANCE VARIOUS IMPROVEMENTS BENEFITTING SUPER MARKET DEVELOPERS, INC., AND PROMOTE, STIMULATE AND DEVELOP THE ECONOMIC WELFARE OF BOTH THE CITY AND THE STATE OF KANSAS.

WHEREAS, the City of Leavenworth, Leavenworth County, Kansas, (the "City") is authorized and empowered pursuant to the provisions of K.S.A. 12-1740 to 12-1749(d), inclusive, as amended, (the "Act") to both issue its industrial revenue bonds to finance all or part of the cost of purchasing, acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, enlarging or remodeling certain facilities including commercial facilities and enter into lease agreements with any person, firm or corporation for the use and acquisition of such facilities in order to promote, stimulate and develop the economic welfare and prosperity of both the City and the State of Kansas (the "State"); and

WHEREAS, Super Market Developers, Inc., a Missouri corporation registered and in good standing as a foreign corporation in the State, (the "Applicant") has requested that the City issue its federally taxable industrial revenue bonds in one or more separate series in the maximum principal amount of Twelve Million Dollars (\$12,000,000) (the "Bonds") to finance the cost of acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, and remodeling certain commercial facilities and improvements to benefit the Applicant's retail grocery store and pharmacy operating as Price Chopper located generally at 2107 S. 4th Street, Leavenworth, Kansas (the "Project"); and

WHEREAS, the City does hereby find and determine it to be advisable and in the best interest of the City and its inhabitants that such Bonds, as and in the maximum amount so requested be authorized and issued by the City to finance the Project; and

WHEREAS, such Bonds if, as, and when issued by the City will be payable solely and only from the moneys and revenues received by the City from the fees charged and rentals received for the use of the Project and not from any other fund or source; and

WHEREAS, pending the issuance of the Bonds, the Company intends to initiate the construction, furnishing and equipping of the Project and finance, on an interim basis, such capital expenditures with its own funds which it, by its acknowledgment and acceptance hereof, intends to reimburse and permanently finance with the proceeds of the Bonds; and

WHEREAS, this resolution is intended to constitute a non-binding declaration of the official intent of the City to issue such Bonds and it is not bound or otherwise obligated to the Applicant to issue the Bonds if in its sole discretion it determines for whatever reason not to issue such Bonds.

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

Section 1. That the Governing Body of the City hereby finds and determines that the Project will promote, stimulate and develop the general economic welfare of the City and be in furtherance of the public purposes as set forth in the Act.

Section 2. That the Bonds in the maximum principal amount of \$12,000,000 be issued by the City in one or more separate series to finance the Project to be leased to the Applicant pursuant to and in accordance with the Act.

Section 3. That the terms of all ordinances, trust indentures, lease agreements and other documents required in the issuance of the Bonds (the "Bond Documents") shall be as agreed to by and between the City and the Applicant. The selection of the purchaser of the Bonds shall be the sole responsibility of the Applicant, subject to the approval of the City.

Section 4. That the City officials are hereby directed and authorized to proceed with the necessary negotiations relating to the Bond Documents with the Applicant and with the preparation of all other necessary documents relating thereto for final action by the Governing

Body of the City. All terms and conditions of the Bonds and the sale thereof must be acceptable to and approved by the Governing Body of the City and the Applicant.

Section 5. That the City Clerk and Nichols and Wolfe Chartered, bond counsel, are hereby authorized and directed to prepare and cause to be filed and published, where necessary, all statements and notices required by the provisions of both K.S.A. 12-1740 et seq., as amended, and other applicable law.

Section 6. That although the Project site(s) and facilities may be entitled to an exemption from ad valorem taxation for a period of ten (10) years beginning after the calendar year in which the Bonds are issued in accordance with the provisions of K.S.A. 79-201a, as amended, the Applicant agrees that no such abatement of ad valorem taxes is contemplated or being requested by Applicant and, as such, no such abatement will be sought or otherwise requested. The City will, however, cooperate with and assist the Applicant in connection with the preparation and filing of any sales tax exemption certificate requests or refunds Applicant may lawfully request in connection with the Project.

Section 7. That the City will not be liable or otherwise responsible for the payment of any costs or expenses incurred by or in connection with the issuance of the Bonds.

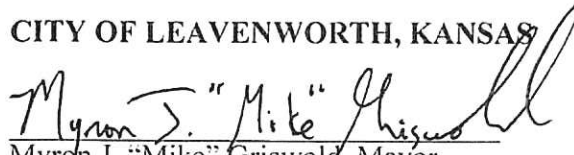
Section 8. That the issuance of the Bonds by the City shall, in addition to all other requirements of the City, be subject to any limitations imposed upon the City by either federal or Kansas law, including any regulations, rulings or executive orders which might appertain thereto.

Section 9. That this Resolution will be available for public inspection during regular business hours of the City at City Hall and shall be of force and effect from and after its adoption and approval.

Section 10. That this Resolution shall be of force and effect immediately upon its adoption and approval.

ADOPTED AND APPROVED THIS 26th day of May, 2020.

CITY OF LEAVENWORTH, KANSAS


Myron J. "Mike" Griswold, Mayor

ATTEST:


Carla K. Willjamson, CMC, City Clerk

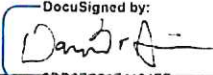


ACKNOWLEDGEMENT AND ACCEPTANCE

The provisions of this resolution are hereby acknowledged and accepted as the declaration of the official intent of Super Market Developers, Inc., a Missouri corporation registered and in good standing as a foreign corporation in the State.

Dated this 26th day of May, 2020.

SUPER MARKET DEVELOPERS, INC.

DocuSigned by:
By 

David E. Smith, President and
Chief Executive Officer

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF LEAVENWORTH, KANSAS OF NOT TO EXCEED \$12,000,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2020 (SUPER MARKET DEVELOPERS, INC. PROJECT), TO PROVIDE FUNDS TO ACQUIRE, CONSTRUCT AND EQUIP A PROJECT FOR SUPER MARKET DEVELOPERS, INC., AND AUTHORIZING AND APPROVING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS.

WHEREAS, the City of Leavenworth, Kansas, (the “Issuer”) is a municipal corporation and political subdivision duly organized and validly existing under the laws of the State of Kansas as a city of the first class; and

WHEREAS, the Issuer is authorized by K.S.A. 12-1740 to 12-1749e, inclusive, as amended, (collectively, the “Act”) to issue revenue bonds, the proceeds of which shall be used for the purpose of paying all or part of the cost of acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, enlarging or remodeling facilities for agricultural, commercial, hospital, industrial, natural resources, recreational development and manufacturing purposes; and

WHEREAS, pursuant to the Act, the Issuer proposes to issue its Taxable Industrial Revenue Bonds, Series 2020 (Super Market Developers, Inc., Project), in an aggregate principal amount not to exceed \$12,000,000 (the “Bonds”) for the purpose of (a) acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, and remodeling a commercial facility for Super Market Developers, Inc., a Missouri corporation registered and in good standing as a foreign corporation in the State of Kansas (the “Company”), and (b) paying certain costs of issuance, all as further described in the hereinafter referred to Bond Indenture and Lease Agreement; and

WHEREAS, the Bonds will be issued under a Bond Trust Indenture dated as of the date set forth therein (the “Bond Indenture”), by and between the Issuer and UMB Bank n.a., Kansas City, Missouri, with one or more offices in the State of Kansas, as Bond Trustee (the “Bond Trustee”); and

WHEREAS, the Company will lease the Project to the Issuer pursuant to the Base Lease Agreement of even date herewith (the “Base Lease”) between the Company and the Issuer; and

WHEREAS, simultaneously with the execution and delivery of the Bond Indenture, the Issuer will enter into a Lease Agreement dated as of the date set forth therein (the “Lease Agreement”), by and between the Issuer, as lessor, and the Company, as lessee, pursuant to which the Project (as defined in the Bond Indenture) will be acquired, constructed, reconstructed, improved, equipped, furnished, repaired, and remodeled pursuant to which the Issuer will lease the Project to the Company, and the Company will agree to pay Lease Payments (as defined in the Bond Indenture) sufficient to pay the principal of and interest on the Bonds; and

WHEREAS, the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of the Bonds that the Issuer execute and deliver certain documents and that the Issuer take certain other actions as herein provided.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS, AS FOLLOWS:

Section 1. Findings and Determinations. The Issuer hereby makes the following findings and determinations with respect to the Company and the Bonds to be issued by the Issuer, based upon representations made to the Issuer:

- (a) The Company has properly requested the Issuer's assistance in financing the costs of the Project;
- (b) The issuance of the Bonds for the purpose of providing funds to finance the costs of the Project is in furtherance of the public purposes set forth in the Act; and
- (c) The Bonds are being issued for a valid purpose under and in accordance with the provisions of the Act.

Section 2. Authorization of the Bonds. The Issuer is hereby authorized to issue the Bonds in the aggregate principal amount of not to exceed \$12,000,000, which shall be issued under and secured by and shall have the terms and provisions set forth in the Bond Indenture. The Bonds shall bear interest at the fixed rate of 5.00% and shall mature not later than the year 2025, and shall have such redemption provisions as set forth in the Bond Indenture. The final terms of the Bonds shall be specified in the Bond Indenture, and the signatures of the officers of the Issuer executing such Bond Indenture shall constitute conclusive evidence of their approval and the Issuer's approval thereof.

Section 3. Limited Obligations. The Bonds shall be limited obligations of the Issuer, payable solely from the sources and in the manner as provided in the Bond Indenture, and shall be secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate (as defined in the Bond Indenture) to the Bond Trustee and in favor of the owners of the Bonds, as provided in the Bond Indenture. The Bonds and interest thereon shall not be deemed to constitute a debt or liability of the Issuer, the State of Kansas (the "State") or of any political subdivision thereof within the meaning of any State constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the Issuer, the State or of any political subdivision thereof, but shall be payable solely from the funds provided for in the Lease Agreement and the Bond Indenture. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the Issuer, the State or any political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment. No breach by the Issuer of any such pledge, mortgage, obligation or agreement may impose any liability, pecuniary or otherwise, upon the Issuer or any charge upon its general credit or against its taxing power.

Section 4. Authorization and Approval of Documents. The following documents are hereby approved in substantially the forms presented to and reviewed by the Issuer (copies of which documents, upon execution thereof, shall be filed in the office of the City Clerk), and the Issuer is hereby authorized to execute and deliver each of such documents (the "Issuer Documents") with such changes therein (including the dated date thereof) as shall be approved by the officials of the Issuer executing such documents, such officials' signatures thereon being conclusive evidence of their approval and the Issuer's approval thereof:

- (a) Bond Indenture;
- (b) Base Lease Agreement;
- (c) Lease Agreement; and

(d) Bond Purchase Agreement.

Section 5. Execution of Bonds and Documents. The Mayor of the Issuer is hereby authorized and directed to execute the Bonds by manual or facsimile signature and to deliver the Bonds to the Bond Trustee for authentication for and on behalf of and as the act and deed of the Issuer in the manner provided in the Bond Indenture. The Mayor of the Issuer is hereby authorized and directed to execute and deliver the Issuer Documents for and on behalf of and as the act and deed of the Issuer. The City Clerk of the Issuer is hereby authorized and directed to attest, by manual or facsimile signature, to the Bonds, the Issuer Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 6. Further Authority. The Issuer shall, and the officials, agents and employees of the Issuer are hereby authorized and directed to, take such further action, and execute such other documents, certificates and instruments, including, without limitation, any credit enhancement and security documents, arbitrage certificate, redemption notices, closing certificates and tax forms, as may be necessary or desirable to carry out and comply with the intent of this Ordinance, and to carry out, comply with and perform the duties of the Issuer with respect to the Bonds and the Issuer Documents.

Section 7. Effective Date. This Ordinance shall take effect and be in full force immediately after its adoption by the Governing Body of the Issuer and publication in the official newspaper of the Issuer.

PASSED by the Governing Body of the City of Leavenworth, Kansas this ___ day of _____, 2020.

CITY OF LEAVENWORTH, KANSAS

Myron J. "Mike" Griswold, Mayor

(Seal)

ATTEST:

Carla K. Williamson, CMC City Clerk

[SUMMARY ORDINANCE FOR PUBLICATION]

(PUBLISHED IN *The Leavenworth Times* ON _____, 2020)

SUMMARY OF ORDINANCE NO. _____

On _____, 2020, the governing body of the City of Leavenworth, Kansas, passed an ordinance entitled:

AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF LEAVENWORTH, KANSAS OF NOT TO EXCEED \$12,000,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2020 (SUPER MARKET DEVELOPERS, INC. PROJECT), TO PROVIDE FUNDS TO ACQUIRE, CONSTRUCT AND EQUIP A PROJECT FOR SUPER MARKET DEVELOPERS, INC., AND AUTHORIZING AND APPROVING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS.

The bonds approved by the Ordinance are being issued in an aggregate principal amount not to exceed \$12,000,000 for the purpose of acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, and remodeling a commercial facility located approximately at 2107 S. 4th Street, Leavenworth, Kansas and paying certain costs of issuance of the bonds. The bonds shall be limited obligations of the City of Leavenworth, Kansas payable from lease payments to be made by Super Market Developers, Inc., in amounts sufficient to pay the principal of and interest on the bonds. The bonds and interest thereon shall not be deemed to constitute a debt or liability of the City of Leavenworth, the State of Kansas (the "State") or of any political subdivision thereof within the meaning of any State constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the City of Leavenworth, the State or of any political subdivision thereof, but shall be payable solely from the funds provided for in the Lease Agreement and the Bond Indenture. The issuance of the bonds shall not, directly, indirectly or contingently, obligate the City of Leavenworth, the State or any political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment. A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, 100 North 5th Street. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at the City Clerk's office 100 North 5th Street, Leavenworth, Kansas.

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: _____, 2020.

David Waters, City Attorney

Leavenworth Times Affidavit of Publication

I, Tammy Lawson, of lawful age, being first duly sworn on oath, states, that she (he) is a Legal Representative of the Times a daily newspaper, printed and published in Leavenworth, Leavenworth County, Kansas, that said newspaper has been published for a least Fifty (50) times a year and has been so published for at least five (5) years prior to the first publication of the attached Notice that said newspaper has a general paid circulation on a monthly and yearly basis in Leavenworth County, Kansas and is not a trade, religious or fraternal publication and has been printed and published in Leavenworth County, Kansas and has a general paid circulation in said County. The attached Notice was published on the following dates in a regular issue of said newspaper.

First Publication was made on the 16th day of October, 2020.


Published in the Leavenworth Times, October 16, 2020


071020 1

PUBLIC NOTICE

NOTICE is hereby given, pursuant to K.S.A. 12-1744e, as amended, that the City of Leavenworth, Kansas, (the "City") intends to enter into a lease agreement with Super Market Developers, Inc., a Missouri corporation registered and in good standing as a foreign corporation in the State of Kansas, (the "Company") for the use of certain facilities to be purchased with the proceeds of industrial revenue bonds to be issued pursuant to K.S.A. 12-1740 et seq., as amended, as authorized by an ordinance of the City. A copy of the Resolution of Intent of the Governing Body of the City to enter into such lease agreement with the Company is on file in the office of the City Clerk and is available for public inspection during normal business hours.

DATED this 16 day of October, 2020.




 Carla K. Williamson, City Clerk

104037

Publication was made on the day of, 2020.

Publication was made on the day of, 2020.

Publication was made on the day of, 2020.

Publication was made on the day of, 2020.

Publication was made on the day of, 2020.

Publication was made on the day of, 2020.

WITNESS my hand this 19th day of October, 2020.

Barbara Daniels
Legal Representative

Subscribe and sworn before me, this the 19 day of Oct, 2020.

Rebecca A. Broom

Notary Public

My Commission Expires: 6/7/23

