



**City of Leavenworth**  
**100 N. 5<sup>th</sup> Street**  
**Leavenworth, Kansas 66048**

**CITY COMMISSION REGULAR MEETING**  
**COMMISSION CHAMBERS**  
**TUESDAY, NOVEMBER 22, 2022 6:00 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 6 p.m. and midnight and available for viewing on YouTube*

**CALL TO ORDER** – Pledge of Allegiance Followed by Silent Meditation

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**PROCLAMATIONS & AWARDS:**

1. Small Business Saturday November 26, 2022 (pg. 03)
2. Employee Service Awards (pg. 04)

**OLD BUSINESS:**

**Consideration of Previous Meeting Minutes:**

3. Minutes from October 25, 2022 Regular Meeting and November 1, 2022 Special Meeting **Action:** Motion (pg. 05)

**Second Consideration Ordinance:**

4. Second Consideration Ordinance No. 8199 Approval of Special Use Permit for Residential Home Stay 771 Ottawa  
**Action:** Roll Call Vote (pg. 12)
5. Second Consideration Ordinance No. 8200 Approval of Franchise Agreement with Unite Private Networks, L.L.C.  
**Action:** Roll Call Vote (pg. 15)

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**NEW BUSINESS:**

**Public Comment:** *(i.e. Items not listed on the agenda or receipt of petitions)-Public comment is limited to 2-3 minutes and no action will be taken by the Commission on public comment items - Please state your name and address. A signup sheet will be provided in the commission chambers for anyone wishing to speak.*

**Public Hearing:**

6. Public Hearing on and First Consideration of an Ordinance Authorizing the Issuance of Taxable Industrial Revenue Bonds, Series 2022 (MAPS Project) (pg. 27)
  - a. Open Public Hearing **Action:** Motion
  - b. Staff and Public Comments
  - c. Close Public Hearing **Action:** Motion
  - d. First Consideration Ordinance Authorizing Issuance of Taxable Industrial Revenue Bonds, Series 2022  
**Action:** Consensus

**General Items:**

7. Mayor's Appointments **Action:** Motion (pg. 46)
8. Cancellation of Outstanding City Checks **Action:** Motion (pg. 47)

**Resolutions:**

9. Resolution B-2324 Authorize Serving of Complimentary Alcoholic Liquor at Main Street Event "Alive After Five" for 2023 **Action:** Motion (pg. 49)

**Bids, Contracts and Agreements:**

10. Consider Award of Bid for Bridge Scour Repairs Project **Action:** Motion (pg. 51)
11. Consider Supplemental Agreement No. 1 – Airport Fuel System Replacement Project **Action:** Motion (pg. 56)

**First Consideration Ordinance:**

12. First Consideration Ordinance for Grease Trap and Grease Interceptor Regulations **Action:** Consensus (pg. 74)
13. First Consideration Ordinance for Amending Section 44-32 School Zones **Action:** Consensus (pg. 98)

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|---|------------------------------------|
| 14. First Consideration Ordinance Rezoning 2700 State Street                | <b>Action:</b> Consensus (pg. 103) |
| 15. First Consideration Ordinance Rezoning 212, 220 & 224 Maple Street      | <b>Action:</b> Consensus (pg. 113) |
| 16. First Consideration Ordinance Rezoning 28 Limit Street & 2 Vilas Street | <b>Action:</b> Consensus (pg. 124) |
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**Consent Agenda:**

Claims for October 22, 2022, through November 18, 2022, in the amount of \$4,120,859.48; Net amount for Payroll #22 effective November 4, 2022 in the amount of \$358,048.74 (No Police & Fire Pension) and Payroll #23 effective November 18, 2022 in the amount of \$364,263.17 (Includes Police & Fire Pension in the amount of \$9,888.71).

**Action:** Motion

**Other:**

17. Executive Session – Personnel Matters of Non-Elected Personnel

**Action:** Motion (pg. 139)

**Adjournment**

**Action:** Motion

# City of Leavenworth, Kansas



## Proclamation

- WHEREAS,** *advocacy groups, public and private organizations across the country have endorsed the Small Business Saturday as a shop local campaign held on the Saturday following Thanksgiving to encourage reinvestment in small business across the country; and*
- WHEREAS,** *small businesses employ over 55 percent of America's workers either owning or working for a small business; and*
- WHEREAS,** *87 percent of consumers in the United States agree that small businesses are critical to the overall economic health of the United States; and*
- WHEREAS,** *according to research firm Civic Economics, for every \$100 spent at a local store, \$68 stays within the community while on-line shopping generates little or no benefit for the local economy; and*
- WHEREAS,** *American Express is a leader in promoting Small Business Saturday throughout the country as well as the National Main Street Center and Kansas Main Street; and*
- WHEREAS,** *annually, Leavenworth Main Street hosts Shop Small Saturday on Small Business Saturday within the downtown with many businesses consistently participating. On average, \$95,000 is spent in the businesses and overall merchants collectively average \$200,000 in sales; and*
- WHEREAS,** *the City of Leavenworth wishes to recognize the contributions that small businesses make to our community and local economy.*

**NOW, THEREFORE,** *I, Camalla M. Leonhard, Mayor of the City of Leavenworth, Kansas hereby proclaim November 26, 2022 as:*

## Small Business Saturday

*in the City of Leavenworth, and hereby urge all citizens to shop at and support our local businesses.*

**IN WITNESS WHEREOF,** *I set my hand and have affixed the Great Seal of the City of Leavenworth, Kansas this twenty-second day of November in the year of two-thousand and twenty two.*

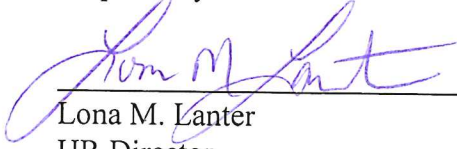
\_\_\_\_\_  
Camalla M. Leonhard, Mayor

ATTEST:

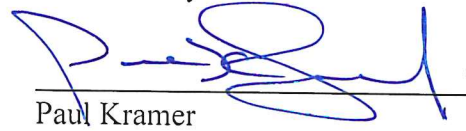
\_\_\_\_\_  
Sarah Bodensteiner, CMC, City Clerk

**POLICY REPORT 22-03**  
**Employee Service Awards**  
**November 22, 2022**

Prepared by:

  
\_\_\_\_\_  
Lona M. Lanter  
HR Director

Reviewed by:

  
\_\_\_\_\_  
Paul Kramer  
City Manager

**Issue:**

In 2022, eleven (11) employees reached a milestone in their career with the City of Leavenworth. These employees are being recognized for their faithful, dedicated, loyal and continuous service to the City. In addition to recognizing the 10 and 25 year awards, we are also recognizing those employees who have continued loyal service to the City with 15, 20, 30 and 35 years of service.

**Background:**

In 1926, the League of Kansas Municipalities began the practice of recognizing city employees for faithful, continuous service. Loyal and dedicated officials and employees form the foundation of every city with strong, progressive government. The pride and devotion shown by these men and women in their jobs is an important factor in making Kansas communities a better place to live. The following City of Leavenworth employees are being honored at this time:

**10 Year Awards**

Melissa Bower, Public Information Officer  
Justin Lacey, Fire Driver/Operator  
G. Tabor Medill III, Recreation Supervisor  
Clarice Phillips, Records Clerk  
Noah Wooten, Police Sergeant I

**25 Years of Service**

Carol Charity, Manager of Information Systems  
Tyler Ewert, Fire Captain  
Sean Goecke, Police Lieutenant  
Danny Hall, Police Lieutenant  
Johnny Sweet II, Police Officer II  
Patrick Tooley, Section 8 Coordinator

We would also like to recognize the following individuals for milestone achievements listed below:

**15 Years of Service**

Andrea Cheatom, Housing Manager  
Tammy Herken, Telecommunications Specialist  
Roberta Johnston, Senior Court Clerk  
Jon Lemke, WPC Assistant Superintendent  
Brandon Mance, Police Sergeant

**20 Years of Service**

Roberta Eddy, Telecommunications Specialist  
Steve Grant, Parks & Recreation Director



**CALL TO ORDER** - The Governing Body met for a regular meeting and the following commission members were present in the commission chambers: Mayor Camalla Leonhard and Commissioners Nancy Bauder, Edd Hingula and Griff Martin. Absent: Mayor Pro-Tem Jermaine Wilson.

**Staff members present:** City Manager Paul Kramer, Assistant City Manager Penny Holler, Planning and Community Development Director Julie Hurley, Police Chief Patrick Kitchens, Deputy Public Works Director Earl Wilkinson, Chief Building Inspector Hal Burdette, Fire Captain Isaiah Maher, Fire Chief Gary Birch, City Attorney David E. Waters and City Clerk Sarah Bodensteiner.

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

**PROCLAMATIONS:**

**United Way Months** – Mayor Leonhard read the proclamation proclaiming September through December as United Way Months. The proclamation was accepted by Mary Mack, Heather Padelli and Caroline Arter.

**National Family Literacy Day – November 1, 2022** – Mayor Leonhard read the proclamation proclaiming November 1, 2022 as National Family Literacy Day. The proclamation was accepted by Janelle DeFrees.

**National American Indian Heritage Month** – Mayor Leonhard read the proclamation proclaiming November 2022 as National American Indian Heritage Month. The proclamation was accepted by Janelle DeFrees.

**OLD BUSINESS:**

**Consideration of Previous Meeting Minutes:**

Commissioner Martin moved to accept the minutes from the October 11, 2022 regular meeting. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 4-0.

**Second Consideration Ordinance:**

**Second Consideration Ordinance No. 8198 Amending the Code of Ordinances, Sections 22-25, 22-107 and 22-134; Amending the Licensing Period** – City Manager Paul Kramer reviewed the Ordinance. There have been no changes since first introduced at the October 11, 2022 meeting.

Mayor Leonhard called the roll and Ordinance No. 8198 was unanimously approved.

**Public Comment:** (*Public comment on non-agenda items or receipt of petitions- limited to 2-3 minutes*)

Jeff Howards 2100 S. 19<sup>th</sup> Terrace:

- Chairman of Leavenworth County Democratic Party

- Cited for having more than 3 signs on private property
- Feels the citation is in violation of Kansas State Statute
- City Manager did address the issue and advised citation was erroneously issued
- Feels like he was singled out
- Would like an investigation

**General Items:**

**Cancellation of the November 8, 2022 City Commission Meeting** – City Manager Paul Kramer presented a request to cancel the November 8, 2022 City Commission Regular Meeting. Regular meeting dates and times are set by City Code of Ordinances and allows for cancellation by the City Commission.

Commissioner Hingula moved to cancel the November 8, 2022 regular meeting. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 4-0.

**Update for Unsafe Structure 717 Spruce Street** – Chief Building Inspector Hal Burdette provided the following background information: On November 13, 2021 the structure was damaged by fire; City received a check from insurance proceeds for \$15,000. The Commission adopted Resolution B-2311, directing the owners to commence repairs and the City Commission would review the status of the project after 90 days. As noted in the update provided to the City Commission on June 28, 2022, there was little to no damage to the exterior of the building but there is a window on the south side of the second floor that is broken and needs to be repaired. There are no records of a furnace being installed yet either. The 2018 Internal Residential Code requires a heating facility in habitable rooms. Staff has attempted to contact the owner by phone and mail with no success to get an update on the situation. Staff does not recommend releasing the funds until the window has been repaired and a heat source has been installed.

Gary Nelson, Attorney for the property owner:

- Owner is hard to get ahold of
- Son who was doing the work hasn't been able to work on it recently
- Intent is to get the furnace done this week
- They are trying to get it done

Commissioner Bauder moved to allow up to another 90 days for repairs to be made to 717 Spruce Street, to include a heating source and window repair. Commission Martin seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 4-0.

**Bids, Contracts and Agreements:**

**Consider Request for Approval of the Purchase of Fire Apparatus** – Fire Captain Isaiah Maher and Fire Chief Gary Birch presented a request to approve the purchase of a Pierce Pumper Truck manufactured and furnished to our specifications, utilizing the Houston-Galveston Area Council (H-GAC) Cooperative Purchasing Program. This purchase will replace our 2003 Ferrara Fire Pumper Truck with 104,000 miles. With this purchase, six of our seven apparatus will be from one manufacturer. A standardized fleet assists with maintenance, driver operator familiarity and training. The 2003 apparatus does not meet today's safety options. There are maintenance issues associated with the older apparatus, as parts are getting

more difficult to find. The total cost of this apparatus is \$859,749.00. A discount of \$27,268.56 will be deducted from the purchase price for utilizing the H-GAC program, leaving a net cost of \$832,479.44. Funds from the American Rescue Plan Act (ARPA) will be utilized for the purchase per the direction from the City Commission.

Commissioner Hingula:

- Asked how old is the oldest truck in the fleet
- Are we going to sell the old truck

Captain Maher:

- This 2003 truck is the oldest

Chief Birch:

- The truck will be auctioned off on Purple Wave

Commissioner Martin:

- Asked is there any guaranteed delivery

Chief Birch:

- Lead time is pretty locked in, but might be an additional month

Commissioner Martin moved to approve the purchase of a Pierce Pumper Truck through Conrad Fire Equipment utilizing the H-GAC Cooperative Purchasing Program in an amount not to exceed \$832,479.44. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 4-0.

**Consider Approval of Contract for Limited Site Assessment – Old City Garage, 2101 S. 3<sup>rd</sup> St.** – Deputy Public Works Director Earl Wilkinson presented for consideration approval of a Limited Site Assessment contract with Blackstone Environmental Inc. The City of Leavenworth previously operated a maintenance facility at 2101 S 3<sup>rd</sup> Street, just north of Price Chopper. There have been several evaluations in the area to help determine what, if any, spills may have entered the soil at this location. The City has been working with the Kansas Department of Health and Environment (KDHE) regarding soil condition and previously removed underground storage tanks. Recently, KDHE solicited proposals for a limited site assessment at this location. Three consultants submitted bids with Blackstone Environmental providing the lowest cost for these services. Funding will be from the Storage Tank Trust Funds managed by KDHE; however, the City, as owner, will need to sign a contract with Blackstone. If the City signs the enclosed Limited Power of Attorney form, KDHE will pay the contractor directly.

Mr. Kramer:

- Two things can occur in this situation, the State can tell you to do this, or you can enter into the State Trust Fund and they handle it for you
- The State would handle the bid, the work, and direct billing
- Former municipal sites are monitored and due to a detection of contamination, the assessment is being requested
- The Trust pays for this assessment

Commissioner Hingula:

- Asked how long the process takes
- Will we be kept in the loop on this project

Mr. Wilkinson:

- The process is about a year long, but once the contract is signed they can begin very quickly
- They are very good at keeping us informed

Commissioner Bauder moved to approve the contract and the Limited Power of Attorney with Blackstone Environmental in an amount not to exceed \$38,276.70 for a Limited Site Assessment at 2101 S. 3<sup>rd</sup> Street. Commissioner Martin seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 4-0.

### **First Consideration Ordinances:**

**First Consideration Ordinance for Special Use Permit for a Residential Home Stay at 771 Ottawa –** Planning and Community Development Director Julie Hurley presented for first consideration an ordinance that would allow a Residential Home Stay at 771 Ottawa Street. Residential Home Stays are allowed in the R1-6 zoning district with the approval of a Special Use Permit. Per the applicant, they intend to utilize the two-bedroom structure for short-term rentals with a focus on military and hospital sectors in Leavenworth. The property provides a driveway for off-street parking and a fenced back yard for privacy. Since purchasing the property in August of 2021, the applicant has replaced windows, installed a new deck, remodeled the kitchen and bathroom, and refinished hardwood floors and installed new carpeting. The Commission may recommend issuance of a special use permit whenever it finds that:

- The proposed special use complies with all applicable provisions of this ordinance.
- The proposed special use at the specified location will contribute to and promote the economic development, welfare or convenience of the public.
- The special use will not cause substantial injury to the value of other property in the neighborhood in which it is located.
- 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.

The Planning Commission considered this item at their October 3, 2022 meeting and voted 5-0 to recommend approval of the Special Use Permit.

Commissioner Bauder:

- Asked will this still function as a single family residence

Ms. Hurley:

- The property is remaining a single family residence

Commissioner Hingula:

- Asked do we have any control to ensure this isn't a party house



Ms. Hurley:

- We do have the means to not renew a Special Use Permit if issues arise and persist

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

**Consent Agenda:**

Commissioner Martin moved to approve claims for October 8, 2022 through October 21, 2022, in the amount of \$1,077,658.18; Net amount for Payroll #21 effective October 21, 2022 in the amount of \$360,661.34 (Includes Police and Fire Pension in the amount of \$9,888.71). Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 4-0.

**Other:**

City Manager Paul Kramer:

- Provided a brief update on the building located at the SW corner of Broadway and Spruce
- Intersection of 20<sup>th</sup> and Spruce was done by the State, they will be reconstructing the intersection in 2024, but this work was a temporary fix

Commissioner Hingula:

- Great trunk or treat event
- A lot of great events are coming up throughout the city

Commissioner Martin:

- God bless and have a great week

Commissioner Bauder:

- Thanks to all who came out to the trunk or treat
- It was a great event

Mayor Leonhard:

- Was able to walk around and greet people at the trunk or treat event
- The haunted house was great, the scary side was definitely scary this year
- Advanced voting is going on right now through Monday November 7<sup>th</sup> at noon

**Adjournment:**

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

Time Meeting Adjourned 6:40 p.m.

Minutes taken by City Clerk Sarah Bodensteiner, CMC



**CALL TO ORDER** - The Governing Body moved from a study session to a special meeting and the following commission members were present in the commission chambers: Mayor Camalla Leonhard, Mayor Pro-Tem Jermaine Wilson, Commissioners Nancy Bauder and Edd Hingula. Absent: Commissioner Griff Martin.

**Staff members present:** Assistant City Manager Penny Holler, Public Works Director Brian Faust and City Clerk Sarah Bodensteiner.

**Mayor Leonhard asked for a motion to open a Special Meeting.**

Commissioner Wilson moved to open the special meeting. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 4-0.

**First Consideration Ordinance Franchise Agreement with Unite Private Networks** – Public Works Director Brian Faust presented for first consideration an ordinance that would grant a Franchise Agreement between the City of Leavenworth and Unite Private Networks, L.L.C. The City of Leavenworth was notified that Unite Private Networks is expanding into Leavenworth as part of a project to provide fiber-based telecommunications services to Leavenworth Public School District USD 453. The intent of the project is to connect the schools and other school district facilities on one network. The proposed agreement has been reviewed by the City Attorney and City Staff. Reviewed highlights of the proposed agreement. City Staff is currently reviewing the plans for the project. The Franchise Agreement is one of the items needed to be in place before this project can begin construction. Reviewed the 2 phases of the project.

Commissioner Bauder:

- Asked about drawbacks with AT&T also laying fiber in the area

Mr. Faust:

- There are a lot of different utilities located within the limited public right-of-way and in the case of a water main break where excavation is needed, there are a lot of things in the way, but telecommunications can locate within the public right-of-way

Commissioner Hingula:

- Asked how do things work in an emergency situation if you have multiple utilities that need to be contacted

Mr. Faust:

- There are emergency locates which respond quickly in those situations

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

Commissioner Hingula moved to close the special meeting. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 4-0.

**Other:**

Ms. Holler:

- Reminded the Commission that there will not be a meeting on November 8<sup>th</sup> due to Election Day
- Sign-ups are open for the holiday parade and tree lighting

Commissioner Bauder:

- Asked about riders from the City in the Veterans Day Parade

Commissioner Wilson:

- God bless, be safe and enjoy the warm fall weather

Mayor Leonhard:

- Enjoy the rest of the week

**Adjournment:**

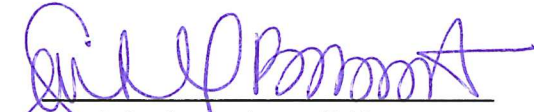
Commissioner Wilson moved to adjourn the meeting. Commissioner Bauder seconded the motion and the motion was unanimously approved and the meeting was adjourned.

Time Meeting Adjourned 6:53 p.m.

Minutes taken by City Clerk Sarah Bodensteiner, CMC

**POLICY REPORT  
SECOND CONSIDERATION ORDINANCE 8199  
APPROVAL OF SPECIAL USE PERMIT FOR RESIDENTIAL HOME STAY  
AT 771 OTTAWA STREET**

**NOVEMBER 22, 2022**

  
Sarah Bodensteiner, CMC  
City Clerk

  
Paul Kramer  
City Manager

**BACKGROUND:**

At the October 25, 2022 City Commission regular meeting the City Commission reviewed and placed on first consideration:

**AN ORDINANCE ALLOWING A SPECIAL USE PERMIT FOR A  
RESIDENTIAL HOME STAY TO BE LOCATED AT 771 OTTAWA STREET  
IN THE CITY OF LEAVENWORTH, KANSAS.**

There have been no other changes since first consideration.

Ordinance No. 8199 is now presented for second consideration and requires a roll call vote.

**ATTACHMENTS:**

- Ordinance No. 8199

*(Summary Published in the Leavenworth Times on November 25, 2022)*

**ORDINANCE NO. 8199**

**AN ORDINANCE ALLOWING A SPECIAL USE FOR A RESIDENTIAL HOME STAY TO BE LOCATED AT 771 OTTAWA STREET IN THE CITY OF LEAVENWORTH, KANSAS.**

**WHEREAS**, under the 2016 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 3rd day of October, 2022 in the Commission Room, 1<sup>st</sup> Floor of City Hall, 100 N. 5<sup>th</sup> 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 8<sup>th</sup> day of September 2022; and

**WHEREAS**, upon a motion made, duly seconded, and passed, the Planning Commission adopted findings of fact and recommended approval of the request for a Residential Home Stay at 771 Ottawa Street, Leavenworth, Kansas.

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

**Section 1.** That a special use permit be issued for a Residential Home Stay on the following described property:

LOTS 21 AND 22, BLOCK 112 IN WESTERN ADDITION TO THE CITY OF LEAVENWORTH, ALSO THE FRACTIONIN DAY AND MACAULAY'S SUBDIVISION WHICH LIES BETWEEN THE SOUTH LINE OF OTTAWA STREET AND THE NORTH LINE OF SAID LOTS 21 AND 22 IN SAID BLOCK 112 IN SAID WESTERN ADDITION, AND ADJOINING SAID LOTS ON THE NORTH AND BEGINNING OF THE SAME WIDTH ALL ACCORDING TO THE PLAT OF SAID WESTERN ADDITION AND DAY AND MACAULAY'S SUBDIVISION ON RECORD IN THE OFFICE OF THE REGISTER OF DEEDS, LEAVENWORTH COUNTY, KANSAS ALL IN LEAVENWORTH COUNTY, KANSAS.

More commonly referred to as: 771 Ottawa Street, Leavenworth Kansas.

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

- a.) A Lodging Permit shall be obtained from the City of Leavenworth Office of the City Clerk each year and payment of Transient Guest Taxes as required to the City of Leavenworth.
- b.) The Special Use Permit shall become null and void upon the sale of the property.

- c.) The property shall be used for the boarding of one limited-term boarder (individual or family) only, and shall not function as an event venue, to include the hosting of parties attended by individuals not listed on the lease agreement.
- d.) Any guests of the property must park in the driveway or garage of the home.
- e.) Any police response to the subject property shall be reported to the City Commission, which may result in revocation of the Special Use Permit.

**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 by the Leavenworth City Commission on this 22<sup>nd</sup> day of November, 2022.

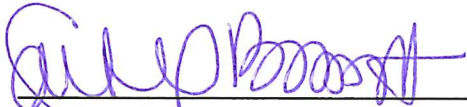
\_\_\_\_\_  
Camalla M. Leonhard, Mayor

ATTEST:

\_\_\_\_\_  
Sarah Bodensteiner, CMC, City Clerk

**POLICY REPORT  
SECOND CONSIDERATION ORDINANCE 8200  
GRANTING A CONTRACT FRANCHISE AGREEMENT WITH UNITE PRIVATE NETWORKS, L.L.C.**

**NOVEMBER 22, 2022**

  
\_\_\_\_\_  
Sarah Bodensteiner, CMC  
City Clerk

  
\_\_\_\_\_  
Paul Kramer  
City Manager

**BACKGROUND:**

At the November 1, 2022 City Commission special meeting the City Commission reviewed and placed on first consideration:

**AN ORDINANCE GRANTING TO UNITE PRIVATE NETWORKS, L.L.C., A  
DELAWARE LIMITED LIABILITY COMPANY, A CONTRACT FRANCHISE  
TO CONSTRUCT, OPERATE AND MAINTAIN A  
TELECOMMUNICATIONS SYSTEM IN THE CITY OF LEAVENWORTH,  
KANDAS AND PRESCRIBING THE TERMS OF SAID CONTRACT  
FRANCHISE.**

There have been no other changes since first consideration.

Ordinance No. 8200 is now presented for second consideration and requires a roll call vote.

**ATTACHMENTS:**

- Ordinance No. 8200

*(Summary Published in the Leavenworth Times on November 25, 2022)*

**ORDINANCE NO. 8200**

**AN ORDINANCE GRANTING TO UNITE PRIVATE NETWORKS, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY, A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN THE CITY OF LEAVENWORTH, KANSAS AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE.**

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

**SECTION 1. DEFINITIONS.**

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word “shall” is always mandatory, and not merely directory.

- a. “Access line” - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer’s premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.
- b. “Access line count” - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.
- c. “Access line fee” - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(c)(2), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.
- d. “Access line remittance” - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.
- e. “City” - means the City of Leavenworth, Kansas.
- f. “Contract franchise” - means this Ordinance granting the right, privilege and franchise to Grantee to use the City’s public right-of-way to provide telecommunications services within the City.



- g. “Facilities” - means the Grantee’s telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and other equipment comprising the Grantee’s system located within the public right-of-way, designed, constructed, and used to provide telecommunication services to or from locations within the City.
- h. “Grantee” – Unite Private Networks, L.L.C., a Delaware limited liability company, authorized to do business in Kansas, as a provider of telecommunication services within the City. References to Grantee shall also include, as appropriate, any and all successors and assigns.
- i. “Gross Receipts” - shall mean only those receipts collected from within the corporate boundaries of the City and which are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee’s Facilities to provide services described in Sections (1) through (6) . All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002, would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.
- j. “Local exchange service” - means local switched telecommunications service within any local exchange service area approved by the state Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.
- k. “Public right-of-way” - means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts. The term further does not include infrastructure located within the public rights-of-way owned by the City or other third parties, such as poles, ducts, or conduits, use of which shall require a separate license agreement for attachment to City facilities.
- l. “Telecommunications local exchange service provider” – means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, and a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187 and amendments thereto, which does, or in good faith intends to, provide local exchange service. The term telecommunications local exchange service provider does not include an interexchange carrier that does not provide local exchange service, competitive access provider that does not provide local exchange service, or any wireless telecommunications local exchange service provider.

- m. “Telecommunication services” - means providing the means of transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received, as described in K.S.A. 17-1902(a)(3) and amendments thereto. For purposes of this contract franchise, the term telecommunication services shall not include the provision of wireless services as a wireless services provider or wireless infrastructure provider.
- n. “Wireless infrastructure provider” – shall have the meaning set forth in K.S.A. 66-2019(b)(20), as amended.
- o. “Wireless services” - means “personal wireless services” and “personal wireless service facilities” as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities or any fixed or mobile wireless services provided using wireless facilities, as described in K.S.A. 66-2019(b)(19).
- p. “Wireless services provider” - means a provider of Wireless Services, as described in K.S.A. 66-2019(b)(24), as amended.

**SECTION 2. GRANT OF CONTRACT FRANCHISE.**

- a. There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying Telecommunication services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.
- b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:
  - (1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
  - (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
  - (3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.
- c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public or private property).

- d. Grantee shall not provide any additional services for which a franchise or deployment agreement is required by the City, including but not limited to services as a wireless services provider or wireless infrastructure provider, without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.
- e. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

### **SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.**

- a. Pursuant to K.S.A. 17-1902 and 12-2001, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.
- b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to, the City's Ordinance Relating to Streets, Sidewalks and Other Public Places codified in Chapter 42 of the Leavenworth Code and Underground Conduits as codified in Chapter 46, Article IV of the Leavenworth Code, and amendments thereto.
- c. Grantee shall participate in the Kansas One Call utility location program.

### **SECTION 4. COMPENSATION TO THE CITY.**

- a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access line fee in the following calendar year; provided, such Access line fee shall not exceed \$2.00 per Access line per month. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back; provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.
- b. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee

limitations contained in K.S.A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.

- c. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the month for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.
- d. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City either a 9K2 (gross receipts) or 9KN (access lines) statement showing the manner in which the franchise fee was calculated.
- e. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.
- f. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.
- g. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of one thousand Dollars (\$1,000). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.
- h. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and/or 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.
- i. Grantee shall remit an access line (franchise) fee or gross receipts (franchise) fee to the City on those access lines that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter into a contract franchise ordinance. Such access line (franchise) fee or gross receipts (franchise) fee shall be in the same amount or percentage as the franchise fee set forth in subsection 4.a above.

## **SECTION 5. INDEMNITY AND HOLD HARMLESS.**

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage by its negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs

of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

Grantee or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's activities in the Public right-of-way.

**SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND.**

- a. **Policies Required.** At all times during the term of this Contract franchise, Grantee shall keep in force and effect all insurance policies as described below:
  - (1) **Workers' Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits in compliance with the statutory requirements of the State of Kansas and employers' liability insurance with a limit of \$1,000,000 each accident/disease/policy limit. This policy shall include a waiver of subrogation in favor of the City. Grantee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.
  - (2) **Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal and advertising injury, blanket contractual coverage and independent contractor's coverage with limits of liability of \$1,000,000 per occurrence for bodily injury and property damage and \$1,000,000 general aggregate, and \$1,000,000 products/completed operations aggregate.
  - (3) **Commercial Automobile Liability Insurance.** Commercial automobile liability covering all owned, hired and non-owned vehicles in the amount of \$1,000,000 combined single limit each accident for bodily injury and property damage.
  - (4) **Umbrella Liability Insurance.** Coverage is to be in excess of the employers' liability, commercial general liability, and automobile liability insurance required above with limits of \$1,000,000 each occurrence, \$1,000,000 aggregate.
  - (5) **Property Insurance.** Each party will be responsible for maintaining property insurance on its own facilities, buildings and other improvements, including all equipment, fixtures, and City structures, fencing or support systems that may be placed on, within or around City facilities to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.

- b. **Qualification; Priority; Contractors' Coverage.** The insurer must be authorized to do business under the laws of the State of Kansas and have an "A-" or better rating in Best's Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Grantee shall carry substantially the same coverage with substantially the same limits as required of Grantee.
- c. **Certificate of Insurance; Other Requirements.** Upon the execution of this Contract franchise and within ten (10) days of each insurance policy expiration date during the term of this Contract franchise, Grantee will furnish the City with a certificate of insurance ("Certificate"). The Certificate shall reference this Contract franchise and workers' compensation and property insurance waivers of subrogation required by this Contract franchise. Upon receipt of notice from its insurer the Grantee shall provide the City thirty (30) calendar days advance written notice of cancellation of insurance during the term of this Contract Franchise. The City, its Commission members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, "Additional Insureds") shall be included as Additional Insureds as their respective interests may appear under this Contract franchise under all of the policies, except workers' compensation and employer's liability, which shall be so stated on the Certificate of Insurance. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. Grantee shall defend, indemnify and hold harmless the City and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Grantee shall obtain Certificates from its agents, contractors and their subcontractors and provide a copy of such Certificates to the City upon request
- d. **Limits.** The limits of liability set out in this Section 6 may be increased or decreased by mutual written consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease Grantee's exposure to risk.
- e. **Prohibited Exclusions.** No policies of insurance required to be obtained by Grantee or its contractors or subcontractors shall contain provisions (1) that exclude coverage of liability assumed by this Contract franchise with the City except as to infringement of patents or copyrights or for libel and slander in program material, (2) that exclude coverage of liability arising from excavating, collapse, or underground work, (3) that exclude coverage for injuries to the City's employees or agents, or (4) that exclude coverage of liability for injuries or damages caused by Grantee's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.
- f. **Deductible/Self-insurance Retention Amounts.** Grantee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.
- g. **Performance Bond.** On the Effective Date, Grantee shall provide to the City a performance bond or letter of credit in an amount of Thirty Thousand Dollars (\$30,000.00). The bond shall be with an entity and in a form acceptable to the City. The purpose of the bond is to ensure Grantee's performance of all of its obligations under this Contract franchise and for the payment by Grantee of any claims, liens, taxes, liquidated damages, penalties, fees and charges due to the City which arise by reason of the construction, operation, maintenance or removal of Grantee's Facilities.

## **SECTION 7. REVOCATION AND TERMINATION.**

In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the governing body of the City present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the governing body's consideration, and shall have the right to address the governing body regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the governing body to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Leavenworth County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

## **SECTION 8. RESERVATION OF RIGHTS.**

- a. The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.
- b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- c. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances (e.g. the City's right-of-way ordinance referenced in Section 3.b of this Contract franchise), and/or rulings.

## **SECTION 9. FAILURE TO ENFORCE.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

## **SECTION 10. TERM AND TERMINATION DATE.**

a. This Contract franchise shall be effective for a two-year term beginning on the effective date of this Contract franchise. Thereafter, this Contract franchise will automatically renew for up to four additional two (2) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least one hundred and eighty (180) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.

c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.

d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

## **SECTION 11. POINT OF CONTACT AND NOTICES**

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing to the addresses listed below, or to replacement address that may be later designated in writing, and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next



business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

**The City:**

City of Leavenworth  
100 N. 5<sup>th</sup> St  
Leavenworth, KS 66048  
Attn: City Clerk  
913-684-0335

**Grantee:**

Unite Private Networks, LLC  
1511 Baltimore Ave., 2<sup>nd</sup> Floor  
Kansas City, MO 64108  
Attn: Charlene White – V.P. Real Estate  
816-903-9400

**SECTION 12. TRANSFER AND ASSIGNMENT.**

This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, or to an entity with which Grantee is under common ownership or control, upon written notice to the City. In the event of any transfer or assignment of either this Contract franchise or Grantee's business or assets, Grantee shall: timely notify the City of the successor entity; provide a point of contact for the successor entity; and advise the City of the effective date of the transfer or assignment. Additionally, Grantee's obligations under this Contract franchise with regard to indemnity, bonding and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the transfer or assignment.

**SECTION 13. CONFIDENTIALITY.**

Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorneys' fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

**SECTION 14. ACCEPTANCE OF TERMS.**

Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the State of Kansas and such contract shall be deemed effective on the later of the date Grantee files acceptance with the City or publication of this Contract Franchise in accordance with applicable Laws.

**SECTION 15. PAYMENT OF COSTS.**

In accordance with statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

**SECTION 16. SEVERABILITY.**

If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as

a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

**SECTION 17. FORCE MAJEURE.**

Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

PASSED and APPROVED by the Governing Body of the City of Leavenworth, Kansas this 22<sup>nd</sup> day of November, 2022.

\_\_\_\_\_  
Camalla M. Leonhard, Mayor

ATTEST:

\_\_\_\_\_  
Sarah Bodensteiner, CMC, City Clerk

**POLICY REPORT**  
**PUBLIC HEARING ON AND FIRST CONSIDERATION OF AN ORDINANCE**  
**AUTHORIZING THE ISSUANCE OF TAXABLE INDUSTRIAL REVENUE BONDS,**  
**SERIES 2022 (MAPS PROJECT)**

NOVEMBER 22, 2022

  
\_\_\_\_\_  
Sarah Bodensteiner, CMC City Clerk

  
\_\_\_\_\_  
Paul Kramer, City Manager

**ISSUE:**

This action is the final phase of the development project for the MAPS, Inc. commercial building. This project, which began with the Industrial Revenue Bonds Predevelopment Agreement dated June 23, 2021, culminates with the issuance of Industrial Revenue Bonds. 21<sup>st</sup> Century Management, LLC (MAPS Inc.) has advised the City that they are ready to finalize this project and requested issuance of Industrial Revenue Bonds. The Industrial Revenue Bonds are being issued to facilitate the property tax abatement, for 6 years, for the property located at 5001 S 13<sup>th</sup> Street, Leavenworth, Kansas. State statute requires a public hearing as part of the issuance of the Industrial Revenue Bonds. Upon completion of the public hearing, the City Commission is being requested to place on first consideration the following ordinance:

**AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF LEAVENWORTH, KANSAS OF NOT TO EXCEED \$1,500,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2022 (MAPS PROJECT), TO PROVIDE FUNDS TO ACQUIRE, CONSTRUCT AND EQUIP A PROJECT FOR 21<sup>ST</sup> CENTURY MANAGEMENT, LLC, AND AUTHORIZING AND APPROVING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS.**

**BACKGROUND:**

At the July 13, 2021 Regular Meeting the City Commission adopted and approved Resolution B-2285; *"A resolution expressing the intent of the City of Leavenworth, Kansas, to issue its industrial revenue bonds in the maximum principal amount of \$1,500,000 to finance the costs of acquiring, constructing, improving and equipping a commercial facility for the benefit of 21<sup>ST</sup> Century Management, LLC, and its successors and assigns.*

- On July 15, 2021 the City Clerk requested a Project Exemption Certificate (PEC) from the Kansas Department of Revenue for use by 21<sup>st</sup> Century Management for their project. The PEC allows 21<sup>st</sup> Century Management 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 November 12, 2022 in the Leavenworth Times providing notice of the public hearing regarding the granting of an

exemption from ad valorem taxation pursuant to K.S.A. 79-201a in connection with certain properties located within the corporate limits of the City of Leavenworth, Kansas and to be improved by the expenditure of the proceeds of industrial revenue bonds of the City.

**ACTION:**

Hold the public hearing as required by state statute and provide consensus by the Governing Body to place on first consideration.

**ATTACHMENTS:**

- Industrial Revenue Bonds Predevelopment Agreement
- Pilot Calculations
- Resolution B-2285
- Draft Ordinance
- Affidavit of Publication of Public Notice

**INDUSTRIAL REVENUE BONDS  
PREDEVELOPMENT AGREEMENT**

THIS INDUSTRIAL REVENUE BONDS PREDEVELOPMENT AGREEMENT (this "Agreement") is entered into as of the 23rd day of June, 2021 (the "Effective Date"), by and between the **City of Leavenworth, Kansas**, a municipal corporation of the State of Kansas (the "City"), and **21st Century Management, LLC**, a Kansas limited liability company ("Developer"), and their respective successors and assigns (the City and Developer are hereby collectively referred to as the "Parties").

RECITALS

A. Reference is hereby made to that certain real property which is commonly known and numbered as 5001 S. 13th Street, Leavenworth, Kansas 66048 (the "Property"), which Property Developer either owns or will own.

B. Developer is proposing a development project (the "Project") for the Property, generally consisting of new construction for a commercial flex office warehouse building of 10,800 square feet.

C. The City is a municipal corporation and political subdivision duly organized and existing under the laws of the State of Kansas and is authorized and empowered under the provisions of K.S.A. 12-1740 to 12-1749d, inclusive (the "Act"), to issue industrial revenue bonds to pay the cost of constructing or renovating the Project in the City, for the purposes set forth in the Act.

D. The Developer desires to obtain a sales tax exemption on costs of materials included in the Project, and a property tax abatement, and accordingly is now requesting that the City finance the cost of constructing and equipping the Project, or portions thereof, through the issuance of its industrial revenue bonds in one or more series (collectively, the "Bonds"), in accordance with the Act, to be purchased and held by the Developer.

E. In connection with the Project and the Bonds, City must retain outside legal counsel and may be required to retain other consultants and incur out-of-pocket costs (e.g. related to cost-benefit analysis) that are outside the normal administrative and professional expenses provided for in City's annual budget, but City is without a source of funds to pay such outside counsel (including but not limited to the appointed city attorney), consultants, and costs (collectively "City Expenses").

F. The parties desire to enter into this Agreement in order to provide for the payment of City Expenses, and to set forth matters that may be included in any final redevelopment agreement between the Parties.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the City and the Developer agree as follows:

1. IRB Application. As of the Effective Date of this Agreement, the City acknowledges Developer has completed and submitted to the City an IRB application in accordance with the Act and the City's policies, on the appropriate City forms.

2. Services to be Performed by the City. The City will retain administrative and professional staff, outside counsel and consultants, and incur expenses which it, in its sole discretion, deems necessary to:

(a) Consider a proposal and request of the Developer for the City to issue the Bonds in order for Developer to obtain a sales tax exemption on materials incorporated in the Project and a property tax abatement for the Project;

(b) If the City Commission approves the request, prepare and negotiate definitive agreements and proceedings providing for issuance of the Bonds, including but not limited to a final development agreement and, to the extent not covered therein, a payment in lieu of taxes agreement (such definitive agreements may be referred to herein collectively as the "Final Development Agreements") between the Parties for implementation of the Project and the approved Bond incentives (if any); and

(c) If the Parties enter into the Final Redevelopment Agreements, administer the Project and the Bond incentives in accordance therewith;

and the City shall do each of the foregoing, subject to Developer's compliance with this Agreement.

3. Payment of City Expenses. Developer will reimburse and pay the City for the City Expenses incurred following execution of this Agreement, in accordance with the following provisions:

(a) As of the Effective Date of this Agreement, the City acknowledges receipt from Developer of a non-refundable IRB application fee of \$1,500.00

(b) In order to insure the prompt and timely payment of the City Expenses, the Developer will establish a fund (the "Fund") in the amount of Five Thousand Dollars (\$5,000.00) ("Initial Deposit") by paying such amount to the City contemporaneously with the full execution of this Agreement. Notwithstanding the Effective Date, this Agreement shall not be deemed effective unless and until Developer has established the Fund with the Initial Deposit.

(c) On a monthly basis, the City will pay the City Expenses from the Fund and will submit to Developer monthly statements itemizing the City Expenses paid from the Fund during the preceding month.

(d) If the City determines that the total of the City Expenses will exceed the balance in the Fund, the City will submit an itemized statement to the Developer to replenish the Fund so that there is a cash balance available against which additional City Expenses may be applied on a current basis, and Developer will have seven (7) calendar days after such submission to pay the City the amount necessary to replenish the Fund.

(e) If not paid from the Fund, all statements of City Expenses will be payable by Developer within thirty (30) calendar days of Developer's receipt thereof. If Developer does not timely pay the City Expenses or replenish the Fund as set forth above, the City will be relieved of its obligations under this Agreement until the City's expenses are paid or the Fund is replenished, as the case may be.

(f) Any unused portion of the Fund shall be returned to Developer in the event that (i) this Agreement is terminated and all of the City Expenses have been paid in full, or (ii) all of the incentives have been approved and implemented by the City and the Final Redevelopment Agreements have been fully executed and delivered by both parties and all of the City Expenses have been paid in full.

(g) Notwithstanding subparagraph (a) above, all attorneys' fees relating to the redevelopment and financing for the Project reasonably incurred by the City prior to the execution of this Agreement shall be reimbursable out of the Fund.

(h) Notwithstanding anything herein to the contrary, other than the fees and expenses of outside legal counsel retained by the City in accordance with this Agreement, the City Expenses payable by Developer hereunder shall not exceed Five Thousand and 00/100 Dollars (\$5,000.00) without Developer's prior written consent.

4. Basic Terms of Final Redevelopment Agreements. Neither Party is obligated to proceed with the Project or any Bond incentives except as may otherwise be provided in the Final Redevelopment Agreements as to the development of the Project, satisfactory to both parties in their sole and absolute discretion. Although the Parties have not yet negotiated the specific terms of any Final Redevelopment Agreements related to Bond incentives, the Parties presently believe that such terms must necessarily address, at a minimum, the following matters:

(a) Determination of Project. The Parties must agree on the proposed square footages of buildings, the plans and specifications, and the exterior design for the Project, or such other massing and design criteria as mutually-agreed to by the Parties in the Final Redevelopment Agreements.

(b) Performance Criteria. Performance criteria in order for Developer and the Project to remain eligible for Bond incentives and rights and remedies of the City if Developer does not satisfy timely such criteria or if Developer otherwise defaults under the Final Redevelopment Agreements.

(c) Payments in Lieu of Taxes. If any tax abatements are to be approved, the Parties must agree on payments in lieu of taxes (PILOTs) to be paid by Developer.

(d) Agreement on Site Work, Infrastructure and Utilities. The Parties must agree on how site work, utilities, street, intersection, sidewalk and similar improvements, if any, are to be addressed by the Project.

(e) Agreement on Progress Schedule. The Parties must agree on a progress schedule by which the Project will be undertaken and completed.

(f) Zoning Changes. The Parties shall agree as to how any necessary zoning changes will be addressed. Nothing contained within this Agreement, nor any future agreement, shall be deemed to bind the City, acting in its governmental capacity, to make any such zoning changes.

(g) Project Financing. The amount, timing, and criteria for any Bond incentives, and requirements for private financing.

(h) Other Matters. Any Final Redevelopment Agreements will also address any other matters that either Party deems appropriate.

5. Obligations of the Parties to Proceed. The obligation of the Parties to proceed beyond this Agreement is dependent upon the Parties entering into all Final Redevelopment Agreements prior to the termination of this Agreement. Nothing contained herein shall: (i) obligate the City to create or approve the Project; (ii) obligate the City to approve or provide any incentives or approve the issuance of the Bonds; (iii) obligate either party to enter into any Final Redevelopment Agreements; or (iv) obligate the Developer to commence or complete all or any portion of the Project.

6. Default. Whenever any event of default by Developer shall have occurred under this Agreement and continued for a period of thirty (30) days following Developer's receipt of written notice from City specifying such default and requiring it be remedied, the City may take any one or more of the following remedial steps: (a) refuse to consider or schedule for consideration or approval any applications for the Bonds or other incentives submitted by Developer; (b) pursue an action to specifically perform the terms and provisions of this Agreement; or (c) terminate this Agreement. Whenever any event of default by City shall have occurred under this Agreement and continued for a period of thirty (30) days following City's receipt of written notice from Developer specifying such default and requiring it be remedied, the Developer may take any one or more of the following remedial steps: (a) pursue an action to specifically perform the terms and provisions of this Agreement; or (b) terminate this Agreement. In case a lawsuit shall be brought because of the breach or alleged breach of any agreement or obligation contained in this Agreement on the part of either party to be kept or performed, the prevailing party shall be entitled to recover its reasonable attorneys' fees and expenses in connection with such lawsuit.

7. Miscellaneous.

(a) Costs. Except as otherwise provided in this Agreement with regard to the City Expenses, each Party shall be solely responsible for all costs and expenses incurred by such Party in connection with the matters contemplated by this Agreement. Developer will pay to the City all plan review and similar fees of general applicability required by City ordinance; however, Developer understands that payment of such fees does not ensure approval of the Project or any of the Bond incentives. Some costs may be reimbursable pursuant to the terms of any Final Redevelopment Agreement.

(b) Assignability. Neither party may assign this Agreement without the written consent of the other Party, such consent not to be unreasonably withheld by the City; provided, however, that the foregoing restriction on assignment shall not apply to, and City consent shall not be required for, any of the following, so long as Developer provides the City with prior written notice of the same: (i) collateral assignments of all or a portion of Developer's rights hereunder for financing purposes; (ii) transfers or assignments to any subsidiary or affiliate which is owned or controlled by Developer or one or more of its principals, or to any entity which is owned or controlled, directly or indirectly, by Developer or one or more of its principals; or (iii) transfer or sale of all or a portion of the underlying real property to a third party, provided that any such sale or transfer shall not relieve Developer of any obligation hereunder unless and until the City voluntarily agrees to release Developer from the same.



(c) Amendments. This Agreement may be supplemented or amended only by written instrument executed by both Parties.

(d) Applicable Law. This Agreement shall be deemed to be entered into in the state of Kansas, and shall be enforceable under the laws of that state.

(e) Binding Effect. This Agreement will inure to the benefit of, and be binding upon, the Parties and the permitted successors and assigns of the Parties.

(f) Non-liability of City Officials and Employees. No member of the governing body, official, or employee of the City will be personally liable to Developer, or any successor in interest to Developer, pursuant to the provisions of this Agreement, or for any default or breach of this Agreement by the City.

(g) Not a Partnership. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

(h) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same agreement. Hand signatures transmitted by electronic mail in PDF or similar format shall also constitute binding signatures to this Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the Effective Date

**CITY:**

**CITY OF LEAVENWORTH, KANSAS**

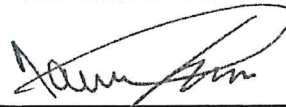
By: \_\_\_\_\_

Paul Kramer  
City Manager

**DEVELOPER:**

**21ST CENTURY MANAGEMENT, LLC**

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



Darrell W. Yoder  
President and CEO

**PILOT CALCULATIONS**  
**Propsoed Flex Office / Warehouse**  
**5001 S 13th St, Leavenworth, KS**

**Property Tax Comp**

Address	4851 S 13th St, Leavenworth, KS	
Sq. Ft.		10,000
2021 Appraised	\$	423,690
2021 Appraised Per Sq. Ft.	\$	42

**Property Tax Projection**

Address	5001 S 13th St, Leavenworth, KS	
Sq. Ft.		10,800
Appraised Per Sq. Ft.	\$	42
Appraised Value	\$	453,600
Assessment Rate		25%
Assessed Value	\$	113,400
Total Property Tax Rate		129.217
Property Tax Rate NOT Subject to IRB		8.000
Net Property Tax Rate for IRB		121.217

**Year 1 PILOT Projections**

Total Property Taxes	\$	14,653
Property Taxes NOT Subject to IRB	\$	907
Property Taxes Subject to IRB	\$	13,746
Abatement Percentage		60%
PILOT	\$	5,498
Annual Growth Rate		1.0%

**6-Year PILOT Schedule**

1	\$	5,498
2	\$	5,553
3	\$	5,609
4	\$	5,665
5	\$	5,722
6	\$	5,779

**RESOLUTION NO. B-2285**

**A RESOLUTION EXPRESSING THE INTENT OF THE CITY OF LEAVENWORTH, KANSAS TO ISSUE ITS INDUSTRIAL REVENUE BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF APPROXIMATELY \$1,500,000 TO FINANCE THE COSTS OF ACQUIRING, CONSTRUCTING, IMPROVING AND EQUIPPING A COMMERCIAL FACILITY FOR THE BENEFIT OF 21ST CENTURY MANAGEMENT, LLC, AND ITS SUCCESSORS AND ASSIGNS**

**WHEREAS**, the City of Leavenworth, Kansas (the "City"), desires to promote, stimulate and develop the general welfare and economic prosperity of the City and its inhabitants and thereby to further promote, stimulate and develop the general welfare and economic prosperity of the State of Kansas (the "State"); and

**WHEREAS**, this Resolution of Intent (this "Resolution") is intended to constitute a non-binding declaration of the official intent of the City to issue the Bonds (hereinafter defined) subject to the terms and conditions hereof, the adoption of an ordinance authorizing such issuance, and compliance with other state law requirements; and

**WHEREAS**, the City is authorized and empowered under the provisions of K.S.A. 12-1740 to 12-1749d, inclusive (the "Act"), to issue industrial revenue bonds to pay the cost of certain facilities (as defined in the Act) for the purposes set forth in the Act, and to lease such facilities to private persons, firms or corporations; and

**WHEREAS**, 21ST CENTURY MANAGEMENT, LLC, a Kansas limited liability company (including any successors or assigns, the "Company"), has submitted to the City an application for the issuance of Industrial Revenue Bonds requesting that the City finance the cost of acquiring, constructing and equipping a commercial facility located generally at or about 5001 S 13<sup>th</sup> Street in the City (collectively, the "Project") through the issuance of its industrial revenue bonds in one or more series in the maximum principal amount of approximately \$1,500,000 (the "Bonds"), and to lease the Project to the Company, or its successors and assigns, in accordance with the Act; and

**WHEREAS**, it is hereby found and determined to be advisable and in the interest and for the welfare of the City and its inhabitants that the City finance the costs of the Project by the issuance of the Bonds under the Act in the maximum principal amount of approximately \$1,500,000, said Bonds to be payable solely out of rentals, revenues and receipts derived from the lease of the Project by the City to the Company.

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

**Section 1. Approval of Project.** The governing body of the City hereby finds and determines that the acquiring, constructing, improving and equipping of the Project will promote the general welfare and economic prosperity of the City, and the issuance of the Bonds to pay the costs of the Project will be in furtherance of the public purposes set forth in the Act. The Project shall be generally located at or about 5001 S 13<sup>th</sup> Street in the City.

**Section 2. Intent to Issue Bonds.** The governing body of the City hereby determines and declares the intent of the City to acquire, construct and equip the Project out of the proceeds of the Bonds of the City in the maximum principal amount of approximately \$1,500,000, to be issued pursuant to the Act.

**Section 3. Ad Valorem Tax Abatement.** In consideration of the Company's decision to acquire, construct, improve and equip the Project, the City hereby agrees to take all appropriate action to (i) request the Kansas Board of Tax Appeals to approve a 100% ad valorem property tax abatement (not including special assessments and taxes that cannot be abated by the City under Kansas law, including the school district's capital outlay levy) for all property (including real property, building improvements, machinery and equipment) financed with the proceeds of the Bonds, and (ii) file with the Kansas Department of Revenue an application for an exemption from sales tax for materials financed with the proceeds of the Bonds.

In consideration of the City's agreement to request such 100% abatement, the Company will agree to make payments in lieu of tax as set forth on **Exhibit A** hereto. The Project shall be entitled to a 6-year tax abatement, with the first year of the abatement being the year beginning on the January 1 following the year the Bonds are issued.

**Section 4. Provision for the Bonds.** Subject to the conditions of this Resolution, the City expresses its intent to (i) issue the Bonds to pay the costs of acquiring, constructing, improving and equipping the Project, with such maturities, interest rates, redemption terms and other provisions as may be reasonably acceptable to the Company and determined by ordinance of the City (the "Ordinance"); (ii) provide for the lease (with an option to purchase) of the Project to the Company; and (iii) to effect the foregoing, adopt such resolutions and ordinances and authorize the execution and delivery of such instruments and the taking of such action as may be necessary or advisable for the authorization and issuance of the Bonds by the City and take or cause to be taken such other action as may be required to implement the aforesaid.

**Section 5. Conditions to Issuance.** The issuance of the Bonds and the execution and delivery of any documents related to the Bonds are subject to: (i) obtaining any necessary governmental approvals; (ii) agreement by the City, the Company and the purchaser of the Bonds upon (a) mutually acceptable terms for the Bonds and for the sale and delivery thereof, and (b) mutually acceptable terms and conditions of any documents related to the issuance of the Bonds and the Project; (iii) the passage and publication of an Ordinance authorizing the issuance of the Bonds; and (iv) Company's payment of all of the costs of issuance related to the issuance of the Bonds. Kansas law provides that the City may only issue the Bonds by passage of an ordinance and compliance with other state law requirements. The City has not yet passed such an ordinance for the Bonds. This Resolution evidences the intent of the current governing body to issue the Bonds for the Project. The Company should not construe adoption of this Resolution as a guarantee that the ordinance for the Bonds will be passed.

**Section 6. Sale of the Bonds.** The sale of the Bonds shall be the sole responsibility of the Company; provided, however, arrangements for the sale of the Bonds shall be reasonably acceptable to the City.

**Section 7. Limited Obligations of the City.** The Bonds and the interest thereon shall be special, limited obligations of the City payable solely out of the amounts derived by the City under a lease agreement with respect to the Bonds (the "Lease") and as provided herein and are secured by a transfer, pledge and assignment of and a grant of a security interest in the trust estate to the trustee for the Bonds and in favor of the owners of the Bonds, all as provided in the trust indenture to be entered into between the City and the trustee for the Bonds (the "Indenture"). The Bonds shall not constitute a general obligation of the City, the State or of any other 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, the State or of any other political subdivision thereof and shall not be payable in any manner by taxation, but shall be payable solely from the funds provided for as provided in the Lease and the Indenture. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City, the State or any other political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment.

**Section 8. Authorization to Proceed.** The Company is hereby authorized to proceed with the acquiring, constructing and equipping of the Project, including the necessary planning and engineering for the Project and entering into of contracts and purchase orders in connection therewith, and to advance such funds as may be necessary to accomplish such purposes, and, to the extent permitted by law and upon compliance with the other requirements of this Resolution, the City will reimburse the Company for all expenditures paid or incurred therefor out of the proceeds of the Bonds.

**Section 9. Benefit of Resolution.** This Resolution will inure to the benefit of the City and the Company. Subject to the City's prior written consent, which it will not be unreasonably withheld, or as otherwise provided in the development agreement to be entered into between the City and the Company, the Company may assign all or a portion of the Company's interest in this Resolution to another entity, and such assignee will be entitled to the benefits of the portion of this Resolution assigned and the proceedings related hereto.

**Section 10. Further Action.** Counsel to the City and Nichols and Wolfe Chartered, Bond Counsel for the City, together with the officers and employees of the City, are hereby authorized to work with the purchaser of the Bonds, the Company, their respective counsel and others, to prepare for submission to and final action by the City all documents necessary to effect the authorization, issuance and sale of the Bonds and other actions contemplated hereunder.

**Section 11. Effective Date.** This Resolution shall take effect and be in full force immediately upon its adoption by the governing body of the City.

[Remainder of page intentionally blank.]

ADOPTED by the Governing body of the City of Leavenworth, Kansas this 13<sup>th</sup> day of July 2021.



Attest:

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

By: Nancy D. Bauder  
Nancy D. Bauder, Mayor

**EXHIBIT A**

**PAYMENT IN LIEU OF TAX SCHEDULE**

<b>Year</b>	<b>PILOT</b>
1	\$ 5,498
2	\$ 5,553
3	\$ 5,609
4	\$ 5,665
5	\$ 5,722
6	\$ 5,779

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

**AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF LEAVENWORTH, KANSAS, OF NOT TO EXCEED \$1,500,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2022 (MAPS PROJECT), TO PROVIDE FUNDS TO ACQUIRE, CONSTRUCT AND EQUIP A PROJECT FOR 21ST CENTURY MANAGEMENT, LLC, 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 12-1749d, 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 purchasing, 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 2022 (MAPS Project), in an aggregate principal amount not to exceed \$1,500,000 (the “Bonds”) for the purpose of providing funds to 21st Century Management, LLC, a Kansas limited liability company (together with its successors and assigns, the “Company”) to (a) acquire certain real property, do sitework, and acquire, construct, equip and furnish a commercial flex office warehouse building together with all other facilities, improvements, and things necessary and incidental thereto, located generally at 5001 S. 13th Street in the City of Leavenworth, Kansas, and (b) pay certain costs of issuance, all as further described in the hereinafter referred to Bond Indenture and Lease Agreement; and

**WHEREAS**, the Issuer has in accordance with K.S.A. 12-1749c heretofore notified the unified school district within which the Project site is located that the Issuer intends to grant an ad valorem tax abatement for property to be financed with the proceeds of the Bonds; and

**WHEREAS**, the Issuer’s resolution of intent, Resolution No. B-2285, adopted July 13, 2021, (the “Resolution”) expresses the Issuer’s intent to take all appropriate action to request the Kansas Board of Tax Appeals approve a 100% ad valorem tax abatement, conditioned on (among other things) obtaining necessary governmental approvals and entering into an agreement for ad valorem tax abatement for the property to be financed with the Bonds; and

**WHEREAS**, the Lease Agreement (defined herein) constitutes such an agreement; and

**WHEREAS**, by the adoption of this Ordinance, the Issuer desires to approve the Resolution as an inducement resolution or letter of intent; and

**WHEREAS**, the Issuer has, in accordance with K.S.A. 12-1749d, (a) prepared an analysis of the costs and benefits of its proposed ad valorem tax exemption in connection with the Project on revenues of the State of Kansas, (b) conducted a public hearing on granting the proposed tax exemption after having given notice thereof published in the official newspaper of the Issuer at least once seven (7) days prior to such



hearing, and (c) notified the governing body of any city or county and unified school district within which the Project property proposed for exemption is located; and

**WHEREAS**, the Company has certified and affirmed that it is not a retailer as defined in K.S.A. 79-3602, as amended; 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 Security Bank of Kansas City, Kansas City, 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 and equipped and 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 Issuer's Resolution expressing the Issuer's intent to issue the Bonds is, in accordance with K.S.A. 12-1749c, hereby approved;
- (c) 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
- (d) 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 \$1,500,000, 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 an interest rate and be payable at such times, and 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 December, 2022.

**CITY OF LEAVENWORTH, KANSAS**

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Mayor

(Seal)

ATTEST:

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Sarah Bodensteiner, City Clerk

[SUMMARY ORDINANCE FOR PUBLICATION]

(PUBLISHED IN *The Leavenworth Times* ON December \_\_\_\_, 2022)

**SUMMARY OF ORDINANCE NO. XXXX**

On December 13, 2022, 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 \$1,500,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2022 (MAPS PROJECT), TO PROVIDE FUNDS TO ACQUIRE, CONSTRUCT AND EQUIP A PROJECT FOR 21ST CENTURY MANAGEMENT, LLC, 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 \$1,500,000 for the purpose providing funds to 21st Century Management, LLC, a Kansas limited liability company to acquire certain real property, do sitework, and acquire, construct, equip and furnish a commercial flex office warehouse building together with all other facilities, improvements, and things necessary and incidental thereto, located generally at 5001 S. 13th Street in the City of Leavenworth, Kansas, and pay 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 21st Century Management, LLC, 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 N. 5th Street. A reproduction of the original ordinance is available on the City's official website [www.leavenworthks.org](http://www.leavenworthks.org) for a minimum of one week following the publication date of this Summary in the City's official newspaper.

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: December 13, 2022.

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David Waters, City Attorney

# Leavenworth Times Affidavit of Publication

NOTICE OF PUBLIC HEARING 116922 F

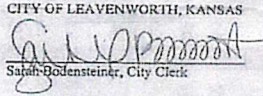
NOTICE is hereby given in accordance with the requirements of K.S.A. 12-1749d that the City Commission as the governing body of the City of Leavenworth, Kansas, (the "City") will hold a public hearing at 6:00 o'clock P.M., on Tuesday, November 22, 2022, or as soon thereafter as the matter may be heard, at City Hall, 100 North 5th Street in the City of Leavenworth, Kansas, regarding the granting of an exemption from ad valorem taxation pursuant to K.S.A. 79-201a Second, as amended, to 21st Century Management, LLC, a Kansas limited liability company ("21st Century Management") in connection with certain properties located within the corporate limits of the City of Leavenworth, Kansas, and to be improved (the "Project") by the expenditure of the proceeds of industrial revenue bonds of the City (the "Bonds"). In accordance with the requirements of K.S.A. 12-1749d, an analysis of the costs and benefits of such ad valorem tax exemption has been prepared, or shall do so prior to the hearing, by the City. Following completion of the hearing which is the subject of this notice, the City intends to consider the adoption of an Ordinance to both authorize the issuance of the Bonds in the maximum principal amount of \$1,500,000 and enter into a lease or lease-purchase agreement(s) for the Project with 21st Century Management, subject to compliance with other legal conditions applicable to the issuance of the Bonds. A copy of the City's Resolution of Intent regarding the City's intent to issue the Bonds is on file in the office of the City Clerk and will be available for public inspection during the regular business hours of the City.

DATED this 9th day of November, 2022.



(SEAL) CITY OF LEAVENWORTH, KANSAS  
CORPORATE SEAL

CITY OF LEAVENWORTH, KANSAS



Sarah Rodensteiner, City Clerk

(This notice shall be published at least once seven (7) days prior to the date of the hearing.)  
Published in the Leavenworth Times, November 12, 2022

I, Tammy Lawson, of lawful age, being first duly sworn on oath, states, that she 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 at 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 12<sup>th</sup> day of November, 2022.

WITNESS my hand this 14th day of November, 2022.

Tammy Lawson  
Legal Representative

Subscribe and sworn before me, this 14 day of Nov., 2022.

Rebecca A. Broom  
Notary Public

My Commission Expires: 6/7/23

REBECCA A. BROOM  
Notary Public - State of Kansas  
My Appt. Expires 6/7/23

**MAYOR'S APPOINTMENTS**

**NOVEMBER 22, 2022**

**Mayor Leonhard**

*"Move to*

*Appoint to the **Convention & Tourism Committee** Danny La Gore to an unexpired term ending January 31, 2025;*

*Appoint to the **Temporary Leavenworth Transit Advisory Committee** Allen Barnes, Kelly Butler, and Linda Johnson to terms ending July 30, 2024"*

**Requires a second and vote by the Governing Body.**

**Policy Report**  
**Cancellation of Outstanding City Checks**  
**November 22, 2022**

Prepared by:



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Roberta Beier  
Finance Director

Approved by:



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Paul Kramer  
City Manager

**Issue:**

According to KSA 10-816a, checks that remain outstanding after a period of two years of issuance may be canceled by the City Commission. The City has a total of 46 checks in the amount of \$4,566,76 that remain outstanding after two years of issuance (see attached listing).

**Recommendation:**

It is recommended that the City Commission cancel checks that remain outstanding after two years of issuance and that these balances, in accordance with KSA 10-816c, revert back to the City Fund upon which such checks were drawn.

**Background:**

It is appropriate to cancel outstanding checks after two years. After cancellation by the City Commission, if a check is presented for payment, the Finance Department will honor the obligation and issue a new check.

The funds revert back to the original City Fund upon which they were drawn.

City of Leavenworth  
 Uncleared Checks > Two Years Old as of November 22, 2022  
 November 22, 2022

Check Number	Check Date	Payee	Check Amount
290029490	03/03/2020	AMBER-RAE MOORE	\$ 8.00
290030757	07/01/2020	AMBER-RAE MOORE	\$ 8.00
290031143	08/03/2020	AMBER-RAE MOORE	\$ 8.00
290031400	09/01/2020	AMBER-RAE MOORE	\$ 8.00
290031678	10/01/2020	AMBER-RAE MOORE	\$ 8.00
290031980	11/02/2020	AMBER-RAE MOORE	\$ 8.00
290029752	03/27/2020	Andrea Sladky	\$ 25.00
290031409	09/01/2020	BART ERWIN	\$ 54.00
290030280	05/15/2020	Breanne Johnson	\$ 50.00
290028561	12/06/2019	CHANTEL COATES	\$ 96.00
290030812	07/06/2020	CHANTEL COATES	\$ 4.00
290031460	09/04/2020	CHANTEL COATES	\$ 42.00
290032075	11/09/2020	CHANTEL COATES	\$ 80.00
290031799	10/12/2020	CLAYTON STOLLENWERK	\$ 54.00
290029660	03/20/2020	Cole Burns	\$ 40.00
290028324	11/22/2019	Daniel Vasquez	\$ 100.00
290032066	11/09/2020	DARRIN MANNA	\$ 11.52
290029843	04/01/2020	DEJESUS, ANA	\$ 29.00
290029210	02/07/2020	Dwayne O. Berry	\$ 20.00
290030146	05/01/2020	JACQUELYN JACKSON	\$ 8.00
290030738	07/01/2020	JACQUELYN JACKSON	\$ 8.00
290031122	08/03/2020	JACQUELYN JACKSON	\$ 8.00
290031966	11/02/2020	JACQUELYN JACKSON	\$ 12.00
290031857	10/26/2020	Jaime Scott	\$ 100.00
290030083	05/01/2020	Jennifer Boal	\$ 100.00
290030886	07/17/2020	Jordan Green	\$ 5.78
290029683	03/20/2020	Karolyn Taylor	\$ 10.00
290030140	05/01/2020	LEE II, DAVID	\$ 56.00
290028493	12/02/2019	LSF8 MASTER PARTICIPATION TRUST	\$ 489.00
290029691	03/20/2020	Marco Goodman	\$ 10.00
290031318	08/28/2020	Mary Hutchison	\$ 5.00
290031273	08/21/2020	Mason James Taylor	\$ 20.00
290031225	08/14/2020	Michael Thompson	\$ 1.00
290031435	09/04/2020	Sarah Hiatt	\$ 100.00
290028806	01/02/2020	SCOTT LATESSA	\$ 54.00
290031391	09/01/2020	SCOTT LATESSA	\$ 324.00
290031669	10/01/2020	SCOTT LATESSA	\$ 54.00
290031971	11/02/2020	SCOTT LATESSA	\$ 54.00
290029297	02/13/2020	SEBER, CLAY	\$ 81.98
290031732	10/05/2020	SEBER, CLAY	\$ 54.56
290028738	12/31/2019	Sue Ludwikoski	\$ 7.92
290030994	07/24/2020	SUPERIOR LAWN CARE & SNOW REMOVAL LLC	\$ 1,697.25
290031320	08/28/2020	Tiffany Pheral	\$ 300.00
290031408	09/01/2020	TRAVIS SIPES	\$ 70.00
290029188	02/03/2020	VANESSA ENRIQUEZ	\$ 45.00
290029586	03/13/2020	William H. Wigley	\$ 237.75
<b>49 Total Checks</b>			<b>\$ 4,566.76</b>



**POLICY REPORT  
RESOLUTION B-2324  
TO AUTHORIZE SERVING COMPLIMENTARY (FREE) ALCOHOLIC LIQUOR  
LEAVENWORTH MAIN STREET PROGRAM ALIVE AFTER FIVE EVENTS**

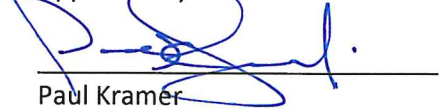
**NOVEMBER 22, 2022**

Prepared by:



Sarah Bodensteiner, CMC  
City Clerk

Approved by:



Paul Kramer  
City Manager

**ISSUE:**

To consider a resolution to authorize serving complimentary (free) alcoholic liquor or cereal malt beverages to members of the general public during the "Alive After Five Events" to be held at various businesses as sponsored by Leavenworth Main Street Program from January 1, 2023 through December 31, 2023.

**BACKGROUND:**

State statute K.S.A. 41-104 allows authorization to serve complimentary (free) alcoholic liquor or cereal malt beverages to members of the general public on the unlicensed premises of businesses by the business owner or owner's agent. Leavenworth Main Street Program which is a non-profit 501©3 organization is sponsoring the "Alive After Five Events" to be held on the first Thursday of each month between the hours of 4:00 p.m. to 10:00 p.m. commencing on January 1, 2023 through December 31, 2023.

The Leavenworth Main Street Program would strictly control the activity. Should the City Commission agree with this request, the governing body must approve a resolution authorizing the event as required by Alcoholic Beverage Control Division Form ABC-865.

**ACTION:**

Approve Resolution B-2324 as presented.

**ATTACHMENT:**

- Resolution B-2324

**RESOLUTION B-2324**

**WHEREAS**, the City of Leavenworth, Kansas authorizes serving complimentary (free) alcoholic liquor or cereal malt beverages to members of the general public during the “Alive After Five Events” to be held at various businesses as sponsored by Leavenworth Main Street Program from January 1, 2023 through December 31, 2023.

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

**Section 1.** Pursuant to K.S.A. 41-104, authorization is hereby given to serve complimentary (free) alcoholic liquor or cereal malt beverages to members of the general public on the unlicensed premises of businesses by the business owner or owner's agent at the “Alive After Five Events” sponsored by Leavenworth Main Street Program which is a non-profit 501©3 organization, to be held on the first Thursday of each month between the hours of 4:00 p.m. to 10:00 p.m. commencing on January 1, 2023 through December 31, 2024.

**Section 2.** Leavenworth Main Street Program shall not be required to obtain a Temporary Permit, falling under the “Fundraising” category wherein:

- The alcoholic drinks served must be complimentary.
- The event at which the alcoholic liquor is served must be an official fundraising event of the organization or the event must be sponsored by either a charitable organization or by a candidate, party or political committee.

**Section 3.** That this resolution shall be effective upon its passage.

**PASSED AND APPROVED** by the Governing Body this 22nd day of November 2022.

**CITY OF LEAVENWORTH, KANSAS**

\_\_\_\_\_  
Camalla M. Leonhard, Mayor

{SEAL}

ATTEST:

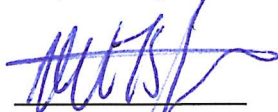
\_\_\_\_\_  
Sarah Bodensteiner, CMC, City Clerk

POLICY REPORT PWD NO. 22-52

CONSIDER BIDS FOR THE BRIDGE SCOUR REPAIRS  
City Project 2021-974

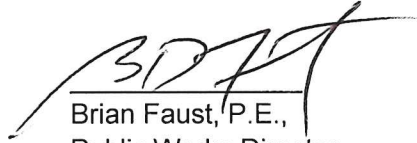
November 22, 2022

Prepared By:



Michael Stephan,  
Project Manager

Reviewed By:



Brian Faust, P.E.,  
Public Works Director

Approved By:



Paul Kramer,  
City Manager

**ISSUE:**

Consider bids received for the Bridge Scour Repairs Project.

**BACKGROUND:**

The bridge scour repairs for the 20th Street & Broadway Bridges over Three-Mile Creek were identified during our Biennial Bridge Inspection Program. Repairs in and around bridges are critical to maintain the integrity of the structure. Erosive action, over time, can remove material from around bridge abutments that can compromise the structure. Scour is one the leading causes of bridge failures in the US.

Bids were opened on November 2nd with the results listed below:

Company	Bid Total
Linaweaver Construction	\$89,700
Lexeco, Inc.	\$124,235
Engineer's Estimate	\$72,640

Linaweaver Construction is an established local contractor that has done numerous jobs for the City.

**BUDGET IMPACT:**

The 2022 – 2026 CIP included \$30,000 for the 20th Street over Three-Mile Creek Bridge and \$20,000 for the Broadway Street over Three-Mile Creek Bridge Scour Repairs. These Scour Repairs are funded through the Streets Capital Project Fund. The cost of fuel, materials and labor has continued to increase over the past year, thus proposed bids came in higher than expected. Funding for the difference (\$39,700) will be from the Streets Capital Reserve Funds.

**STAFF RECOMMENDATION:**

Staff recommends that the City Commission accept the low bid received from Linaweaver Construction in the amount of \$89,700 for the Bridge Scour Repairs.

**POLICY:**

The City Commission generally awards a contract to the lowest bidder if the bid is less than the Engineer's estimate and whose evaluation by the City indicates that the award will be in the best interest of the City. Staff does not feel rebidding the project will benefit the City.

**ATTACHMENTS:**

- Bid Tabulation
- CIP Budget Statements
- Engineer's Estimate



**CITY OF LEAVENWORTH**  
**Project No. 2021-974**  
**Bridge Scour Repairs**  
**November 2, 2022**

<b>BASE BID</b>				<b>Engineer's Estimate</b>		<b>LINAWEAVER</b>		<b>LEXECO</b>	
<b>Item</b>	<b>Description</b>	<b>Unit</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Extension</b>	<b>Unit Price</b>	<b>Extension</b>	<b>Unit Price</b>	<b>Extension</b>
1	Mobilization (2 Sites)	LS	1	\$10,500.00	\$10,500.00	\$15,000.00	\$15,000.00	\$12,400.00	\$12,400.00
2	Clearing & Grubbing	LS	1	\$4,000.00	\$4,000.00	\$25,000.00	\$25,000.00	\$17,000.00	\$17,000.00
3	Rubbelize Existing Concrete Slope Protection	LS	1	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$5,000.00	\$5,000.00
4	Install 500 lb. Min. Rip Rap (Avg. Dia. 12")	CY	20	\$65.00	\$1,300.00	\$200.00	\$4,000.00	\$220.00	\$4,400.00
5	Install 1000 lb. Min. Rip Rap (Avg. Dia. 24")	CY	70	\$100.00	\$7,000.00	\$150.00	\$10,500.00	\$260.00	\$18,200.00
6	Flowable Fill (NON-DIGGABLE)	CY	68	\$280.00	\$19,040.00	\$150.00	\$10,200.00	\$570.00	\$38,760.00
7	Erosion Control	LS	1	\$2,000.00	\$2,000.00	\$5,000.00	\$5,000.00	\$4,000.00	\$4,000.00
8	Traffic Control	LS	1	\$3,500.00	\$3,500.00	\$5,000.00	\$5,000.00	\$4,000.00	\$4,000.00
9	Site Regrading, Restoration & Seeding	LS	1	\$15,300.00	\$15,300.00	\$5,000.00	\$5,000.00	\$20,475.00	\$20,475.00
				<b>TOTAL BASE BID:</b>	<b>\$72,640.00</b>		<b>\$89,700.00</b>		<b>\$124,235.00</b>

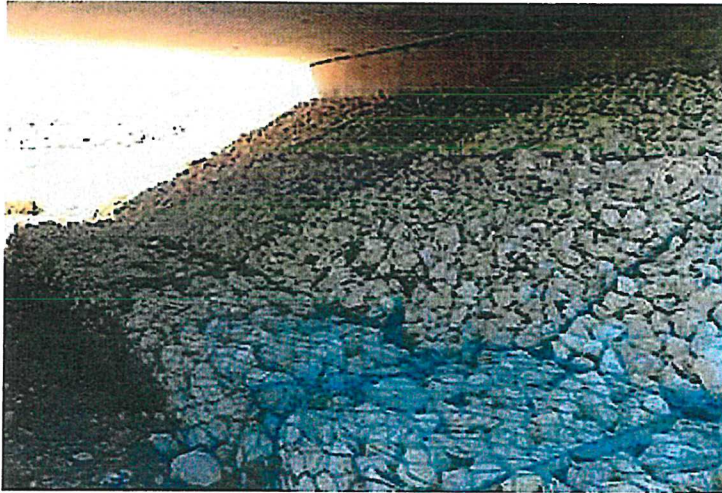
**Capital Improvements Program  
2022-2026  
FFE & Infrastructure - 20th St Over Three Mile Creek Bridge**

**Purpose:** This provides funds to install additional riprap under the bridge and outfall slab to prevent additional erosion of the bank and undermining of the bridge.

**Impact on Operating Budget:** The installation of riprap is funded by the Streets Capital Project Fund and, therefore, does not impact the operating budget. The riprap installation will reduce maintenance and repair expenses in future years.

Source	Comments	Year	Requested	Projected
Streets Capital Project Fund		2022	\$ 40,000	\$ 30,000
		2023	-	-
		2024	-	-
		2025	-	-
		2026	-	-

Uses	Comments	Year	Requested	Projected
Construction		2022	\$ 40,000	\$ 30,000
		2023	-	-
		2024	-	-
		2025	-	-
		2026	-	-



The City places riprap under bridges to protect the structure from erosion

**Capital Improvements Program  
2022-2026  
FFE & Infrastructure - Broadway St Over Three Mile Creek Bridge**

**Purpose:** This provides funds to install additional riprap under the bridge and outfall slab to prevent additional erosion of the bank and undermining of the bridge.

**Impact on Operating Budget:** The installation of riprap is funded by the Streets Capital Project Fund and, therefore, does not impact the operating budget. The riprap installation will reduce maintenance and repair expenses in future years.

Source	Comments	Year	Requested	Projected
Streets Capital Project Fund		2022	\$ 20,000	\$ 20,000
		2023	-	-
		2024	-	-
		2025	-	-
		2026	-	-
			<b>\$ 20,000</b>	<b>\$ 20,000</b>

Uses	Year	Requested	Projected
Construction	2022	\$ 20,000	\$ 20,000
	2023	-	-
	2024	-	-
	2025	-	-
	2026	-	-
		<b>\$ 20,000</b>	<b>\$ 20,000</b>



The City places riprap under bridges to protect the structure from erosion

**NAPIER  
ENGINEERING, LLC**

207 South 5th Street  
Leavenworth, KS 66048

October 26, 2022

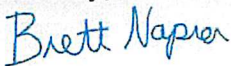
City of Leavenworth  
Attn: Brian Faust, P.E.  
100 North 5<sup>th</sup> Street  
Leavenworth, KS 66048

**RE: Bridge Abutment Improvements  
Leavenworth, KS 66048  
Project No. 2021-974  
Engineer's Opinion of Probable Cost**

ITEM DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL
Mobilization	LS	1	\$10,500	\$10,500
Clearing & Grubbing	LS	1	\$4,000	\$4,000
Rubbelize Existing Concrete Slope Protection	LS	1	\$10,000	\$10,000
Install 500 lb. Min. Rip Rap (Avg. Dia. 12")	CY	20	\$65	\$1,300
Install 1000 lb. Min. Rip Rap (Avg. Dia. 24")	CY	70	\$100	\$7,000
Flowable Fill (NON-DIGGABLE)	CY	68	\$280	\$19,000
Erosion Control	LS	1	\$2,000	\$2,000
Traffic Control	LS	1	\$3,500	\$3,500
Site Regrading, Restoration & Seeding	LS	1	\$15,300	\$15,300
<b>TOTAL PROJECT COST</b>				<b>\$72,640</b>
<b>Company Name: Engineer's Opinion of Probable Cost</b>				

Please feel free to call me at (913) 375-0482 if you have additional questions.

Sincerely,



Brett A. Napier, P.E.

POLICY REPORT PWD NO. 22-53

AIRPORT FUEL SYSTEM REPLACEMENT  
SUPPLEMENTAL AGREEMENT No. 1 – PROJECT AV-2022-16

November 22, 2022

Prepared By:

Reviewed By:

  
Brian Faust  
Director of Public Works

  
Paul Kramer  
City Manager

**BACKGROUND:**

In June of 2021, the Commission approved a sole source contract with Hoidale to upgrade the Sherman Army Airfield fuel dispenser. A copy of the June 2021 policy report is attached. At that time, the city had received a bid from Hoidale for \$38,357.52 for this work. From the June policy report:

*The Kansas Department of Transportation (KDOT) awarded a grant through the Kansas Airport Improvement Program (KAIP) funds to the City. The 90% matching grant will provide up to \$35,550 for the project with a total estimated project cost reported on the grant of \$39,500. In addition to the fuel system replacement, a limited amount of concrete work at the site will also need to be completed. The grant has a time limit of 120 days from the contract date to complete the work.*

*Aircraft fuel systems are highly specialized and a bid from Hoidale was received in late 2019. The bid was since updated with a total cost of \$38,357.52 for replacement of the fuel system. As this is a specialized product and service, staff has identified this as a sole source bid.*

In addition to the upgrades to the fuel system, significant electrical upgrades were required to bring the fuel system into compliance with current code. The cost for the electric work was over \$15K and was not included in the original request to KDOT. When submitting the application for the 90% reimbursement, staff included the actual total project cost with both the fuel system and electrical upgrades. The requested reimbursement was based on the previously approved estimated cost of \$39,500. Total actual cost was: \$53,973.35.

After the city submitted the reimbursement request, KDOT notified the city that we could request additional funding through the program. The attached Supplemental Agreement No. 1, increases the amount of reimbursement the city will receive from \$35,550.00 to \$48,576.10.

**RECOMMENDATION:**

Staff recommends that Supplemental Agreement No. 1 with KDOT for Project AV-2022-16 be approved and authorize the Mayor to sign.

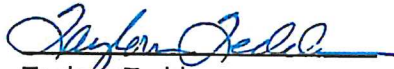
**ATTACHMENTS:**

1. Policy Report June 8, 2021
2. Airport Preservation Agreement – Supplemental Agreement No. 1 (AV-2022-16)



**Policy Report**  
**Airport Fuel System Replacement**  
**June 8, 2021**

Prepared By:



Taylour Tedder  
Assistant City Manager

Reviewed By:



Paul Kramer  
City Manager

**BACKGROUND:**

The City's fuel dispenser system at Sherman Army Airfield was damaged beyond repair by flooding in 2019 and has remained damaged since that time. A temporary solution was utilized, but does not measure the amount of fuel or allow for patrons of the airport to self-pay for the fuel at the pump.

The Kansas Department of Transportation (KDOT) awarded a grant through the Kansas Airport Improvement Program (KAIP) funds to the City. The 90% matching grant will provide up to \$35,550 for the project with a total estimated project cost reported on the grant of \$39,500. In addition to the fuel system replacement, a limited amount of concrete work at the site will also need to be completed. The grant has a time limit of 120 days from the contract date to complete the work.

Aircraft fuel systems are highly specialized and a bid from Hoidale was received in late 2019. The bid was since updated with a total cost of \$38,357.52 for replacement of the fuel system. As this is a specialized product and service, staff has identified this as a sole source bid.

As time is of the essence related to the grant, and costs being lower than expected, City staff recommends approval of the work with Hoidale. The budget for airport maintenance has ample funds to cover the City's required matching funds for this project.

**ACTION:**

Authorize staff to approve the sole source contract with Hoidale in an amount not to exceed \$38,357.52.

**ATTACHMENTS:**

1. Airport Preservation Agreement (KDOT Grant)
2. Hoidale Quotation and Contract

## AIRPORT PRESERVATION AGREEMENT

This Agreement is between the Secretary of Transportation of the State of Kansas, Kansas Department of Transportation (KDOT) (the "Secretary") and THE CITY OF LEAVENWORTH (the "Recipient"), collectively, the "Parties."

### RECITALS:

- A. The Recipient has applied for and the Secretary has approved an Airport Infrastructure Improvement Project to: replace fuel dispenser damaged by flooding owned by the City of Leavenworth at Sherman Army Airfield.
- B. The Secretary has approved the use of Kansas Airport Improvement Program (KAIP) funds from the State's General Aviation Airport Development Fund for this purpose, limited to the scope of the Project, as further described below.
- C. The Secretary and the Recipient are empowered by the laws of Kansas to enter into agreements for the construction, planning and maintenance of the Airport.
- D. The Secretary and the Recipient desire to enter into this Agreement to participate in the cost of the Project by use of State funds.

NOW THEREFORE, the Parties agree as follows:

### ARTICLE I

#### DEFINITIONS:

As used in this Agreement, the capitalized terms below have the following meanings:

1. "Agreement" means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
2. "Airport" means Sherman Army Airfield, a Public Use General Aviation Airport, located at 1000 Chief Joseph Loop, Fort Leavenworth, KS 66027.
3. "Construction" means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or pavement; any drainage, dredging, excavation, grading or similar work upon real property.
4. "Construction Contingency Items" means unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
5. "Construction Engineering" means inspection services material testing, engineering consultation and other reengineering activities required during Construction of the Project.

6. **“Contractor”** means the entity awarded the Construction contract for the Project by the Recipient, and any subcontractors working for the Contractor or the Recipient with respect to the Project.
7. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement and as approved by FAA.
8. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
9. **“Expiration Date”** means one hundred twenty (120) days after the date the grant offer letter is mailed by the Secretary.
10. **“FAA”** means the Federal Aviation Administration, a federal agency of the United States.
11. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261, *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280, *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430, *et seq.*, Hazardous Waste.
12. **“KAIP”** means the Kansas Airport Improvement Program, administered by KDOT’s Division of Aviation.
13. **“KDOT”** means the Kansas Department of Transportation, an agency of the State of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
14. **“Letting”** or **“Let”** means the process of receiving bids prior to an award of a Construction contract for any portion of the Project.
15. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, reasonably determines are not Participating Costs.
16. **“Participating Costs”** means expenditures for items or services which are an integral part of the Project, as reasonably determined by the Secretary.
17. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the Recipient.
18. **“Project”** means all phases and aspects of the endeavor to be undertaken by the Recipient, being as follows: replace fuel dispenser damaged by flooding owned by the City of Leavenworth at Sherman Army Airfield, and is the subject of this Agreement.

19. **“Project Limits”** means that area of the Project, including all areas between and within the Right of Way boundaries as shown on the final Design Plans.
20. **“Public Use General Aviation Airport”** means any airport available for use by the general public for the landing and taking off of aircraft, but shall not include any airport classified as a primary airport by the Federal Aviation Administration (FAA), as defined in K.S.A. § 75-5061(e) or other applicable statute.
21. **“Recipient”** means the City of Leavenworth, Kansas, with its place of business at 100 N. 5<sup>th</sup> Street, Leavenworth, KS 66048.
22. **“Right of Way”** means the real property and interests therein necessary for construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the final Design Plans.
23. **“Secretary”** means the Secretary of Transportation of the State of Kansas, and his or her successors and assigns.
24. **“Useful Life Period”** means a sufficient period of time, as specifically designated in this Agreement in Article IV, paragraphs 18 and 19, to secure the investment of KAIP funds in the Project based on the nature and magnitude of Project costs and generally accepted economic or useful life cycle norms for the type of Construction involved in the Project.

**ARTICLE II**

**FUNDING:**

1. **Funding.** The table below reflects the funding commitments of each Party. The Total Actual Costs of Construction include all Construction Contingency Items. The Parties agree costs and contributions reflected below are for encumbrance purposes and may be subject to change.

Party	Responsibility	Total Projected Contribution (\$)
Secretary	90% of Total Actual Costs of the Project, not to exceed \$35,550.00.	35,550.00
Recipient	10% of Total Actual Costs of the Project until Secretary’s funding limit is reached;  100% of Total Actual Costs of the Project after Secretary’s funding limit is reached;  100% of Costs of Non-Participating Costs.	
<b>Total Estimated Project Costs</b>		<b>39,500.00</b>

### ARTICLE III

#### SECRETARY RESPONSIBILITIES:

1. **Reimbursement Payments.** The Secretary agrees to make such payment to the Recipient as soon as reasonably possible after construction of the Project is completed and after receipt of proper billing and certification by the Recipient that the Project was constructed within substantial compliance of the approved plans and specifications. The Secretary reserves the right to retain up to five percent (5%) of the Secretary's maximum participation until the Recipient completes its obligations under this Agreement to the satisfaction of the Secretary.

2. **Verification of Project Start.** The Secretary shall not reimburse the Recipient until the Secretary receives verification from the Recipient that the Project is underway. Verification for the Project may consist of evidence of construction, proof of hiring consultant or contractor for the Project, or other method deemed acceptable by the Secretary's authorized representative. Failure to submit verification that the Project has been started within two (2) years of the effective date shall result in the Secretary cancelling the Project. Permission to delay the Project start must be approved by the Secretary and evidenced by a supplemental agreement executed by both Parties.

### ARTICLE IV

#### RECIPIENT RESPONSIBILITIES:

1. **Project Administration.** The Recipient shall be responsible for undertaking and completion of the Project. Immediately after the Project is Let, the Recipient shall notify KDOT's Division of Aviation of the Letting date, the total contract amount, and any other requested information related to the Project.

2. **Design and Specifications.** The Recipient will prepare, or contract to have prepared, Design Plans for the Project, Let the contract, construct the Project in accordance with the final Design Plans, inspect the Construction, and administer both the Project and the payments due the Contractor, including the portion of cost borne by the Secretary. The Recipient shall separate and list apart the Participating Cost bid items from Non-Participating Cost bid items on both the final Design Plans and the bid documents.

3. **Conformity with Federal Requirements.** The Recipient agrees to design the Project, or contract to have it designed, in conformity with the current Federal Aviation Administration (FAA) airport design standards and the rules and regulations of the FAA pertaining thereto. The Recipient agrees that all airport planning and environmental activities associated with this grant shall be conducted in accordance with FAA written policy or policies governing the Recipient's airport projects and the sequence thereof, including those that govern projects for a National Plan of Integrated Airport Systems (NPIAS) airport.

4. **Submission of Design Plans to Secretary.** If requested, the Recipient will furnish to KDOT's Division of Aviation one (1) set of final Design Plans.

5. **Performance Bond.** The Recipient has the discretion to require the Contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

6. **Preventive Maintenance.** The Recipient agrees to implement an airport pavement management program which assures preventive maintenance for construction, reconstruction, replacement, and maintenance for projects which utilize KAIP funds.

7. **Final Acceptance.** The Recipient shall obtain final acceptance and certification of the Project through KDOT's Division of Aviation.

8. **Prevailing Wages.** The Recipient will require the Contractor to pay prevailing wages. The Recipient will incorporate into the Construction contract the current general wage decision for the county in which the Project is being constructed. The Recipient can obtain the current wage decision from KDOT's Bureau of Construction and Materials website.

9. **Utilities.** The Recipient will move or adjust, or cause to be moved or adjusted all Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing Utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the KDOT **Utility Accommodation Policy (UAP)**, as amended or supplemented. The expense of such removal or adjustment shall be borne by the owner or the Recipient.

10. **Hazardous Waste.** The Recipient agrees to the following with regard to Hazardous Waste:

- (a) **Removal of Hazardous Waste.** The Recipient shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The Recipient shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The Recipient will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency (EPA), State of Kansas environmental laws and regulations, and local agency standards where the Hazardous Waste is located.
- (b) **Responsibility for Hazardous Waste Remediation Costs.** The Recipient shall be responsible for all damages, fines or penalties, expenses, fees, claims and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.
- (c) **Hazardous Waste Indemnification.** The Recipient shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under state or federal laws arising out of or related to any act of omission by the Recipient in undertaking cleanup or remediation for any Hazardous Waste.
- (d) **No Waiver.** By signing this Agreement the Recipient has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project limits. The Recipient reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project limits.

11. **General Indemnification.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act (K.S.A. § 75-6101, *et seq.*) as applicable, the Recipient will defend, indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the Recipient, the Recipient's employees, agents, subcontractors or its consultants. The Recipient shall not be required to defend, indemnify, or hold the Secretary harmless for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

12. **Indemnification by Contractors.** The Recipient agrees to require the Contractor to indemnify, hold harmless, and save the Secretary and the Recipient from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the Recipient defends a third party's claim, the Contractor shall indemnify the Secretary and the Recipient for damages paid to the third party and all related expenses either the Secretary or the Recipient or both incur in defending the claim.

13. **Inspection of Records.** During Project execution, representatives of the Secretary may make periodic inspection of the Project and the records of the Recipient as may be deemed necessary or desirable. The Recipient will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as necessary to the performance of this Agreement.

14. **Audit.** The Recipient will participate and cooperate with the Secretary in an annual audit of the Project. The Recipient shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments that have been made with state funds by the Recipient for items considered Non-Participating Costs, the Recipient shall promptly reimburse the Secretary for such items upon notification by the Secretary.

15. **Accounting.** Upon request by the Secretary, the Recipient will provide the Secretary an accounting of all actual Non-Participating Costs associated with the Project which are paid directly by the Recipient to any party outside of the Secretary and costs incurred by the Recipient not to be reimbursed by the Secretary. This will enable the Secretary to report all costs of the Project to the legislature.

16. **Legal Authority.** By his or her signature on this Agreement, the Recipient certifies that the signatory has legal and actual authority as representative and agent for the Recipient to enter into this Agreement. The Recipient agrees to take any administrative and/or legal steps as may be required to give full effect to the terms of this Agreement.

17. **Project Modification.** Any the following Project changes require the Recipient to send a formal notice to the Secretary for approval:

- a. Fiscal year the Project is to be let
- b. Project description
- c. Project scope

During construction the Recipient shall notify the Secretary of any changes in the plans and specifications, which will require the written approval of the Secretary.

18. **Assurance Clause.** At any time that the public is not allowed access to the Airport, the Recipient agrees to reimburse the Secretary a prorated amount based on a ten (10) year useful life of the

Project. This assurance clause will be valid and enforceable for ten (10) years from the date that the final payment is authorized. This provision is only applicable to closure for non-airport purposes.

19. **Useful Life.**

(a) **Useful Life Period.** The Parties agree the Useful Life Period of the Project is 10 years, commencing on the date the Secretary gives notice of final acceptance of the Project.

(b) **Change in Public Use.** After the Project is completed and during the entire Useful Life Period, the Airport shall remain open for public use. Any change in the public use of the real property for the Project will require written approval from the Secretary.

(c) **Recapture of State Investment.**

(i) During the first five (5) years of the Useful Life Period, if the Project is not used for the purpose set forth in this Agreement or other use approved by the Secretary under subparagraph (b) above, then the Recipient shall pay to the Secretary 100% of the funds invested in the Project.

(ii) Following the first five (5) years of the Useful Life Period and until the Useful Life Period expires, if the Project is not used for the purpose set forth in this Agreement or other use approved by the Secretary under subparagraph (b) above, then the Recipient shall pay to the Secretary as recapture of funds invested in the Project an amount, which will be determined according to the following formula:

$$\begin{array}{rcl}
 \begin{array}{l} \textit{Total Amount} \\ \textit{of State and/or Federal Funds Invested in} \\ \textit{the Project} \end{array} & \times & \begin{array}{l} \textit{Number of Full Years} \\ \textit{Remaining in the Useful Life} \\ \textit{Period at the time of} \\ \textit{unauthorized change in use} \end{array} & = & \begin{array}{l} \textit{Recapture} \\ \textit{Amount} \end{array} \\
 \hline
 \begin{array}{l} \textit{Entire Useful Life Period} \\ \textit{for the Project} \end{array} & & & & 
 \end{array}$$

(iii) Any payments due to the Secretary pursuant to this subparagraph (c) shall be made within ninety (90) days after receipt of billing from the Secretary's Chief of Fiscal Services unless an extension is granted by the Secretary.

**ARTICLE V**

**GENERAL PROVISIONS:**

1. **Project Limits.** It is mutually agreed the Project will be constructed within the limits of the Airport.
2. **Incorporation of Design Plans.** The final Design Plans for the Project are by this reference made a part of this Agreement.
3. **Compliance with Federal and State Laws.** The Parties agree to comply with all appropriate state and federal laws and regulations applicable to the Project.



4. **Offer Expiration.** The Secretary’s offer to fund the Project, subject to the terms of this Agreement, is contingent upon the Recipient executing this Agreement on or before the Expiration Date. In the event the Recipient fails to execute this Agreement on or before the Expiration Date, the Secretary will not be obligated to fund the Project and the Secretary may cancel the Project. If the Recipient wishes to extend the Expiration Date, the Recipient must submit a written extension request to the Secretary at least forty-five (45) days prior to the Expiration Date. After receiving the request, the Secretary may extend the Expiration Date by providing written notice to the Recipient.

5. **Civil Rights Act.** The “Special Attachment No. 1, Rev. 09.20.17” pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

6. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this Agreement and made a part hereof.

7. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not deemed to control or affect the meaning or construction or the provisions herein.


8. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the Recipient and their successors in office.

9. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

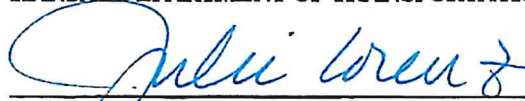
10. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

CITY OF LEAVENWORTH

By:   
Name: Paul Keenan  
Title: City Manager

KANSAS DEPARTMENT OF TRANSPORTATION

  
\_\_\_\_\_  
Julie L. Lorenz, (date) 5-3-21  
Secretary of Transportation

Form Approved
By <u>HDA 04.07.2021</u>
Legal Dept. KDOT

**CONTRACTUAL PROVISIONS ATTACHMENT**

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to

comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

6. **Acceptance of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority to Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility for Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, *et seq.*
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

## KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment  
To Contracts or Agreements Entered Into  
By the Secretary of Transportation of the State of Kansas

### PREAMBLE

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and other nondiscrimination requirements and the Regulations, hereby notifies all contracting parties that it will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, color, national origin, sex, age, disability, income-level or Limited English Proficiency ("LEP").

### CLARIFICATION

Where the term "contractor" appears in the following "Nondiscrimination Clauses", the term "contractor" is understood to include all parties to contracts or agreements with the Secretary of Transportation, Kansas Department of Transportation. This Special Attachment shall govern should this Special Attachment conflict with provisions of the Document to which it is attached.

### ASSURANCE APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in its Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration (FHWA), the Federal Transit Administration ("FTA") or the Federal Aviation Administration ("FAA") as they may be amended from time to time which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, Including Procurements of Material and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, Federal Transit Administration ("FTA"), or Federal Aviation Administration ("FAA") to be pertinent to ascertain compliance with such Acts, Regulations, and Instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or, the FHWA, FTA, or FAA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA, FTA, or FAA may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any

subcontract or procurement as the Recipient or the FHWA, FTA, or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### ASSURANCE APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Federal Aid Highway Act of 1973 (23 U.S.C. § 324 et. seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et. seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL No. 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)

PROJECT NO. AV-2022-16  
AIRPORT PRESERVATION  
CITY OF LEAVENWORTH, KANSAS

**S U P P L E M E N T A L   A G R E E M E N T   N o . 1**

This Supplemental Agreement, effective the date signed by the Secretary or the Secretary’s designee, is by and between the **Secretary of Transportation**, Kansas Department of Transportation (KDOT) (“Secretary”) and the **City of Leavenworth, Kansas** (“Recipient”), collectively, the “Parties.”

**RECITALS**

- A. The Parties entered into an Agreement dated May 2, 2021, for a Kansas Airport Improvement Program Project (the “Original Agreement”).
- B. The Parties mutually desire to supplement the Original Agreement to reflect an increase in the funds allowed for the Project.

**NOW, THEREFORE**, the Parties agree as follows:

1. On page 3 of the Original Agreement, Article II, paragraph 1 is replaced in its entirety to read as follows:

1. **Funding.** The table below reflects the funding commitments of each Party. The Total Actual Costs of Construction include all Construction Contingency Items. The Parties agree costs and contributions reflected below are for encumbrance purposes and may be subject to change.

Party	Responsibility
Secretary	90% of Total Actual Costs of the Project, not to exceed \$48,576.10.
Recipient	10% of Total Actual Costs of the Project until Secretary’s funding limit is reached;  100% of Total Actual Costs of the Project after Secretary’s funding limit is reached;  100% of Costs of Non-Participating Costs.

2. **Counterparts.** This Supplemental Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one in the same Agreement.

**THIS SUPPLEMENTAL AGREEMENT** shall not be construed to alter, modify, or void the terms, provisions, or conditions of the Original Agreement, which is incorporated into this Supplemental Agreement by reference, except as herein specifically provided.

**IN WITNESS WHEREOF**, the Parties have caused this Supplemental Agreement to be signed by their duly authorized officers.

ATTEST:

CITY OF LEAVENWORTH, KANSAS

\_\_\_\_\_  
CITY CLERK (Date)

\_\_\_\_\_  
MAYOR (Date)

(SEAL)



Kansas Department of Transportation  
Secretary of Transportation

By: \_\_\_\_\_  
Burt Morey, P.E. (Date)  
Deputy Secretary and  
State Transportation Engineer

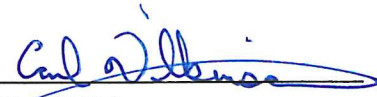
Approved as to form:

**POLICY REPORT PWD NO. 22-50**

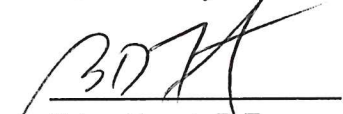
**CONSIDER APPROVAL OF CITY CODE CHANGES  
FOR GREASE TRAPS AND GREASE INTERCEPTORS**

**November 22, 2022**

Prepared by:

  
Earl Wilkinson,  
Deputy Director of Public Works

Reviewed by:

  
Brian Faust, P.E.,  
Director of Public Works

  
Paul Kramer,  
City Manager

**ISSUE:**

Staff is proposing changes to the City Code to facilitate regulation of grease interceptors and grease traps through installation requirements, best management practices, maintenance logs and yearly inspections.

**BACKGROUND:**

For the last seven years, the City of Leavenworth has required the installation of a grease trap or grease interceptor at any facility that prepares and/or packages food for sale or consumption - on or off site - with the exception of private residences. In addition to the initial installation of a grease trap or grease interceptor, there is a constant need to inspect, maintain, clean and service them. The grease-laden waste created by the improperly maintained facilities leads to the following issues (among others):

- Sewer line backups into the originating structure, and often the adjoining structures or onto the surface of the adjoining property.
- Failure to properly maintain a grease interceptor or grease trap may result in grease entering the sanitary sewer system, which can cause significant blockages.
- Failure to properly maintain a grease interceptor or grease trap may create an illicit discharge that can enter our stormwater system or creek, which is considered a violation of our Stormwater Permit.

These situations besides being unsightly, possibly odorous and creating a health hazard for the public, are a “non-compliance” issue with the City National Pollutant Discharge Elimination System (NPDES) Permit that often requires a report to KDHE. Specifically –

- Overflows reaching a creek or underground stormwater system must be reported to KDHE.
- An excess number of events can cause KDHE to question the efficacy of the program and meeting the terms of the permit.

To address the issues regarding the operation and maintenance of these facilities, staff is proposing requirements for the inspection of grease removal devices by a registered service provider, minimum pumping frequencies for grease removal devices and best management

practices to ensure continual and effective operations of grease removal devices. This information will be maintained on a maintenance log furnished by the City. The current voluntary program began after the EPA inspections of City programs in 2012. Besides the physical inspections by City staff, the City implemented a record-keeping program by owners. The City sends out a letter annually reminding the subject establishments of the need for monthly device inspections and requesting a copy of their inspection logs. These records are also reviewed during inspections by City staff.

Staff is proposing that the regulations be changed as follows:

1. Require an annual Grease Discharge Permit and a \$25 fee for each facility.
2. Stipulate requirements for the maintenance and annual inspection of the facility and devices.
3. Stipulate the enforcement actions and fines for facilities that fail to obtain a permit, fail to maintain their facilities, fail to provide credible evidence of routine maintenance, or fail to clean up an illicit discharge as required.

Proposed enforcement actions include:

- \$100 fine for the failure to renew permit and/or failure or incomplete record submittal.
- A person or entity found to be in violation shall first be served with a notice of violation, and they must come into compliance within ten (10) days following the date of notice.
- Any fee imposed for cleaning of the sanitary sewer collection system and/or removal of grease from the sanitary sewer collection system must be paid within thirty (30) days of receipt of the billing.
- Failure to address the violation and/or fee within the prescribed time will result in the person or entity being guilty of a misdemeanor.
- A fine not to exceed \$500 shall be levied upon a first conviction. Each day of violation shall constitute a separate offense.
- A fine not less than \$500 and not to exceed \$1,000 shall be levied upon a second and subsequent conviction. Each day shall constitute a separate offense.

**BUDGET IMPACT:**

The staff time dedicated to regulating this code will be offset by a yearly standard permit fee and in the case of violations, fines, cleaning and removal costs will be assessed specific to the violation.

**RECOMMENDATION:**

Staff recommends that the City Commission adopt the proposed City Code changes presented.

**ATTACHMENTS:**

- Exhibit A (Proposed Changes to City Code)
- Exhibit B (Best Management Practices)
- Exhibit C (Maintenance Log)
- Exhibit D (Educational Information)

## Recommended Changes to the City of Leavenworth City Code

### Chapter 46 – Utilities

#### Article III. Sewers

Division 2. – Connections, Shall be amended as follows:

Sec. 46-92 – Unlawful Connections. It shall be unlawful to connect an open gutter, cesspool, privy vault or any drain of any kind whatsoever of the surface water from the roof or yard to a sanitary sewer, or to connect any sanitary sewer or sanitary sewage to any drainage or stormwater sewer. In addition, it shall be unlawful for any property owner to maintain any sewer service line from the structure to the main, to include the connection at the main, that allows the flow of sewage or other waste into the soil around the service line and/or connection or that allows ground water (inflow and infiltration) into the service line, connection, or main.

Sec. 46-93 - Failure to repair/fees.

Upon notification by the City of any unlawful service line or connection, the property owner shall have 30 days from the date of notice to repair the service line or connection. Failure on the part of the property to make the necessary repairs will result in the City initiating the repairs and assessing the property owner for all costs of the repairs and the appropriate administrative fee as prescribed in the City Fee Schedule. All fees not paid within 30 days after completion of the repairs by the City, shall result in the costs being assessed to the property in accordance with the standard practices for the assessment of other fees.

Secs. 46-94—46-112 Reserved

Division 4. – Industrial Wastes, shall be changed to read Industrial/Commercial Wastes, and shall be amended by changing as follows:

46-150. - Prohibited wastes.

The following wastes shall not be discharged into the city sewers:

- (1) Any liquid or vapor having a temperature higher than 150 degrees Fahrenheit, except where the volume of discharge represents a significant portion of the flow through a particular sewer, a lower limit may be prescribed to prevent odor nuisance.
- (2) Stormwater and surface drain water.
- (3) Wastes having a pH less than 5.5 or more than 10.0 or otherwise having chemical properties which are hazardous or are capable of causing damage to the sewage works or personnel.
- (4) Garbage or waste that has not been properly shredded.

(5) Insoluble oils, fats and greases. So-called soluble oils may be permitted to the extent of 100 mg/L; provided, that subsequent dilution in the sewers or treatment plant does not result in separation.

(6) Gasoline, naphtha, benzene, oil and other flammable or explosive liquids, solids or gases.

(7) Any waste which contains more than 100 mg/L of fat, oil and grease (exclusive of soap).

(8) Any corrosive, noxious or malodorous material or substance which either singly or by reaction with other wastes is capable of causing damage to the sewage works or creating a public nuisance or hazard or preventing entry into the sewers for maintenance and repair.

(9) Any material or substance not specifically mentioned in this section which is in itself corrosive, irritating to human beings and animals, toxic or noxious or which by interaction with other wastes could produce undesirable effects including deleterious action on the sewage works, adversely affect any treatment process, constitute a hazard to human beings or animals or have an adverse effect upon the receiving stream.

(10) Grease-laden Waste – effluent discharge that is produced from food processing, food preparation, or other sources where grease, fats, and oils enter automatic dishwasher pre-rinse stations, sinks, or other appurtenances.

Secs. 46-155—46-199 Reserved.

Division 5. Regulating and Permitting the Operation of Facilities Producing grease-Laden Waste and Service Providers for Grease Interception Devices, shall be added by including as follows:

Division 5. Regulating and Permitting the Operation of Facilities Producing Grease-Laden Waste and Service Providers for Grease Interception Devices

#### Sec. 46-200 Definitions

The following words and terms, as used in this division, shall be deemed to mean and be construed as follows:

*Automatic Grease Removal Device* – a plumbing appurtenance installed in a sanitary drainage system to intercept free-flowing fats, oils, and grease from wastewater discharge. Such a device operates on a time or event controlled basis and has the ability to remove free-floating fats, oils, and grease automatically without the intervention from the user, except for maintenance.

*Grease Interceptor* – a plumbing appurtenance installed in a sanitary drainage system to intercept oily and greasy wastes from a wastewater discharge. Such device has the ability to intercept free-flowing fats and oils with a flow rate **greater than 50 gallon per minute.**

*Grease Trap* - (also known as grease interceptor, grease recovery device and grease converter) is a plumbing device designed to intercept most greases and solids before they enter a wastewater disposal system. They are used to reduce the amount of fats, oils and greases (FOGs) that enter the main sewers with a flow rate **less than 50 gallon per minute**.

*Food Service Establishment* – any facility that prepares and/or packages food for sale or consumption, on or off site, with the exception of private residences. The term “food service establishment” includes, but is not limited to: food courts, food manufacturers, food processors, food packagers, restaurants, grocery stores, delicatessens, bakeries, lounges, hospitals, hotels, nursing homes, churches, college dining halls, Greek housing (sororities and fraternities), prisons, and cafeterias in schools.

*Grease Laden Waste* – Effluent discharge that is produced from food processing, food preparation, or other sources where grease, fats, oils, and grease enter automatic dishwasher pre-rinse stations, sinks, or other appurtenances.

#### Sec.46-201 Grease Discharge Permit Required; Application, Term, and Fee

- (a) It shall be unlawful for any person, firm, or corporation to operate a facility in which grease-laden waste is produced without obtaining a grease discharge permit for each grease removal device located at the facility. Provided that, “facility” shall not include any individual dwelling unit as such term is defined by the latest adopted building code of the City. All food service establishments shall be presumed to be facilities in which grease-laden waste is produced.
- (b) The owner, manager, or agent of a facility shall make written application to the Director of Public Works, or a designee, on a form furnished by the City. The application shall be accompanied by the appropriate fee per the City Fee Schedule, and for renewals, shall include a copy of the maintenance log per Section 46-203(g). Facilities have until the last working day of the month in which their permit expires, per paragraph (c) of this section, to complete the requirements to renew their permit. Permits issued pursuant to this division are nontransferable. A new permit application and fee shall be required for each change of ownership of a licensed facility.
- (c) Permits shall be renewed annually by May 1.
- (d) The Director of Public Works, or a designee, shall issue or renew a permit for a facility that complies with the terms of this ordinance. The Director of Public Works may modify the terms and conditions of any permit, in order to protect the sanitary sewer system. The permit holder shall receive at least thirty (30) day notice of such modification, except in the event of an emergency as described in Section 46-204(e).
- (e) The permit fee shall be as stated in the City Fee Schedule, a grease removal device and only one fee per facility. Permit fees shall not be prorated for permits in effect for less than the full calendar year. If a facility fails to submit all needed documents to renew its permit(s) prior to expiration, an additional late fee, as stated in the City

Fee Schedule, will be assessed for each month until the documents are received. A facility that is late in renewing its permit shall be in violation of this ordinance and any assessed late fees shall be in addition to the penalties provided for in Section 46-206(c)(d).

#### Section 46-202 Conditions of the Grease Discharge Permit; Variances

Each facility with a grease discharge permit is subject to the requirements of this section. Failure to abide by these requirements shall be unlawful. The requirements are as follows:

- (a) Each facility shall install and maintain grease removal devices as required by the latest adopted Plumbing Code of the City. If the facility's existing grease removal devices are not adequately sized for the facility's activities, the facility shall replace the devices to meet the requirements of the latest adopted Plumbing Code of the City. *Installations in existence prior to the adoption of this ordinance shall not be required to replace the existing grease removal device provided a maintenance plan is submitted and approved by the Director of Public Works, or designee, that ensures grease-laden wastes will not enter the City's wastewater system.*
- (b) The permit holder shall ensure the inspection of, and shall maintain, and require all employees, agents, and other representatives to maintain the grease removal devices in accordance with the requirements of Section 46-203 and the best management practices approved by the Director of Public Works and in accordance with the manufacturer's installation and maintenance instructions.
- (c) The permit holder shall allow the facility to be inspected by the City, and the permit holder shall make grease removal devices accessible and exposed for inspection purposes, in connection with the issuance or renewal of a grease discharge permit, or at any reasonable time, without prior notice, to confirm the permit holder's compliance with this Ordinance. Such inspections may include measuring, testing, or sampling.
- (d) A permit holder may make written request to the Director of Public Works for a variance from any of the requirements of this Ordinance. Such written request must be made on a form provided by the City. The Director of Public Works, or a designee, will issue a written response to the variance request within thirty (30) days. Denials may be appealed to the City Manager through the process described in Section 46-204(f).

#### Section 46-203 Maintenance of Grease Interceptors and Devices; Best Management Practices; Pumping and Minimum Pumping Frequency; Inspection; Maintenance Log

- (a) **Illegal Discharge** – It shall be unlawful for the permit holder to discharge grease-laden waste into the sanitary sewer collection system without using a functional grease removal device. It shall be unlawful for the permit holder to direct or allow any person to discharge grease-laden waste into the sanitary sewer collection system without using a functional grease removing device.

- (b) Pumping – All grease removal devices shall be maintained by the user at the user’s expense. Maintenance shall include the complete removal of all contents, including floating materials, wastewater, and bottom sludge and solids by a registered service provider pursuant to Section 46-205. Decanting or discharging of removed waste back into the grease removal device from which the waste was removed or any other grease removal device, for the purpose of reducing the volume to be disposed, is prohibited.
- (c) Minimum Pumping Frequency – Grease removal devices must be pumped out completely a minimum of once every 180 days, or more frequently as needed, to prevent carryover of grease into the sanitary sewer collection system.
- (d) Best Management Practices – The Director of Public Works shall adopt best management practices to ensure continual and effective operation of grease removal devices, and the Director may update or modify the best management practices to meet or exceed industry standards. The permit holder shall comply with, and cause the permit holder’s employees, agents, and other representatives to comply with, the best management practices adopted by the Director of Public Works.
- (e) Spills – If grease-laden waste spills onto the public right-of-way, parking area, driveway, or other location that may cause run-off into the stormwater management system, the spill shall be immediately cleaned up in a manner that complies with the best management practices approved by the Director of Public Works. The permit holder shall notify the Director of Public Works, or a designee, that such spill occurred by as soon as possible. If the permit holder fails to clean the spill to the City’s satisfaction, then the spill constitutes, and shall be treated as a nuisance pursuant to Chapter 28 of the City Code of Ordinances, and a violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), of which prohibits the unauthorized discharge of pollutants from a point source into any waters or tributary of navigable waters of the United States and thereby creates a nuisance and hazard to the community as defined by the Environmental Protection Agency and shall be subject to additional enforcement in accordance with those provisions.
- (f) Inspection – The permit holder shall have all Automatic Grease Removal Devices, Grease Traps and Grease Interceptors inspected by a registered service provider pursuant to Section 46-205 on an annual basis. Such registered service provider may not be the permit holder or an employee of the permit holder. Grease removal devices must be emptied by the service provider at the time of service or cleaning. The results of the inspection shall be recorded on the maintenance log described in paragraph (g) or the service manifest from the disposal/service provider and shall be reported on a separate inspection form produced by the City and submitted to the City within fifteen (15) days of the inspection date. An inspection report will only be considered valid for permit renewal if it has been completed within sixty (60) days prior to the permit expiration date per Section 46-201(c).

If the inspector notes deficiencies in a grease removal device, the permit holder shall ensure that a city licensed plumbing contractor obtain a plumbing permit from the



Leavenworth Building Inspection Division if required, and make necessary repairs to ensure compliance within sixty (60) days of the date of the inspection, unless an extension is approved by the Director of Public Works. The permit holder shall provide documentation of such repairs to the Director of Public Works, and allow inspection thereof, within fifteen (15) days of the completion of the repairs.

- (g) Maintenance Log – On a form furnished by the City, each permit holder shall maintain a true and accurate log for each of the grease removal devices which provides for entry of the following information:
- (1) The date of each pumping service; the name of the person performing the service and the name of the company with which the service provider is affiliated; the amount removed; the condition of the device; and the signature of the manager or authorized representative of the facility in which the grease removal device is located; and
  - (2) All of the information regarding the annual inspection required by paragraph (f); the name of the person performing the inspection; and the name of the company with which the inspector is affiliated.
  - (3) The manifest with all the required information from the pumping service in Section 46-203(g)(1) above may be attached to the maintenance log in lieu of written entry of the information.

The maintenance log shall be kept in a readily accessible location and made immediately available upon request of the City representative. Each permit holder shall submit a copy of the previous year's maintenance log when renewing their annual permit and shall maintain copies of the log for three (3) years. If a maintenance log is lost and cannot be submitted, the permit holder shall have an opportunity to verify all of the information required by the maintenance log in a manner acceptable to the City, any failure to do so within ten (10) days following the City's request shall be unlawful and a violation of this ordinance.

#### Section 46-204 – Denial, Suspension, Revocation of Permit, or Water Service Disconnect

- (a) The Director of Public Works may deny, revoke, or suspend a permit, and/ or request disconnection of the water service for any of the following reasons:
- (1) Failure to submit a complete application or pay any fees;
  - (2) Fraud, misrepresentation, or false statement in the permit application or inspection and repair records; or
  - (3) Failure to comply with any of the provisions of this or any other City ordinance or other law.
- (b) Such denial, revocation, suspension, or discontinuance shall not become effective until the applicant/permit holder has been served a notice. The notice shall state the reason for noncompliance and include a time period for the applicant/permit holder to comply. Service (Serving of Notice) may be accomplished by personal service, or regular mail. Service by regular mail shall be deemed complete three (3) days after the City has placed the notice in the US mail. Such notice shall inform the applicant/permit holder of the action taken and shall notify the person of the right to appeal, pursuant to Section 46-204(f). Such action shall be effective upon the

seventh day following service upon the applicant/permit holder, unless an appeal is filed. If an appeal is filed, such action shall be stayed until the final written decision on the appeal is rendered.

- (c) In any suspension of the license, the Director of Public Works may place such conditions upon the suspension as deemed advisable. Any conditions of the suspension shall be set forth in the notice.
- (d) Operating a facility after the effective date of a permit's denial, revocation, or suspension shall be unlawful.
- (e) Emergency Suspension – The Director of Public Works may pursue immediate suspension of the water service when, in the opinion of the Director of Public Works, such suspension is necessary to stop an actual or threatened discharge which presents or may present an imminent or substantial danger to the public health, safety, or welfare, or to prevent interference with, or a threat to, the sanitary sewer collection system. If the person notified of such suspension fails to comply with the order, the director shall take steps necessary to discontinue water service. The person may file a written appeal to such order with the City Manager, within two (2) business days of the order being made, and the appeal shall be heard within two (2) business days of the filing. Service shall remain suspended during the appeal period. Service shall be reinstated when the condition causing the threat is corrected, or if the person successfully appeals the director's order.
- (f) Appeal and Hearing – A person receiving any notice or order may appeal the requirements contained therein pursuant to this subsection, except in the case of an emergency order, which shall comply with the process set forth in Section 46-204(e). The person must file a written appeal with the City Manager within seven (7) days of receiving service, and the appeal must state why the requirements should be modified or should not apply to the recipient. The City Manager will hold a hearing, at which the person must be heard, within seven (7) days of receiving the appeal.

#### Section 46-205 Registration and Inspection

- (a) The City will establish and manage registration for all persons, firms, or businesses that desire to be authorized to pump, clean, and/or inspect grease removal devices within the sanitary sewer service area.  
The registration shall be for a period of three (3) years at which time the person, firm, or business must re-register. The registration required by the City shall be in addition to any other permits, registrations, or occupational licenses required by federal, state, and local agencies having lawful jurisdiction. The registration is not transferable. There are no fees required to be registered.
- (b) Pumping and Cleaning – Any person, firm, or business desirous of collecting, pumping, or hauling wastes from, or cleaning Automatic Grease Removal Devices, Grease Traps and Grease Interceptors from businesses located within the sanitary sewer service area shall be required to register with the City. It shall be unlawful for any person, firm, or business to pump out or clean grease removal devices within the sanitary sewer service area without being registered.

- (c) Inspection— A registered service provider person, firm, or business may also perform inspections of grease removal devices per Section 46-203(f). Food service establishment owners, or employees thereof, may complete the inspection in an unofficial capacity, but they will not be qualified to perform the official inspections required by the ordinance. It shall be unlawful for any person or employee of a firm or business to perform inspections of a grease removal device within the sanitary sewer service area that is not registered.
- (d) Plumbers – Any plumber desirous of installing, repairing, and/or inspecting automatic grease removal devices or grease interceptors within the sanitary sewer service area per Section 46-205 shall be licensed through the Building Inspection Division of the City of Leavenworth. Plumbers shall also be required to be a registered service provider through the City for the purpose of performing inspections. It shall be unlawful for any plumber to perform inspections or repairs of grease removal devices within the sanitary sewer service area without being licensed, registered, and certified.




#### Section 46-206 – Enforcement


- (a) Before additional action is taken to enforce the provisions of this section, a person or entity found to be in violation shall first be served with a notice of violation. Notice will be deemed sufficient if it is delivered by personal service or regular mail and adequately describes the nature of the violation and outlines a reasonable time line for the alleged violator to come into compliance of at least ten (10) days following the date of notice. Notice shall be deemed given immediately in the case of personal service and in the case of service by regular mail, three (3) days after the date of mailing.
  - (1) Upon the finding of a suspected violation or illicit discharge into the sanitary sewer collection system, the City Inspector shall be notified to do an immediate and unannounced inspection of the grease removal devices in the suspect facility.
  - (2) If a violation of the maintenance requirements for the grease removal device has been identified, the facility shall be responsible for all costs associated with the cleaning and removal of the violation in the sanitary sewer collection system. All cleaning and removal costs will be in accordance with the City Fee Schedule. Any fee imposed for cleaning of the sanitary sewer collection system and/or removal of grease from the sanitary sewer collection system that has not been paid within thirty (30) days of receipt of the billing, shall be deemed a violation of this ordinance. Service shall be in accordance with Section 46-206(a).
- (b) Following the expiration of the time period granted in paragraph (a), a person or entity found to be in violation of this section shall be guilty of a misdemeanor.
- (c) A fine not to exceed \$500.00 shall be levied upon a first conviction. Each day of violation shall constitute a separate offense.
- (d) A fine not less than \$500.00 and not to exceed \$1,000.00 shall be levied upon a second and subsequent conviction. Each day shall constitute a separate offense.

Food Service Establishments (FSEs) can reduce the waste that goes down the drain by using Best Management Practices (BMPs).

- ◆ BMPs are a schedule of activities, maintenance procedures, prohibitions and other management practices to prevent or reduce stoppages and overflows in the sanitary sewer system.
- ◆ BMPs could help extend the cleaning and pumping frequency of the grease removal system, and prevent unnecessary and expensive repairs or facility closures.

## EXAMPLE BMPs

- 1 Scrape all food waste from plates, pots and pans into a lined garbage can. Place with regular trash for disposal. 
- 2 Use paper towels to “dry wipe” oil and grease from plates, pots and pans before washing.
- 3 Prewash plates, pots, pans, etc., by spraying them off with cold water over a small mesh strainer placed over the drain. This will keep food scraps from going down the drain. Empty strainer into a garbage can as often as necessary. 
- 4 Place all used oil and grease into a “waste grease bucket”. Liquid oil and grease from the waste bucket or other devices must be taken to the grease dumpster. To prevent spillage, empty the grease bucket before it becomes too full. 

- 5 Contain any oil and grease spills. Absorb it with dry material (cat litter, oil dry, wood shavings, etc.). Place in a plastic bag to discard with regular trash.
- 6 **DO NOT** pour or allow any waste to go into an alley, street or storm drain. 
- 7 Excessive use of drain cleaners can damage your sanitary sewer line causing major problems and costly repairs.
- 8 Locate grease dumpsters and storage containers away from stormwater drains and inlets and keep them covered. Uncovered grease and oil storage containers can collect rainwater. Since grease and oil float, the rainwater can cause an overflow onto the ground. Spills and overflows will eventually reach the nearby streams. In case of a spill use absorbent pads, not granules.

### REMEMBER

- ✓ Properly dispose of waste oil and grease.
- ✓ Clean the grease device as scheduled.
- ✓ Document all cleanings and inspections.
- ✓ Keep all maintenance records on site for 3 years.

### DON'T

- ✓ Obstruct the grease trap or interceptor
- ✓ Use hot water to flush the sewer lines.
- ✓ Rely on drain cleaners, enzymes or chemical agents.

### FOR MORE INFORMATION PLEASE CONTACT:

Public Works Department  
100 N. 5th Street  
Leavenworth, KS 66048



Phone: (913) 684-0375  
<https://www.leavenworthks.org/>  
ckiszka@firstcity.org

# Grease Removal Device Cleaning and Maintenance Record Log

Use separate log for each grease removal device and premises

Facility Name: \_\_\_\_\_ Location of Device on Site: \_\_\_\_\_

Facility Address: \_\_\_\_\_ Renewal Month: \_\_\_\_\_

### Inspections

- \* For permit renewal, an inspection report is considered valid if completed within 60 days prior to permit expiration date.
- \* All traps/interceptors must be empty at time of inspection.

Date (mm/dd/yyyy)	Inspected by (Service Company and Employee)	Was the Device Empty (Yes/No)?	Condition of Trap/Interceptor (Working or not; please elaborate)	Signature of Manager or Authorized Representative	Additional Comments

### Cleanings/Pumpings

- \* Minimum cleaning frequency for any trap/interceptor is once every 180 days.
- \* During cleaning the entire contents, including bottom solids and top grease layer, should be removed.

Date (mm/dd/yyyy)	Cleaning by (Establishment Employee or Service Company and Employee)	Gallons Removed	Condition of Trap/Interceptor (Working or not; please elaborate)	Signature of Manager or Authorized Representative	Additional Comments

### Other Maintenance Operations

Date (mm/dd/yyyy)	Cleaning by (Establishment Employee or Service Company and Employee)	Nature of Operation (Repair or Other)	Condition of Trap/Interceptor (Working or not; please elaborate)	Signature of Manager or Authorized Representative	Additional Comments

**CITY OF LEAVENWORTH, KANSAS PUBLIC WORKS DEPARTMENT  
GREASE MANAGEMENT PROGRAM BEST MANAGEMENT PRACTICES (BMPs)  
OCTOBER 21, 2022**

BMP	Description	Reason for BMP	Benefits
Train Kitchen Staff	Train kitchen staff and other employees about how they can help ensure BMPs are implemented.	People are more willing to support an effort if they understand the basis for it.	All of the other benefits of BMPs will have a better chance of being implemented.
Post "No Grease" Signs	Post "No Grease" signs above sinks and on the front of dishwashers.	Signs serve as constant reminder for staff working in the kitchen.	These reminders will help minimize grease discharge to the traps and interceptors and reduce the cost of cleaning and disposal.
Use Water Temperature Less than 140°F	Use water temperature less than 140°F in all sinks, especially the pre-rinse sink before the mechanical dishwasher.	Temperatures in excess of 140°F will liquefy grease, but the grease can solidify in the Sanitary Sewer Collection System as the water cools.	The food service establishment will reduce the energy costs of gas and/or electricity used for heating the water.
Use a Three-Sink Dishwashing System	Use a three-sink dishwashing system, which includes sinks for washing, rinsing, and sanitizing. Water temperatures are less than 140°F.	The three-sink system uses water temperature less than 140°F, where a mechanical dishwasher requires a minimum temperature of 160°F	The food service establishment will reduce its energy costs of and/or electricity used for heating the water for the mechanical dishwasher.
Recycle Waste Cooking Oil	Recycle cooking oil (yellow grease) used in deep fat fryers.	There are many waste oil recyclers throughout the USA. This is a cost recovery opportunity.	The food service establishment will be paid for the waste material and will reduce the amount of garbage it must pay to have it hauled away.
"Dry Wipe" Pots, Pans and Dishware Prior to Dishwashing	Dry wipe pots, pans and dishware with a paper towel prior to dishwashing.	The grease and food that remains in pots, pans, and dishware will likely go to the landfill. By dry wiping and disposing in garbage receptacles, the material will not be sent to the grease traps and interceptors.	This will reduce the amount of material going to grease traps and interceptors, which will require less frequent cleaning, reducing maintenance costs.
Dispose of Food Waste by Recycling and/or Solid Waste Removal	Dispose of food waste by recycling and/or solid waste removal instead of throwing the solid waste down the drain.	Some recyclers will take food waste for animal feed. In the absence of such recyclers, the food waste can be disposed as solid waste in landfills by solid waste haulers.	Recycling food wastes will reduce the cost of solid waste disposal. Solid waste disposal of food waste will reduce the frequency and cost of grease trap and interceptor cleaning.
Witness all Grease Trap or Interceptor Cleaning and Maintenance	Witness all grease trap or interceptor cleaning and maintenance activities to ensure that the device is properly operating.	Grease trap/interceptor haulers and recyclers may take shortcuts. If the establishment manager inspects the cleaning operation and ensures it is consistent with the proper procedures then they are more assured of getting full value for their money.	The establishment will ensure it is getting fair value for the cost of cleaning the grease trap or interceptor. Otherwise, the establishment may be paying for cleaning more often than necessary.

**CITY OF LEAVENWORTH, KANSAS PUBLIC WORKS DEPARTMENT  
GREASE MANAGEMENT PROGRAM BEST MANAGEMENT PRACTICES (BMPs)  
OCTOBER 21, 2022**

BMP	Description	Reason for BMP	Benefits
Clean Under-Sink Grease Traps Weekly	Clean under-sink grease traps weekly. If grease traps are more than 25% full when cleaned weekly, the cleaning frequency needs to be increased.	Under-sink grease traps have less volume than grease interceptors. Weekly cleaning of under-sink grease traps by the establishment's own maintenance staff will reduce the cost of cleaning the grease interceptor. If the establishment does not have a grease interceptor, the under-sink grease trap is the only means of preventing grease from entering the Sanitary Sewer Collection System. If the grease trap is not providing adequate protection, the City of Leavenworth Grease Management Program may require installation of a grease interceptor.	This will extend the length of the cleaning cycle for grease interceptors that the establishment maintains.
Clean Grease Interceptors Routinely	Determine the proper cleaning frequency required and clean the grease interceptors in accordance with that schedule.	Grease interceptors must be cleaned routinely to ensure that grease accumulation does not cause the interceptor to operate poorly. The cleaning frequency is a function of the type of establishment, the size of the interceptor, and the volume of flow discharged by the establishment.	Routine cleaning will prevent plugging of the sewer line between the food service establishment and the Sanitary Sewer Collection System. If the line plugs, the sewer line may back up into the establishment, and the business will need to hire someone to unplug it.
Keep a Maintenance Log	Keep a written record of all repairing, cleaning, emptying, and hauling activities performed on each grease trap or interceptor.	The maintenance log serves as a record of the frequency and volume of cleaning the interceptor.	The maintenance log serves as a record of cleaning frequency and can help the establishment manager optimize cleaning frequency to reduce cost.
Cover Outdoor Grease and Oil Storage Containers	Cover outdoor grease and oil storage containers to prevent stormwater pollution.	Uncovered grease and oil storage containers can collect rainwater. Since grease and oil float, the rainwater can cause an overflow onto the ground. Such an overflow will eventually reach the Stormwater Sewer Collection System and nearby streams.	The discharge of grease and oil to the storm drain system will degrade the water quality of receiving streams by adding biological and chemical oxygen demand to the stream. Discharge of grease and oil to the storm drain might also result in legal penalties or fines.

**CITY OF LEAVENWORTH, KANSAS PUBLIC WORKS DEPARTMENT  
GREASE MANAGEMENT PROGRAM BEST MANAGEMENT PRACTICES (BMPs)  
OCTOBER 21, 2022**

BMP	Description	Reason for BMP	Benefits
Locate Grease Dumpsters and Storage Containers away from Stormwater Drains and Inlets.	Locate grease dumpsters and storage containers away from stormwater drains and inlets.	The farther away from the catch basin, the more time someone has to clean up spills or drainage prior to entering the storm drain system. Be aware of oil and grease dripped on the ground while carrying waste to the dumpster, as well as oil and grease that may "ooze" from the dumpster.	The discharge of grease and oil to the storm drain system will degrade the water quality of receiving streams by adding biological and chemical oxygen demand to the stream. Discharge of grease and oil to the storm drain might also result in legal penalties or fines.
Use Absorbent Pads or other Material to Clean up Spilled Material	Use absorbent pads or other material to clean up spilled material around outdoor equipment, containers, or dumpsters. Do not use free-flowing absorbent materials such as "kitty litter" or sawdust that can be discharge to the storm drain.	Absorbent pads or materials can help clean up grease and oil that is spilled on the ground and prevent it from flowing to the storm drain system.	The discharge of grease and oil to the storm drain system will degrade the water quality of receiving streams by adding biological and chemical oxygen demand to the stream. Discharge of grease and oil to the storm drain might also result in legal penalties or fines.
Routinely Clean Kitchen Exhaust Systems	Routinely clean kitchen exhaust system filters, ducts, vents, and hoods.	If grease and oil escape through the kitchen exhaust system, it can accumulate on the roof of the establishment and eventually enter the stormwater drain system when it rains. Proper cleaning and disposal as a solid waste will minimize the potential for stormwater pollution.	The discharge of grease and oil to the stormwater drain system will degrade the water quality of receiving streams by adding biological and chemical oxygen demand to the stream. Discharge of grease and oil to the stormwater drain might also result in legal penalties or fines.
Annual Inspection of all Grease Interceptors and Automatic Grease Removal Devices	All grease interceptors and automatic grease removal devices must be inspected annually by a City-licensed plumber. The results of the inspection shall be reported on a form produced by the City and shall be submitted to the City within fifteen (15) days of the inspection date.	The annual inspection must be conducted to meet the requirement of the City of Leavenworth Grease Management Ordinance.	The annual inspection will ensure that all the grease interceptors and automatic grease removal devices operate continually, effectively, and as designed.

*These Best Management Practices were adapted from the manual titled "Fats, Oil, and Grease Best Management Practices Manual" published by the Oregon Association of Clean Water Agencies.*



**ORDINANCE NO. XXXX**

**AN ORDINANCE AMENDING CHAPTER 46 (UTILITIES), ARTICLE III (SEWERS), DIVISION 2 (CONNECTIONS) AND DIVISION 4 (INDUSTRIAL WASTES), AND CERTAIN SECTIONS THEREIN, AND ADDING NEW AND SUBSTITUTE PROVISIONS, AND REPEALING THE PREVIOUS SECTIONS SO AMENDED.**

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

**Section 1.** Section 46-92 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

**Sec. 46-92. - Unlawful connections.**

It is and shall be unlawful to connect an open gutter, cesspool, privy vault or any drain of any kind whatsoever of the surface water from the roof or yard to a sanitary sewer, or to connect any sanitary sewer or sanitary sewage to any drainage or stormwater sewer. In addition, it is and shall be unlawful for any property owner to maintain any sewer service line from the structure to the main, to include the connection at the main, that allows the flow of sewage or other waste into the soil around the service line and/or connection or that allows ground water (inflow and infiltration) into the service line, connection, or main.

**Section 2.** A new Section 46-93 is hereby added to the Leavenworth Code of Ordinances, to read as follows:

**Sec. 46-93. – Failure repair; fees.**

Upon notification by the city of any unlawful service line or connection, the property owner shall have thirty (30) days from the date of notice to repair the service line or connection. Failure on the part of the property to make the necessary repairs will result in the City initiating the repairs and assessing the property owner for all costs of the repairs and the appropriate administrative fee as prescribed in the city fee schedule, as amended. All fees not paid within thirty (30) days after completion of the repairs by the city, shall result in the costs being assessed to the property in accordance with the standard practices for the assessment of other fees.

**Section 3.** Chapter 46, Article III, Division 2 of the Leavenworth Code of Ordinances, is hereby amended to provide that Secs. 46-94 through 46-112 are reserved, as follows:

**Secs. 46-94—46-112. Reserved.**

**Section 4.** Section 46-150 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

**Sec. 46-150. – Prohibited wastes.**

The following wastes shall not be discharged into the city sewers:

- (1) Any liquid or vapor having a temperature higher than 150 degrees Fahrenheit, except where the volume of discharge represents a significant portion of the flow through a particular sewer, a lower limit may be prescribed to prevent odor nuisance.
- (2) Stormwater and surface drain water.
- (3) Wastes having a pH less than 5.5 or more than 10.0 or otherwise having chemical properties which are hazardous or are capable of causing damage to the sewage works or personnel.
- (4) Garbage or waste that has not been properly shredded.
- (5) Insoluble oils, fats and greases. So-called soluble oils may be permitted to the extent of 100 mg/L; provided, that subsequent dilution in the sewers or treatment plant does not result in separation.
- (6) Gasoline, naphtha, benzene, oil and other flammable or explosive liquids, solids or gases.
- (7) Any waste which contains more than 100 mg/L of fat, oil and grease (exclusive of soap).
- (8) Any corrosive, noxious or malodorous material or substance which either singly or by reaction with other wastes is capable of causing damage to the sewage works or creating a public nuisance or hazard or preventing entry into the sewers for maintenance and repair.
- (9) Any material or substance not specifically mentioned in this section which is in itself corrosive, irritating to human beings and animals, toxic or noxious or which by interaction with other wastes could produce undesirable effects including deleterious action on the sewage works, adversely affect any treatment process, constitute a hazard to human beings or animals or have an adverse effect upon the receiving stream.
- (10) Grease-laden Waste – effluent discharge that is produced from food processing, food preparation, or other sources where grease, fats, and oils enter automatic dishwasher pre-rinse stations, sinks, or other appurtenances.

**Section 5.** Chapter 46, Article III, Division 4 of the Leavenworth Code of Ordinances, is hereby amended to provide that Secs. 46-155 through 46-199 are reserved, as follows:

**Secs. 46-155—46-199. Reserved.**

**Section 6.** A new Division 5 is hereby added to Chapter 46, Article III the Leavenworth Code of Ordinances, to read as follows:

**DIVISION 5.—REGULATING AND PERMITTING THE OPERATION OF  
FACILITIES PRODUCING GREASE-LADEN WASTE AND SERVICE  
PROVIDERS FOR GREASE INTERCEPTION DEVICES**

**Sec. 46-200. – Definitions.**

The following words and terms, as used in this division, shall be deemed to mean and be construed as follows:

*Automatic Grease Removal Device* – a plumbing appurtenance installed in a sanitary drainage system to intercept free-flowing fats, oils, and grease from wastewater discharge. Such a device operates on a time or event-controlled basis and has the ability to remove free-floating fats, oils, and grease automatically without the intervention from the user, except for maintenance.

*Grease Interceptor* – a plumbing appurtenance installed in a sanitary drainage system to intercept oily and greasy wastes from a wastewater discharge. Such device has the ability to intercept free-flowing fats and oils with a flow rate **greater than 50 gallon per minute.**

*Grease Trap* - (also known as grease interceptor, grease recovery device and grease converter) is a plumbing device designed to intercept most greases and solids before they enter a wastewater disposal system. They are used to reduce the amount of fats, oils and greases (FOGs) that enter the main sewers with a flow rate less than 50 gallon per minute.

*Food Service Establishment* – any facility that prepares and/or packages food for sale or consumption, on or off site, with the exception of private residences. The term “food service establishment” includes, but is not limited to food courts, food manufacturers, food processors, food packagers, restaurants, grocery stores, delicatessens, bakeries, lounges, hospitals, hotels, nursing homes, churches, college dining halls, Greek housing (sororities and fraternities), prisons, and cafeterias in schools.

*Grease-Laden Waste* – Effluent discharge that is produced from food processing, food preparation, or other sources where grease, fats, oils, and grease enter automatic dishwasher pre-rinse stations, sinks, or other appurtenances.

**Sec.46-201. – Grease Discharge Permit Required; Application, Term, and Fee.**

- (a) It shall be unlawful for any person, firm, or corporation to operate a facility in which grease-laden waste is produced without obtaining a grease discharge permit for each grease removal device located at the facility. Provided that, “facility” shall not include any individual dwelling unit as such term is defined by the latest adopted building codes of the city. All food service establishments shall be presumed to be facilities in which grease-laden waste is produced.
- (b) The owner, manager, or agent of a facility shall make written application to the Director of Public Works, or a designee, on a form furnished by the city. The application shall be accompanied by the appropriate fee per the city fee schedule, as amended, and for renewals, shall include a copy of the maintenance log per Section 46-203(g) below. Facilities have until the last working day of the month in which their permit expires, per paragraph (c) of this section, to complete the requirements to renew their permit. Permits

issued pursuant to this division are nontransferable. A new permit application and fee shall be required for each change of ownership of a licensed facility.

- (c) Permits shall be renewed annually by May 1.
- (d) The Director of Public Works, or a designee, shall issue or renew a permit for a facility that complies with the terms of this division. The Director of Public Works may modify the terms and conditions of any permit, in order to protect the sanitary sewer system. The permit holder shall receive at least thirty (30) day notice of such modification, except in the event of an emergency as described in Section 46-204(e) below.
- (e) The permit fee shall be as stated in the city fee schedule, as amended, for a grease removal device and only one fee per facility. Permit fees shall not be prorated for permits in effect for less than the full calendar year. If a facility fails to submit all needed documents to renew its permit(s) prior to expiration, an additional late fee, as stated in the city fee schedule, will be assessed for each month until the documents are received. A facility that is late in renewing its permit shall be in violation of this ordinance and any assessed late fees shall be in addition to the penalties provided for in Section 46-206(c) and (d) below.

**Sec. 46-202. – Conditions of the Grease Discharge Permit; Variances**

Each facility with a grease discharge permit is subject to the requirements of this section. Failure to abide by these requirements shall be unlawful. The requirements are as follows:

- (a) Each facility shall install and maintain grease removal devices as required by the latest adopted Plumbing Code of the city. If the facility's existing grease removal devices are not adequately sized for the facility's activities, the facility shall replace the devices to meet the requirements of the latest adopted Plumbing Code of the city. Installations in existence prior to the adoption of this section shall not be required to replace the existing grease removal device provided a maintenance plan is submitted and approved by the Director of Public Works, or designee, that ensures grease-laden wastes will not enter the city's wastewater system.
- (b) The permit holder shall ensure the inspection of, and shall maintain, and require all employees, agents, and other representatives to maintain the grease removal devices in accordance with the requirements of Section 46-203 below and the best management practices approved by the Director of Public Works and in accordance with the manufacturer's installation and maintenance instructions.
- (c) The permit holder shall allow the facility to be inspected by the city, and the permit holder shall make grease removal devices accessible and exposed for inspection purposes, in connection with the issuance or renewal of a grease discharge permit, or at any reasonable time, without prior notice, to confirm the permit holder's compliance with this division. Such inspections may include measuring, testing, or sampling.

- (d) A permit holder may make written request to the Director of Public Works for a variance from any of the requirements of this division. Such written request must be made on a form provided by the city. The Director of Public Works, or a designee, will issue a written response to the variance request within thirty (30) days. Denials may be appealed to the City Manager through the process described in Section 46-204(f) below.

**Sec. 46-203. – Maintenance of Grease Interceptors and Devices; Best Management Practices; Pumping and Minimum Pumping Frequency; Inspection; Maintenance Log.**

- (a) Illegal Discharge – It is and shall be unlawful for the permit holder to discharge grease-laden waste into the sanitary sewer collection system without using a functional grease removal device. It is and shall be unlawful for the permit holder to direct or allow any person to discharge grease-laden waste into the sanitary sewer collection system without using a functional grease removing device.
- (b) Pumping – All grease removal devices shall be maintained by the user at the user's expense. Maintenance shall include the complete removal of all contents, including floating materials, wastewater, and bottom sludge and solids by a registered service provider pursuant to Section 46-205 below. Decanting or discharging of removed waste back into the grease removal device from which the waste was removed or any other grease removal device, for the purpose of reducing the volume to be disposed, is prohibited.
- (c) Minimum Pumping Frequency – Grease removal devices must be pumped out completely a minimum of once every 180 days, or more frequently as needed, to prevent carryover of grease into the sanitary sewer collection system.
- (d) Best Management Practices – The Director of Public Works shall adopt best management practices to ensure continual and effective operation of grease removal devices, and the Director may update or modify the best management practices to meet or exceed industry standards. The permit holder shall comply with, and cause the permit holder's employees, agents, and other representatives to comply with, the best management practices adopted by the Director of Public Works.
- (e) Spills – If grease-laden waste spills onto the public right-of-way, parking area, driveway, or other location that may cause run-off into the stormwater management system, the spill shall be immediately cleaned up in a manner that complies with the best management practices approved by the Director of Public Works. The permit holder shall notify the Director of Public Works, or a designee, that such spill occurred by as soon as possible. If the permit holder fails to clean the spill to the City's satisfaction, then the spill constitutes, and shall be treated as a nuisance pursuant to Chapter 28 of the City Code of Ordinances, and a violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), of which prohibits the unauthorized discharge of pollutants from a point source into any waters or tributary of navigable waters of the United States and thereby creates a nuisance and hazard to the community as

defined by the Environmental Protection Agency and shall be subject to additional enforcement in accordance with those provisions.

- (f) Inspection – The permit holder shall have all Automatic Grease Removal Devices, Grease Traps and Grease Interceptors inspected by a registered service provider pursuant to Section 46-205 on an annual basis. Such registered service provider may not be the permit holder or an employee of the permit holder. Grease removal devices must be emptied by the service provider at the time of service or cleaning. The results of the inspection shall be recorded on the maintenance log described in paragraph (g) below or the service manifest from the disposal/service provider and shall be reported on a separate inspection form produced by the city and submitted to the city within fifteen (15) days of the inspection date. An inspection report will only be considered valid for permit renewal if it has been completed within sixty (60) days prior to the permit expiration date per Section 46-201(c).

If the inspector notes deficiencies in a grease removal device, the permit holder shall ensure that a city licensed plumbing contractor obtain a plumbing permit from the Leavenworth Building Inspection Division, if required, and make necessary repairs to ensure compliance within sixty (60) days of the date of the inspection, unless an extension is approved by the Director of Public Works. The permit holder shall provide documentation of such repairs to the Director of Public Works, and allow inspection thereof, within fifteen (15) days of the completion of the repairs.

- (g) Maintenance Log – On a form furnished by the city, each permit holder shall maintain a true and accurate log for each of the grease removal devices which provides for entry of the following information:

- (1) The date of each pumping service; the name of the person performing the service and the name of the company with which the service provider is affiliated; the amount removed; the condition of the device; and the signature of the manager or authorized representative of the facility in which the grease removal device is located; and
- (2) All of the information regarding the annual inspection required by paragraph (f); the name of the person performing the inspection; and the name of the company with which the inspector is affiliated.
- (3) The manifest with all the required information from the pumping service in Section 46-203(g)(1) above may be attached to the maintenance log in lieu of written entry of the information.

The maintenance log shall be kept in a readily accessible location and made immediately available upon request of a city representative. Each permit holder shall submit a copy of the previous year's maintenance log when renewing their annual permit and shall maintain copies of the log for three (3) years. If a maintenance log is lost and cannot be submitted, the permit holder shall have an opportunity to verify all of the information required by the maintenance log in a manner acceptable to the city, any failure to do so within

ten (10) days following the city's request shall be unlawful and a violation of this division.

**Sec. 46-204 – Denial, Suspension, Revocation of Permit, or Water Service Disconnect.**

- (a) The Director of Public Works may deny, revoke, or suspend a permit, and/ or request disconnection of the water service for any of the following reasons:
  - (1) Failure to submit a complete application or pay any fees;
  - (2) Fraud, misrepresentation, or false statement in the permit application or inspection and repair records; or
  - (3) Failure to comply with any of the provisions of this or any other city ordinance or other law.
- (b) Such denial, revocation, suspension, or discontinuance shall not become effective until the applicant/permit holder has been served a notice. The notice shall state the reason for noncompliance and include a time period for the applicant/permit holder to comply. Service (serving of notice) may be accomplished by personal service, or regular mail. Service by regular mail shall be deemed complete three (3) days after the city has placed the notice in the US mail. Such notice shall inform the applicant/permit holder of the action taken and shall notify the person of the right to appeal, pursuant to Section 46-204(f). Such action shall be effective upon the seventh day following service upon the applicant/permit holder, unless an appeal is filed. If an appeal is filed, such action shall be stayed until the final written decision on the appeal is rendered.
- (c) In any suspension of the license, the Director of Public Works may place such conditions upon the suspension as deemed advisable. Any conditions of the suspension shall be set forth in the notice.
- (d) Operating a facility after the effective date of a permit's denial, revocation, or suspension is and shall be unlawful.
- (e) Emergency Suspension – The Director of Public Works may pursue immediate suspension of the water service when, in the opinion of the Director of Public Works, such suspension is necessary to stop an actual or threatened discharge which presents or may present an imminent or substantial danger to the public health, safety, or welfare, or to prevent interference with, or a threat to, the sanitary sewer collection system. If the person notified of such suspension fails to comply with the order, the director shall take steps necessary to discontinue water service. The person may file a written appeal to such order with the City Manager, within two (2) business days of the order being made, and the appeal shall be heard within two (2) business days of the filing. Service shall remain suspended during the appeal period. Service shall be reinstated when the condition causing the threat is corrected, or if the person successfully appeals the director's order.

- (f) Appeal and Hearing – A person receiving any notice or order may appeal the requirements contained therein pursuant to this subsection, except in the case of an emergency order, which shall comply with the process set forth in Section 46-204(e). The person must file a written appeal with the City Manager within seven (7) days of receiving service, and the appeal must state why the requirements should be modified or should not apply to the recipient. The City Manager will hold a hearing, at which the person must be heard, within seven (7) days of receiving the appeal.

**Sec. 46-205. – Registration and Inspection.**

- (a) The city will establish and manage registration for all persons, firms, or businesses that desire to be authorized to pump, clean, and/or inspect grease removal devices within the sanitary sewer service area. The registration shall be for a period of three (3) years at which time the person, firm, or business must re-register. The registration required by the city shall be in addition to any other permits, registrations, or occupational licenses required by federal, state, and local agencies having lawful jurisdiction. The registration is not transferable. There are no fees required to be registered.
- (b) Pumping and Cleaning – Any person, firm, or business desirous of collecting, pumping, or hauling wastes from, or cleaning Automatic Grease Removal Devices, Grease Traps and Grease Interceptors from businesses located within the sanitary sewer service area shall be required to register with the city. It is and shall be unlawful for any person, firm, or business to pump out or clean grease removal devices within the sanitary sewer service area without being registered.
- (c) Inspection – A registered service provider person, firm, or business may also perform inspections of grease removal devices per Section 46-203(f). Food service establishment owners, or employees thereof, may complete the inspection in an un-official capacity, but they will not be qualified to perform the official inspections required by the ordinance. It is and shall be unlawful for any person or employee of a firm or business to perform inspections of a grease removal device within the sanitary sewer service area that is not registered.
- (d) Plumbers – Any plumber desirous of installing, repairing, and/or inspecting automatic grease removal devices or grease interceptors within the sanitary sewer service area per Section 46-205 shall be licensed through the Building Inspection Division of the City of Leavenworth. Plumbers shall also be required to be a registered service provider through the city for the purpose of performing inspections. It is and shall be unlawful for any plumber to perform inspections or repairs of grease removal devices within the sanitary sewer service area without being licensed, registered, and certified.

**Sec. 46-206 – Enforcement.**

- (a) Before additional action is taken to enforce the provisions of this division, a person or entity found to be in violation shall first be served with a notice of violation. Notice will be deemed sufficient if it is delivered by personal service



or regular mail and adequately describes the nature of the violation and outlines a reasonable timeline for the alleged violator to come into compliance of at least ten (10) days following the date of notice. Notice shall be deemed given immediately in the case of personal service and in the case of service by regular mail, three (3) days after the date of mailing.

- (1) Upon the finding of a suspected violation or illicit discharge into the sanitary sewer collection system, the City Inspector shall be notified to do an immediate and unannounced inspection of the grease removal devices in the suspect facility.
  - (2) If a violation of the maintenance requirements for the grease removal device has been identified, the facility shall be responsible for all costs associated with the cleaning and removal of the violation in the sanitary sewer collection system. All cleaning and removal costs will be in accordance with the city fee schedule, as amended. Any fee imposed for cleaning of the sanitary sewer collection system and/or removal of grease from the sanitary sewer collection system that has not been paid within thirty (30) days of receipt of the billing, shall be deemed a violation of this ordinance. Service shall be in accordance with Section 46-206(a).
- (b) Following the expiration of the time period granted in paragraph (a), a person or entity found to be in violation of this division shall be guilty of a misdemeanor.
  - (c) A fine not to exceed \$500.00 shall be levied upon a first conviction. Each day of violation shall constitute a separate offense.
  - (d) A fine not less than \$500.00 and not to exceed \$1,000.00 shall be levied upon a second and subsequent conviction. Each day shall constitute a separate offense.

**Section 7.** Sections 46-92, 46-93, and 46-150 of the Leavenworth Code of Ordinances, in existence as of and prior to the adoption of this ordinance, and all other sections in conflict with the terms of this ordinance, are hereby repealed.

**Section 8.** This ordinance shall take effect and be in force from and after its publication in the official city newspaper as provided by law.

PASSED and APPROVED by the Governing Body on the \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Mayor

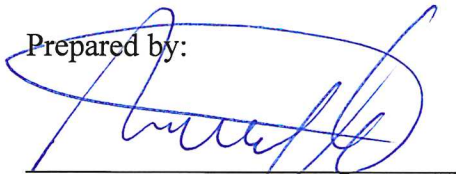
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ATTEST:

\_\_\_\_\_  
Sarah Bodensteiner, City Clerk

**Policy Report No. 9-2022**  
**2022 Section 44-32 School Zones**  
**November 22, 2022**

Prepared by:



Patrick R. Kitchens, Police Chief

Approved by:



Paul Kramer, City Manager

**ISSUE:**

The Police Department is requesting the commission place an ordinance on first consideration that changes Section 44-32 School Zones by adding a school zone to the area of Nettie Hartnett School at 1000 3<sup>rd</sup> Avenue.

**STAFF RECOMMENDATION:**

Staff recommends approval.

**BACKGROUND:**

At a recent community engagement event, a citizen inquired about a school zone in or around Nettie Hartnett School located at 1000 3<sup>rd</sup> Avenue. Staff conducted a review and confirmed the school zones were removed when the use of the building changed. That building has changed uses over the last few years.

The city conducted a very thorough recodification of the city ordinances in 2019 and the school zone was removed. Staff confirmed with the school district the building does have students and that will continue into the future.

Staff recommends placing a School Zone on 3<sup>rd</sup> Avenue from Congress to Marshall Street at 20 miles per hour during times before and after school.

**BUDGET IMPACT:**

There is no budget impact.

**COMMISSION ACTION:**

Place an ordinance on first consideration that changes Section 44-32 – School Zones by adding a School Zone on 3<sup>rd</sup> Avenue between Congress and Marshall.

(Summary Publish in the Leavenworth Times on \_\_\_\_\_, 2022)

**ORDINANCE NO. XXXX**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF LEAVENWORTH, KANSAS; CHAPTER 44 TRAFFIC AND VEHICLES, ARTICLE II STREET USE DESIGNATIONS, SECTION 44-32 SCHOOL ZONES; PROVIDING SUBSTITUTE PROVISIONS AND REPEALING THE SECTION AMENDED.**

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

**Section 1.** That the Code of Ordinance of the City of Leavenworth, Kansas, Chapter 44 Traffic and Vehicles, Article II Street Use Designations, Sec. 44-32 School Zones, is hereby deleted in its entirety and amended to read as follows:

**Sec. 44-32. – School zones.**

(a) The following streets and portions are designated as school zones:

(1) Anthony School:

- a. 2<sup>nd</sup> Avenue between Evergreen Street to Thornton Street as a school zone.
- b. 4<sup>th</sup> Avenue between Evergreen Street to Thornton Street as a school zone.
- c. Thornton Street between 2<sup>nd</sup> Avenue to 4<sup>th</sup> Avenue as school zone.
- d. Evergreen Street between 2<sup>nd</sup> Avenue to 4<sup>th</sup> Avenue as a school zone.

(2) David Brewer School:

- a. Ottawa Street 150 feet east of 17<sup>th</sup> Street to 19<sup>th</sup> Street as a school zone.
- b. 18<sup>th</sup> Street between Ottawa Street to Miami Street as a school zone.
- c. 17<sup>th</sup> Street between Ottawa Street to Miami Street as a school zone.

(3) Henry Leavenworth Elementary School: 20<sup>th</sup> Street north and south of Vilas Street as a school zone.

(4) Lawson Elementary School: 5<sup>th</sup> Street between Kiowa and Pawnee Street as a school zone.

(5) Leavenworth High School: 10<sup>th</sup> Avenue between Marion Street and Halderman Street as a school zone.

(6) Nettie Hartnett School: 3<sup>rd</sup> Avenue between Congress to Marshall Street as a school zone

(7) Xavier Catholic School:

- a. Muncie Road between Hughes Road to Lakeview Drive as a school zone.

- b. Hughes Road 150 feet south of its intersection with Muncie Road as a school zone.
- (8) St. Paul Lutheran Elementary School and Xavier Upper Schools: 7<sup>th</sup> Street between Miami to Pottawatomie Street as a school zone.
- (9) Warren Middle School: New Lawrence Road from 100 feet south of Gatewood Street to 200 feet south of Wildwood Street as a school zone.
- (10) Xavier Pre-school: 2<sup>nd</sup> Avenue between Prospect Street to Ohio Street
- (b) All school zones are in effect when schools are in session and during the hours posted on school zoning signage.
- (c) All school zones shall be clearly marked with static signage or electronic signage that indicates the beginning of and the end of a school zone as required by Manual of Uniformed Traffic Control Devices.

State Law reference – Authority to decrease speed limits in school zones. K.S.A. 8-1560(a)(4).

**Section 2.** Chapter 44 Traffic and Vehicles, Article II Street Use Designations, Sec. 44-32 School Zones of the Code of Ordinances of the City of Leavenworth, Kansas, in existence as of and prior to the adoption of this ordinance, are hereby repealed.

**Section 3.** This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

**PASSED and APPROVED** by the Governing Body on this \_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Mayor

{Seal}

ATTEST:

\_\_\_\_\_  
Sarah Bodensteiner, CMC, City Clerk

## Sec. 44-32. - School zones.

(a) The following streets and portions of streets are designated as school zones:

(1) Anthony School:

- a. 2nd Avenue between Evergreen Street to Thornton Street as a school zone.
- b. 4th Avenue between Evergreen Street to Thornton Street as a school zone.
- c. Thornton Street between 2nd Avenue to 4th Avenue as a school zone.
- d. Evergreen Street between 2nd Avenue to 4th Avenue as a school zone.

(2) David Brewer School:

- a. Ottawa Street 150 feet east of 17th Street to 19th Street as a school zone.
- b. 18th Street between Ottawa Street to Miami Street as a school zone.
- c. 17th Street between Ottawa Street to Miami Street as a school zone.

(3) Henry Leavenworth Elementary School: 20th Street north and south of Vilas Street as a school zone.

(4) Lawson Elementary School: 5th Street between Kiowa and Pawnee Street as a school zone.

(5) Leavenworth High School: 10th Avenue between Marion Street and Halderman Street as a school zone.

(6) Xavier Catholic School:

- a. Muncie Road between Hughes Road to Lakeview Drive as a school zone.
- b. Hughes Road 150 feet north and 150 feet south of its intersection with Muncie Road as a school zone.

(7) St. Paul Lutheran Elementary School and Xavier Upper Schools: 7th Street between Miami to Pottawatomie Street as a school zone.

(8) Warren Middle School: New Lawrence Road from 100 feet south of Gatewood Street to 200 feet south of Wildwood Street as a school zone.

(9) Xavier Pre-school: 2nd Avenue between Prospect Street to Ohio Street.

(b) All school zones are in effect when schools are in session and during the hours posted on school zoning signage.

(c) All school zones shall be clearly marked with static signage or electronic signage that indicates the beginning of and the end of a school zone as required by Manual of Uniformed Traffic Control Devices.

(Code 1978, § 35-21.1; Code 1994, § 110-46; Ord. No. 7123, § 1, 3-9-1993; Ord. No. 7152, § 2, 11-9-1993; Ord. No. 7560, § 1, 3-25-2003; Ord. No. 7655, § 1, 7-5-2005; Ord. No. 7860, § 1, 12-14-2010; Ord. No. 7889, § 1, 11-22-2011; Ord. No. 7902, § 1, 8-28-2012; Ord. No. 7963, § 1, 12-9-2014; Ord. No. 7986, § 1, 12-8-2015; Ord. No. 8007, § 1, 9-13-2016)

**State Law reference—** Authority to decrease speed limits in school zones, K.S.A. 8-1560(a)(4).

**POLICY REPORT  
FIRST CONSIDERATION ORDINANCE  
2022-27-REZ  
2700 STATE STREET**

**NOVEMBER 22, 2022**

**SUBJECT:**

Place on first consideration an ordinance to approve 2022-27-REZ

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

  
\_\_\_\_\_  
**Reviewed By:**  
Paul Kramer,  
City Manager

**ANALYSIS:**

The applicant is requesting a rezoning of their property located at 2700 State Street from R-MF, Multi-Family Residential District, to RMX, Residential Mixed Use District. The subject property is owned by Steven and Mary Foutch, and is currently vacant.

The subject property is approximately 4 acres in size and lies directly adjacent to the north of The Guidance Center (TGC). The property is under contract to be purchased by TGC. The intent for the property is to allow for future expansion of TGC's behavioral health services, as well as to provide space for expansion of partnerships with potential primary care providers. There are also ongoing discussions with the Leavenworth Attainable Housing Group for the potential construction of a multi-family housing unit to provide transitional housing for their training and support programs to assist homeless and precariously housed persons. All intended future uses for the property, medical office and multi-family housing, are allowed uses in the RMX zoning district.

No specific plans exist for the potential future development of the property. Any proposed development will require full site plan review and approval by staff, and will be required to comply with all applicable development regulations and building codes.

The Planning Commission considered this item at their November 7, 2022 meeting and voted 4-0 to recommend approval of the rezoning request.

**CONDITIONS OF DETERMINATION**

Whenever the Planning Commission or City Commission takes action on an application for amendment to these Development Regulations, and such proposed amendment is not a general revision of existing ordinances, but one which will affect specific property, the Planning Commission and City Commission shall consider the following factors:

- a) The character of the neighborhood;

*The subject property is an approximately 4 acre vacant piece land, located north of Limit Street and one block west of 4<sup>th</sup> Street. There are a multitude of uses in close proximity, including medical office, multi-family, single-family, and commercial.*

- b) The zoning and use of properties nearby;

*The property to the south is occupied by The Guidance Center and is zoned OBD, Office Business district. Properties to the east, north, and west are zoned R-MF, Residential Multi-Family District, and are occupied by apartment buildings to the west and north, and single-family homes to the east.*

- c) The suitability of the subject property for the uses to which it has been restricted;

*The subject property is vacant and has been available for sale and development for approximately 20 years. In that time, no development proposals for a multi-family housing development have been presented to staff.*

- d) The extent to which removal of the restrictions will detrimentally affect nearby property;

*The proposed rezoning should have little or no detrimental effect upon surrounding properties. The property is currently zoned to allow for development of multi-family housing, which will also be allowed in the RMX zoning district. The RMX zoning district would also allow for the development of some office or commercial uses, which already exist in close proximity, and will not alter the overall character of the neighborhood.*

- e) The length of time the subject property has remained vacant as zoned;

*The subject property has always been vacant.*

- f) The relative gain to economic development, public health, safety, and welfare by the reduction of the value of the landowner's property as compared to the hardship imposed by such reduction upon the individual landowner;

*The proposed rezoning will have a positive effect on the economic development of the City and region by allowing for the development of a long-vacant piece of property. It will additionally provide the opportunity for the expansion of vital services to the residents of Leavenworth, improving the public health of the community.*

- g) The recommendations of permanent or professional staff;

*Staff recommends approval of the rezoning request.*

- h) The conformance of the requested change to the adopted or recognized Comprehensive Land Use Plan being utilized by the city;

*The area is identified as appropriate for multi-family uses on the Future Land Use map. Multi-family uses are allowed in the RMX zoning district, in addition to limited commercial and office uses. Therefore, staff finds the proposed use to be in conformance with the overall goals of the adopted Comprehensive Plan.*

- i) Such other factors as may be relevant to a particular proposed amendment. The factors considered in taking action on any proposed amendment shall be included in the minutes or otherwise be made part of the written record.

*No other factors*

After the required public notices were sent to property owners within 200' as required by Kansas State Statute, staff received one call from a notified property owner indicating that they do not want to see their property taxes raised, and do not want the development to bring more homeless persons to the area.



**REZONING ACTION/OPTIONS:**

- Place an ordinance on first consideration to approve the rezoning request of 2700 State Street from R-MF to RMX.
- Deny the rezoning request of 2700 State Street from R-MF to RMX.
- Remand the issue to the Planning Commission for further consideration.

*(Summary Published in the Leavenworth Times on \_\_\_\_\_)*

**ORDINANCE NO. XXXX**

**AN ORDINANCE AMENDING THE DEVELOPMENT REGULATIONS, APPENDIX A OF THE CODE OF ORDINANCES OF THE CITY OF LEAVENWORTH, KANSAS BY REZONING 2700 STATE STREET FROM MUTLI-FAMILY RESIDENTIAL DISTRICT (R-MF) TO RESIDENTIAL MIXED USE DISTRICT (RMX).**

**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 7th day of November 2022 in the Commission Room, 1<sup>st</sup> Floor of City Hall, 100 N. 5<sup>th</sup> Street, Leavenworth, Kansas. The official date and time set as was published in the Leavenworth Times newspaper on the 12<sup>th</sup> day of October 2022 and notice of the public hearing was mailed to all property owners as required by K.S.A. 12-757(b); 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 2700 State Street, Leavenworth Kansas from Multi-Family Residential District (R-MF) to Residential Mixed Use District (RMX); 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 property, to-wit, is hereby rezoned from Multi-Family Residential District (R-MF) to Residential Mixed Use District (RMX).

LOT OR BLOCK SEVEN (7), LESS THE NORTH 58 FEET IN JOHNSON'S SUBDIVISION, IN THE CITY OF LEAVENWORTH, LEAVENWORTH COUNTY, KANSAS, LESS AND EXCEPT THE EAST 30 FEET THEREOF.

And **more commonly referred to as 2700 State 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 summary 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 \_\_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Mayor

{Seal}

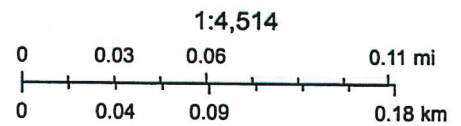
ATTEST:

\_\_\_\_\_  
Sarah Bodensteiner, CMC, City Clerk

# 2022-27-REZ

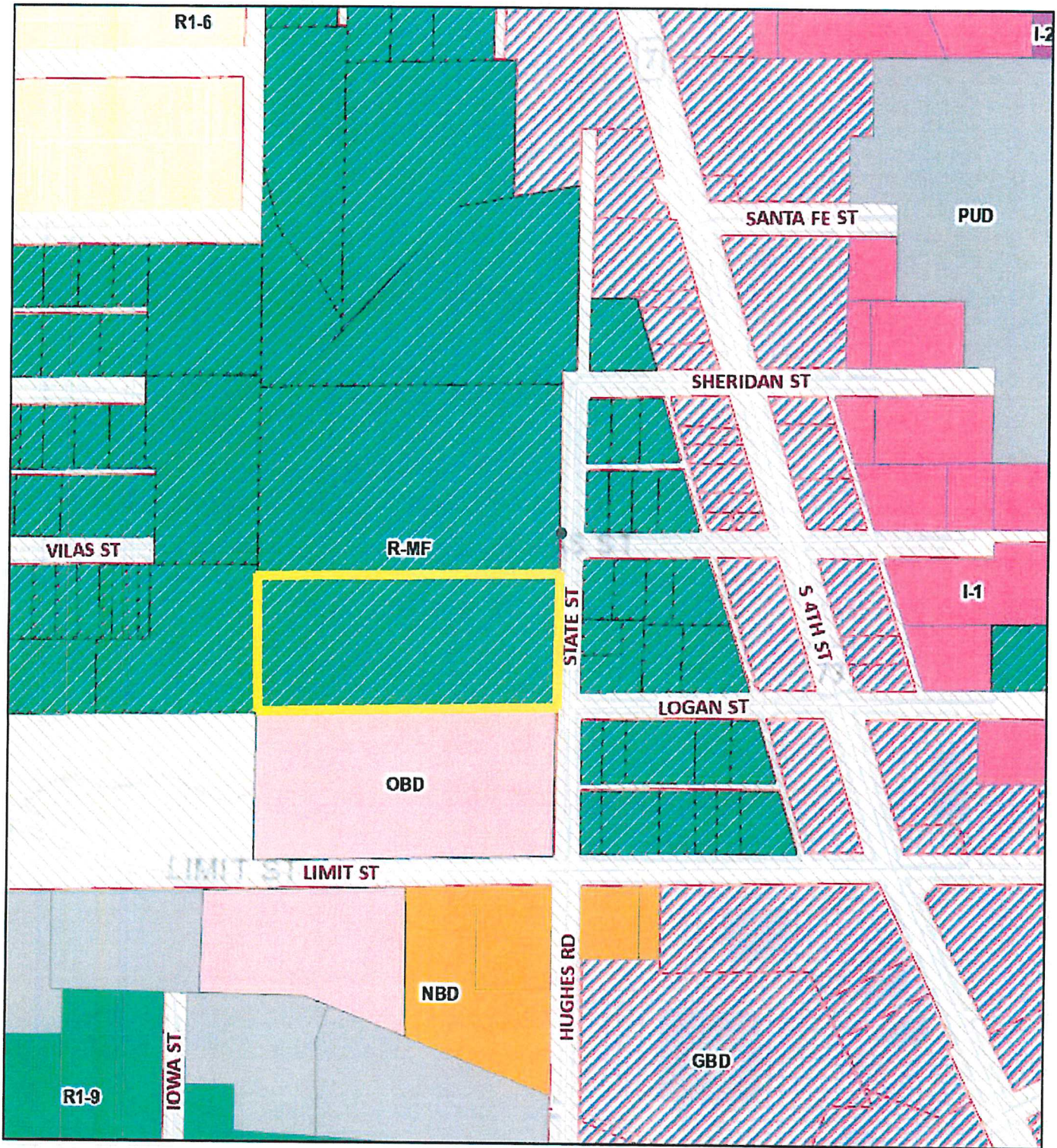


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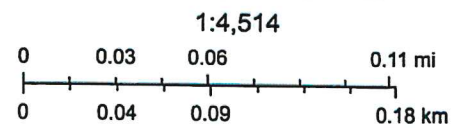


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# 2022-27-REZ (Zoning)

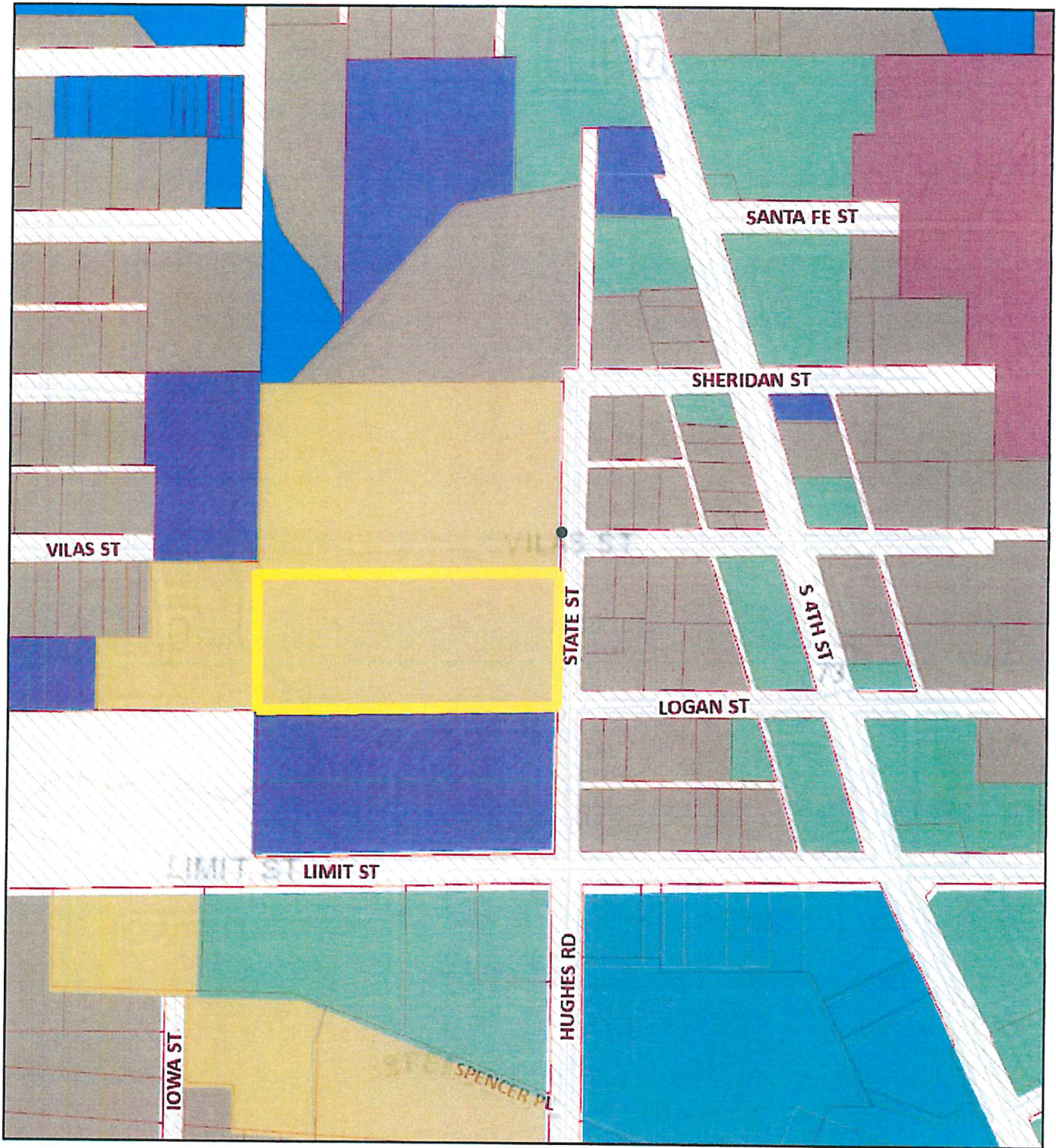


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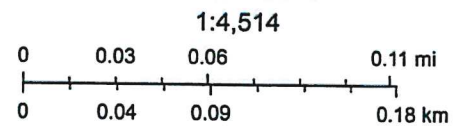
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# 2022-27-REZ (Future Land Use)



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- Override 1
- Public/Semi-Public
- Single-Family
- Commercial
- Conservation/Open Space
- Industrial
- Mixed Use
- Multi-Family
- Parcels (City Owned)
- Parcels\_Current
- Leavenworth City Limits
- City Right-of-Way
- RoadCenterline



Platte County, Missouri Dept. of Conservation, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA



APPLICATION FOR REZONING  
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

CASE NO. 2022-27 REZ

Application #	<u>12066</u>
Fee (non-refundable)	\$350.00
Filing Date	<u>9.12.22</u>
Received By	<u>[Signature]</u>
Hearing Date	<u>11-7-22</u>
Publication Date	<u>10-12-22</u>

The undersigned owner(s)/agent for the owner(s) of the property described below, herein petition for a change in the zone of the following legally described property: (agent must have authorization to make application).

Subject Property:	<u>2700 State Street Leavenworth, Kansas 66048</u>		
Rezoning:	Present classification of: <u>Multi-Family</u> district to: <u>Residential Mixed Use (RMX)</u>		
Legal Description:	(Attach full legal description provided by the REGISTER OF DEEDS OFFICE)		
Real Estate PID #	<u>052-101-01-0-30-12-040,03-0</u>	Historic District:	<u>N/A</u>

We, Steven & Mary Foutch, being duly sworn, depose and say that I am the owner/agent for the owner of the property involved in this petition and that the statements and answers herein contained and then information herewith submitted are in all respects true and correct to the best of my knowledge and belief.

Name(s) of Owner (print or type):	<u>Steven D. and Mary Jane Foutch</u>		
Address:	<u>603 East Street #400 Parkville, Missouri 64152</u>		
Contact No.:	<u>(816) 520-3948 (Cell)</u>	Email:	<u>Steve@foutchbrothers.com</u>
Signature of Owner(s):	<u>[Signatures]</u>		

NOTE: All signatures must be in black or blue ink. Signature of owner(s) must be secured and notarized.

State of Missouri )  
County of Platte ), SS

Signed or attested before me on 09/08, 2022 by CARA Knutson  
(date) (name(s) of person(s))

Notary Public: Cara Knutson My Appointment Expires: 03/24/23

(SEAL) CARA KNUTSON  
My Commission Expires  
March 24, 2023  
Clay County  
Commission #15573205

If necessary, use additional sheets to respond to the following:

Briefly describe the present use and character of the property and of the surrounding area:

The vacant land on State Street is directly north of The Guidance Center at 500 Limit Street and consists of approximately 4.4 acres. The land has been vacant perpetually and for sale at least since The Guidance Center was opened in May of 2004. Directly north of the vacant land is an apartment complex also owned by Steven D. and Mary Jane Foutch. Directly to the east of the property are single family homes. There is a heavy tree line and bush directly to the west of the property. A creek also runs directly west of the property.

Briefly describe the intended use and character of the property:

The Guidance Center intends to purchase the property for future expansion of its behavioral health services, as well as expansion of partnerships with potential primary care providers. Integrated care is a primary element of our mission and vision and we want to ensure we coordinate holistic care for our clients. We would potentially build a medical building on the eastern most portion of the property. In addition, we are in discussions with Sister Vickie Perkins with the Leavenworth Attainable Housing group. We believe there is enough land there to build a 20-unit apartment building for their training and support program to assist homeless and precariously housed persons. Those residents stay in those apartments would be dependent upon participation in a training program to allow them to move into the community over time.

Briefly describe why you believe the land use (zoning) being requested is the most appropriate for this property:

Julie Hurley, Director of Planning and Community Development for the City recommended this rezoning designation based on our description of the partnerships and projects being considered. She indicated that Residential Mixed Use would allow for multi-family dwellings as well as a medical office.

Give the reason(s) why you believe this proposal will not be materially detrimental to the public welfare and surrounding properties and/or measures you have taken or intend to take to prevent detrimental impacts:

This proposal will improve property that is presently an eyesore to the community. The land is infrequently mowed and debris is beginning to accumulate thereon. This proposal would bring new construction and community development to an area that is currently blighted. The residents surrounding the property are accustomed to the public traffic created by The Guidance Center and this will be an extension of that work. In addition, the homelessness issue in Leavenworth will be better addressed, possibly improving the community in a number of ways.

Is the property affected by any easements, deed/plat restrictions or other conditions arising from previous Special Use Permits, Subdivisions, rezoning, or variances? If so, briefly describe the origin and effect of such conditions:

Unknown

Check List:	
<input checked="" type="checkbox"/>	Non-refundable fee of \$350.00 is due at time of application
<input checked="" type="checkbox"/>	Certified list of the property owners within two hundred (200) feet of the subject property
<input checked="" type="checkbox"/>	Full legal description obtained through the Register of Deeds Office
<input checked="" type="checkbox"/>	Site plan drawn to scale (see General Instructions)
<input checked="" type="checkbox"/>	Supporting documentation (see General Instructions)



**POLICY REPORT  
FIRST CONSIDERATION ORDINANCE  
2022-28-REZ  
212, 220 & 224 MAPLE STREET**

**NOVEMBER 22, 2022**

**SUBJECT:**

Place on first consideration an ordinance to approve 2022-28-REZ

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

  
\_\_\_\_\_  
**Reviewed By:**  
Paul Kramer,  
City Manager

**ANALYSIS:**

The applicant is requesting a rezoning of their property located at 212, 220 & 224 Maple Street from R1-6, High Density Single-Family Residential District, to I-1, Light Industrial District. The subject property is owned by Geiger Ready-Mix Co., Inc., and is currently being developed as additional parking area for employees and equipment.

The subject property consists of 3 vacant lots that lie directly adjacent to property that is currently being utilized by Geiger for parking of equipment. The property is to the east of Stubby Park, and has been vacant for at least 25 years. The two lots addressed as 220 and 224 Maple were previously owned by the City of Leavenworth, and were transferred to Geiger in 2021 for the express purpose of providing land for additional parking for the business.

Plans for the expanded parking lot were reviewed and approved by City staff, and it was discovered after construction had begun on the parking lot that the property was zoned R1-6. The rezoning request will bring the site into compliance with existing regulations for the use of the property. All other property owned and occupied by Geiger in the immediate vicinity is zoned I-1.

The Planning Commission considered this item at their November 7, 2022 meeting and voted 4-0 to recommend approval of the rezoning request.

**CONDITIONS OF DETERMINATION**

Whenever the Planning Commission or City Commission takes action on an application for amendment to these Development Regulations, and such proposed amendment is not a general revision of existing ordinances, but one which will affect specific property, the Planning Commission and City Commission shall consider the following factors:

- a) The character of the neighborhood;

*The subject property consists of 3 vacant lots. To the east is the existing Geiger Ready-Mix business. To the north are single family homes, to the west is Stubby Park, and to the south is the American Legion. The neighborhood contains an existing mix of uses, which will not be altered by the requested rezoning.*

- b) The zoning and use of properties nearby;

*The property to the east is zoned I-1 and is occupied by Geiger Ready-Mix. The property to the south is zoned R1-6 and is occupied by the American Legion, the property to the west is zoned R1-6 and is occupied by Stubby Park, and the properties to the north are zoned R1-6 and are occupied by single family residences.*

- c) The suitability of the subject property for the uses to which it has been restricted;

*The subject property is vacant and has been available for sale and development for a minimum of 25 years. In that time, no other development proposals have been presented.*

- d) The extent to which removal of the restrictions will detrimentally affect nearby property;

*The proposed rezoning should have little detrimental effect upon surrounding properties. The planned parking area will service the existing Geiger Ready-Mix business, and will alleviate parking congestion without introducing an increase in industrial traffic or altering the nature of the neighborhood.*

- e) The length of time the subject property has remained vacant as zoned;

*The subject property has been vacant for a minimum of 25 years.*

- f) The relative gain to economic development, public health, safety, and welfare by the reduction of the value of the landowner's property as compared to the hardship imposed by such reduction upon the individual landowner;

*The proposed rezoning will have a positive effect on the safety of the neighborhood by alleviating parking congestion on other portions of the Geiger Ready-Mix business.*

- g) The recommendations of permanent or professional staff;

*Staff recommends approval of the rezoning request.*

- h) The conformance of the requested change to the adopted or recognized Comprehensive Land Use Plan being utilized by the city;

*The area is identified as appropriate for single-family uses on the Future Land Use map. However, the adjoining parcel which is also owned by Geiger Ready-Mix and utilized for parking of equipment is also identified as appropriate for single-family uses. The proposed parking area allows for the continued sustainability of an existing business in the Leavenworth community, which meets other goals of the Comprehensive Plan, and functions as an extension of the existing location. Therefore, staff finds the proposed use to be in conformance with the overall goals of the adopted Comprehensive Plan.*

- i) Such other factors as may be relevant to a particular proposed amendment. The factors considered in taking action on any proposed amendment shall be included in the minutes or otherwise be made part of the written record.

*No other factors*

After the required public notices were sent to property owners within 200' as required by Kansas State Statute, staff received no calls or communication from notified owners.

**REZONING ACTION/OPTIONS:**

- Place an ordinance on first consideration to approve the rezoning request of 212, 220 and 224 Maple Street from R1-6 to I-1.
- Deny the rezoning request of 212, 220 and 224 Maple Street from R1-6 to I-1.
- Remand the item to the Planning Commission for further consideration.

*(Summary Published in the Leavenworth Times on \_\_\_\_\_)*

**ORDINANCE NO. XXXX**

**AN ORDINANCE AMENDING THE DEVELOPMENT REGULATIONS, APPENDIX A OF THE CODE OF ORDINANCES OF THE CITY OF LEAVENWORTH, KANSAS BY REZONING 212 MAPLE STREET, 220 MAPLE STREET, AND 224 MAPLES STREET FROM HIGH DENSITY SINGLE FAMILY RESIDENTIAL DISTRICT (R1-6) TO LIGHT INDUSTRIAL DISTRICT (I-1).**

**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 7th day of November 2022 in the Commission Room, 1<sup>st</sup> Floor of City Hall, 100 N. 5<sup>th</sup> Street, Leavenworth, Kansas. The official date and time set as was published in the Leavenworth Times newspaper on the 12<sup>th</sup> day of October 2022 and notice of the public hearing was mailed to all property owners as required by K.S.A. 12-757(b); 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 212 Maple Street, 220 Maple Street, and 224 Maple Street, Leavenworth Kansas from High Density Single Family Residential District (R1-6) to Light Industrial District (I-1); 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 property, to-wit, is hereby rezoned from High Density Single Family Residential District (R1-6) to Light Industrial District (I-1).

ALL OF LOTS 9, 10, 11 AND 12, BLOCK 10, FACKLERS ADDITION, A SUBDIVISION OF LAND IN THE CITY OF LEAVENWORTH, LEAVENWORTH COUNTY, KANSAS ACCORDING TO THE RECORDED PLAT THEREOF DESCRIBED BY ROGER B. DILL KANSAS PS 1408, ON SEPTEMBER 20, 2022.

**And more commonly referred to as 212 Maple Street, 220 Maple Street, and 224 Maple 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 summary 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 \_\_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Mayor

{Seal}

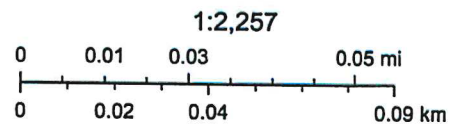
ATTEST:

\_\_\_\_\_  
Sarah Bodensteiner, CMC, City Clerk

2022-28-REZ

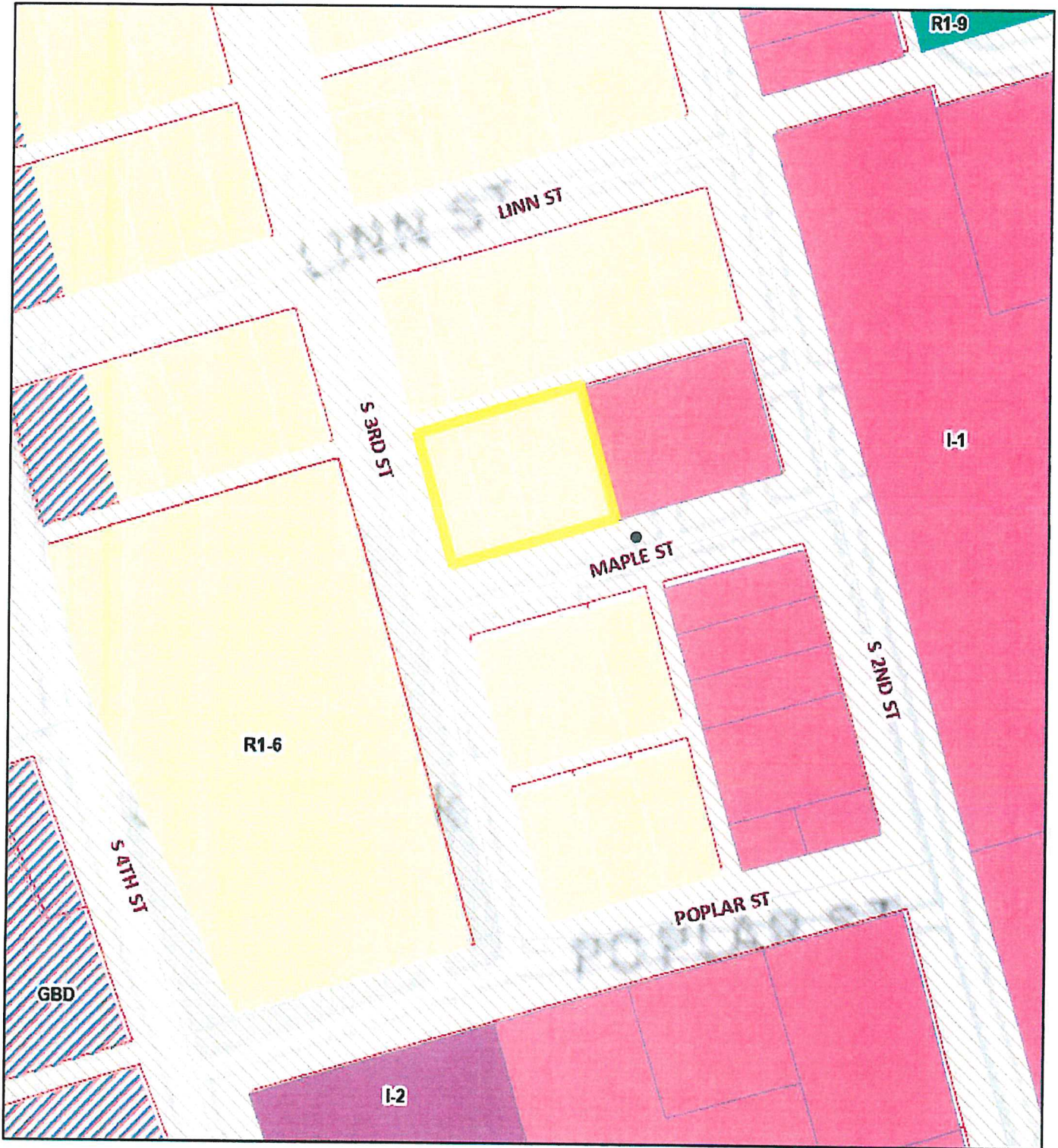


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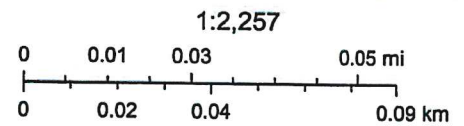


Platte County, Missouri Dept. of Conservation, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA

# 2022-28-REZ (Zoning)

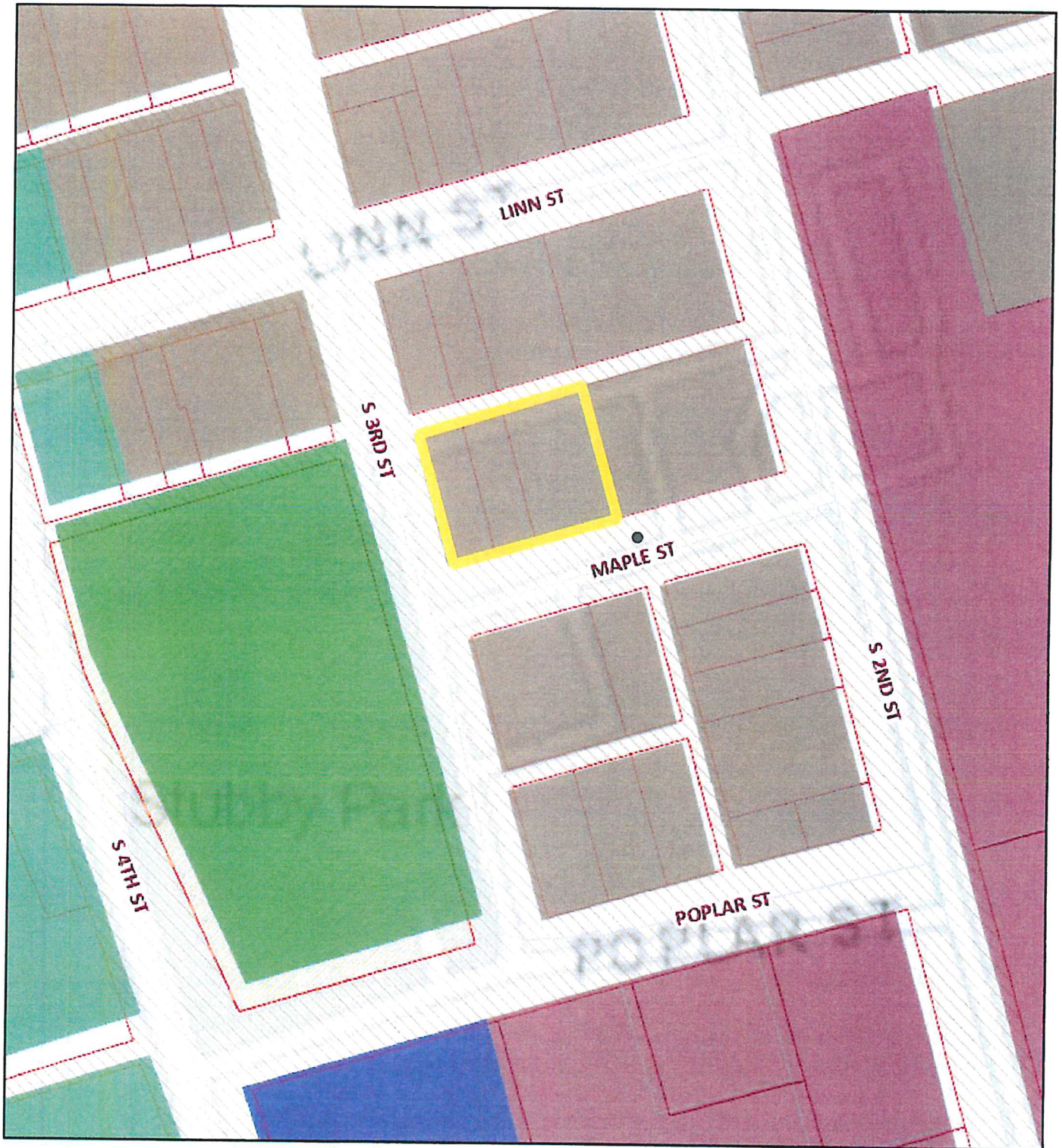


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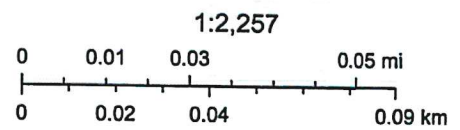
Platte County, Missouri Dept. of Conservation, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA

# 2022-28-REZ (Future Land Use)



11/2/2022, 4:42:20 PM

- Override 1
- Single-Family
- Parcels (City Owned)
- Commercial
- Parcels\_Current
- Industrial
- Park
- Public/Semi-Public
- Leavenworth City Limits
- City Right-of-Way
- RoadCenterline



Platte County, Missouri Dept. of Conservation, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA





**APPLICATION FOR REZONING**  
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

CASE NO. 2022-28 REZ

Application #	12134
Fee (non-refundable)	\$350.00
Filing Date	9/22/22
Received By	WJA
Hearing Date	11-7-22
Publication Date	10-12-22

The undersigned owner(s)/agent for the owner(s) of the property described below, herein petition for a change in the zone of the following legally described property: (agent must have authorization to make application).

Subject Property:	224, 220 & 212 Maple Street, Leavenworth, KS 66048		
Rezoning:	Present classification of: R1-6	district to: I-1	
Legal Description:	(Attach full legal description provided by the REGISTER OF DEEDS OFFICE)		
Real Estate PID #:	0773604008008000, 0773604008008010 & 0773604008009000	Historic District:	

I/We, Brian Schwinn being duly sworn, depose and say that I am the owner/agent for the owner of the property involved in this petition and that the statements and answers herein contained and then information herewith submitted are in all respects true and correct to the best of my knowledge and belief.

Name(s) of Owner (print or type):	Geiger Ready-Mix Co; Inc.		
Address:	PO Box 50, Leav., KS		
Contact No.	913-433-6882	Email Address:	brianschwinn@geigerreadymix.com
Signature of Owner(s):	<u>Brian Schwinn</u>		

State of <u>Kansas</u> )	(SEAL)	
County of <u>Wyandotte</u> )		

Signed or attested before me on <u>21st of Sept. 2022</u> by <u>Kristin Huff</u>	(date)	(name(s) of person(s))
Notary Public: <u>Kristin Huff</u>	My Appointment Expires: <u>7-27-25</u>	

NOTE: All signatures must be in black or blue ink. Signature of owner(s) must be secured and notarized.

**If necessary, use additional sheets to respond to the following:**

**Briefly describe the present use and character of the property and of the surrounding area:**

The area is industrial to the East (Geiger Ready-Mix Plant) and residential to the North and South. Stubby Park lies to the West and the parking lot to be located on the City parcel will be used for the park.

Currently - the properties are vacant.

**Briefly describe the intended use and character of the property:** The City property will be used for parking for the adjacent park. The Geiger property will be used for parking for the Geiger Ready-Mix Trucks.

**Briefly describe why you believe the land use (zoning) being requested is the most appropriate for this property:** The parking will help alleviate on-street parking for the park and will give Geiger better parking for their Ready-Mix trucks and employees.

**Give the reason(s) why you believe this proposal will not be materially detrimental to the public welfare and surrounding properties and/or measures you have taken or intend to take to prevent detrimental impacts:** None are expected.

**Is the property affected by any easements, deed/plat restrictions or other conditions arising from previous Special Use Permits, Subdivisions, rezoning or variances? If so, briefly explain the origin and effect of such conditions:** The property will need to be re-zoned from R1-6 to I-1 due to parking lots not being allowed in R1-6 zoning.

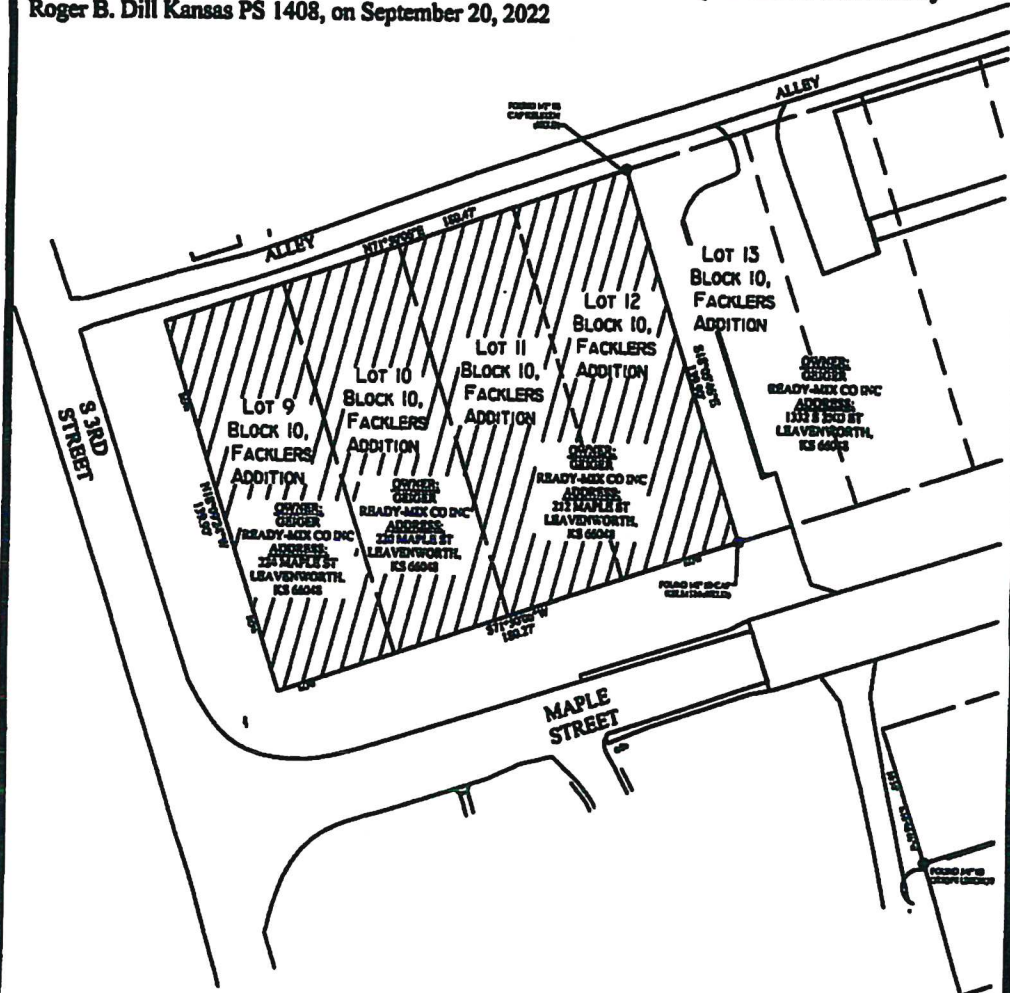
Check List:	
<input type="checkbox"/>	Non-refundable fee of \$350.00 is due at time of application
<input type="checkbox"/>	Certified list of the property owners within two hundred (200) feet of the subject property
<input type="checkbox"/>	Full legal description obtained through the Register of Deeds Office
<input type="checkbox"/>	Site plan drawn to scale (see General Instructions)
<input type="checkbox"/>	Supporting documentation (see General Instructions)

# Exhibit A

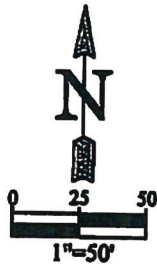
## Rezoning & Legal Description

### LEGAL DESCRIPTION

All of Lots 9, 10, 11 and 12, Block 10, FACKLERS ADDITION, a subdivision of land in the City of Leavenworth, Leavenworth County, Kansas according to the recorded plat thereof described by Roger B. Dill Kansas PS 1408, on September 20, 2022



Rezone from R1-6 to I-1



**Prepared For:**

Geiger Ready-Mix Co. INC.  
 c/o Brian Schwinn  
 P.O. Box 50  
 Leavenworth, KS 66048

SEC. 36, T08S, R22E LEAVENWORTH COUNTY, KANSAS

**ATLAS SURVEYORS, LLC.**

Taking Care of Your Needs  
 207 S. 5th Street | Leavenworth, Kansas 66048 | 913.530.8422 | 913.682.8606 (F)

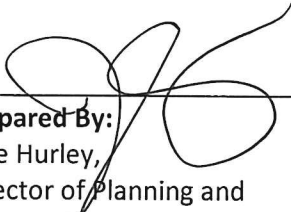
**POLICY REPORT  
FIRST CONSIDERATION ORDINANCE  
2022-29-REZ  
28 LIMIT & 2 VILAS**

**NOVEMBER 22, 2022**

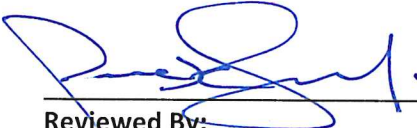
**SUBJECT:**

Place on first consideration an ordinance to approve 2022-29-REZ

**Prepared By:**

  
Julie Hurley,  
Director of Planning and  
Community Development

**Reviewed By:**

  
Paul Kramer,  
City Manager

**ANALYSIS:**

The subject property is owned by Greenamyre Rentals, Inc. The applicant is requesting a rezoning of a portion of their property located at 28 Limit Street and all of 2 Vilas Street from R1-9, Medium Density Single-Family Residential District to PUD, Planned Unit Development.

The rezoning and accompanying preliminary and final plats, also on this agenda, are being requested in order to consolidate commonly owned property and plan for future development of residential parcels that are consistent with the existing River View Estates development. Currently, the properties addressed as 2 Limit and 16 Limit are zoned PUD, as well as a portion of the property addressed as 28 Limit. The proposed rezoning and plats will provide for consistent zoning and residential development pattern. The accompanying final plat vacates a portion of the unused Vilas Street right-of-way, and allows for a more cohesive lot layout.

As with all PUD zoning proposals, the only allowed use will be of that shown on the development application. Any proposed change in use or lot configuration would require further public hearing and review and approval by the Planning Commission and City Commission.

The Planning Commission considered this item at their November 7, 2022 meeting and voted 4-0 to recommend approval of the rezoning request. An associated preliminary and final plat were also considered and approved at that time.

**CONDITIONS OF DETERMINATION**

Whenever the Planning Commission or City Commission takes action on an application for amendment to these Development Regulations, and such proposed amendment is not a general revision of existing ordinances, but one which will affect specific property, the Planning Commission and City Commission shall consider the following factors:

- a) The character of the neighborhood;

*The subject property is surrounded by single family residential development. To the east Union Pacific Railroad property and the Missouri River, and to the south is the VA Campus.*

- b) The zoning and use of properties nearby;

*The immediately surrounding properties to the north and west are zoned R1-9. The VA campus to the south does not have an assigned zoning district, and the Union Pacific Railroad property and Missouri River are to the east.*

- c) The suitability of the subject property for the uses to which it has been restricted;

*The subject property is currently zoned R1-9, Medium Density Single-Family Residential District. 2 Vilas Street is not accessible by any developed roadway, and the majority of the lot addressed as 28 Limit is zoned PUD, Planned Unit Development. The existing lot development pattern and vacant ROW is prohibitive for single family development.*

- d) The extent to which removal of the restrictions will detrimentally affect nearby property;

*The proposed rezoning should not have a detrimental impact on nearby property. The proposed rezoning and accompanying plat are consistent with the development pattern and do not introduce any additional lots beyond what currently exist. Therefore, there will be no increase in traffic or service demands in the area.*

- e) The length of time the subject property has remained vacant as zoned;

*The subject property has always been vacant, and the portion of Vilas Street ROW to be vacated with the accompanying plat has never been utilized.*

- f) The relative gain to economic development, public health, safety and welfare by the reduction of the value of the landowner's property as compared to the hardship imposed by such reduction upon the individual landowner;

*The proposed rezoning should have a neutral effect on economic development, public health, safety and welfare, as the proposal simply "cleans up" an area of inconsistent zoning and lot patterns.*

- g) The recommendations of permanent or professional staff;

*Staff recommends that the item be approved.*

- h) The conformance of the requested change to the adopted or recognized Comprehensive Land Use Plan being utilized by the city;

*The subject area is identified as appropriate for Single Family Residential uses, and the proposed rezoning is therefore in conformance with the adopted Comprehensive Land Use Plan.*

- i) Such other factors as may be relevant to a particular proposed amendment. The factors considered in taking action on any proposed amendment shall be included in the minutes or otherwise be made part of the written record.

*No other factors of note.*

After the required notice was published and mailed to property owners within 200' of the subject property, staff received one call confirming that multi-family development would not be allowed.

**REZONING ACTION/OPTIONS:**

- Place an ordinance on first consideration to approve the rezoning request of 28 Limit and 2 Vilas Street from R1-9 to PUD.
- Deny the rezoning request of 28 Limit and 2 Vilas Street from R1-9 to PUD.
- Remand the issue to the Planning Commission for further consideration.

(Summary Published in the Leavenworth Times on \_\_\_\_\_)

**ORDINANCE NO. XXXX**

**AN ORDINANCE AMENDING THE DEVELOPMENT REGULATIONS, APPENDIX A OF THE CODE OF ORDINANCES OF THE CITY OF LEAVENWORTH, KANSAS BY REZONING 28 LIMIT STREET AND 2 VILAS STREET FROM MEDIUM DENSITY SINGLE FAMILY RESIDENTIAL DISTRICT (R1-9) TO PLANNED UNIT DEVELOPMENT (PUD).**

**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 7th day of November 2022 in the Commission Room, 1<sup>st</sup> Floor of City Hall, 100 N. 5<sup>th</sup> Street, Leavenworth, Kansas. The official date and time set as was published in the Leavenworth Times newspaper on the 12<sup>th</sup> day of October 2022 and notice of the public hearing was mailed to all property owners as required by K.S.A. 12-757(b); 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 28 Limit Street and 2 Vilas Street, Leavenworth Kansas from Medium Density Single Family Residential District (R1-9) to Planned Unit Development (PUD); 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 property, to-wit, is hereby rezoned from Medium Density Single Family Residential District (R1-9) to Planned Unit Development (PUD).

A TRACT OF LAND BEING A PART OF LOTS 1 AND 2, RIVER VIEW REPLAT, A SUBDIVISION OF LAND IN THE CITY OF LEAVENWORTH, AND ALSO BEING APART OF LOTS 2, 3, AND 4, RIVER VIEW ROAD SUBDIVISION, A SUBDIVISION OF LAND IN THE CITY OF LEAVENWORTH, AND ALSO BEING A PART OF LOT 8, NEW VIEW SUBDIVISION, A SUBDIVISION OF LAND IN THE CITY OF LEAVENWORTH, AND ALSO BEING A PART OF LOTS 21, 22, AND 23, BLOCK 27, SOUTHSIDE PARK, A SUBDIVISION OF LAND IN THE CITY OF LEAVENWORTH, AND ALSO BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 9 SOUTH, RANGE 23 EAST OF THE

6<sup>TH</sup> PRINCIPAL MERIDIAN, ALL BEING IN LEAVENWORTH COUNTY, KANSAS, A DESCRIPTION WRITTEN BY D. STEVEN WEST, PS NO. 1614, ON SEPTEMBER 22, 2022 AND BEIN MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1 RIVER VIEW REPLAT, SAID CORNER ALSO BEING THE EAST-MOST SOUTHEAST CORNER OF LOT 7 NEW VIEW SUBDIVISION, SAID CORNER ALSO BEING THE SOUTHWEST CORNER OF FORMER LOT 4 RIVER VIEW ROAD SUBDIVISION, AND ALSO FORMER LOT 8 NEW VIEW SUBDIVISION; THENCE N 48°35'54" E ALONG THE SOUTHEAST LINE OF SAID LOT 7, A DISTANCE OF 178.82 FEET TO THE NORTHEAST CORNER OF SAID LOT 7, SAID CORNER ALSO BEING AN INFLECTION POINT ALONG THE WEST LINE OF SAID LOT 1 RIVER VIEW REPLAT, SAID CORNER ALSO BEING AN INFLECTION POINT ALONG THE WEST LINE OF FORMER LOT 4 RIVER VIEW ROAD SUBDIVISION, AND ALSO AN INFLECTION POINT ALONG THE WEST LINE OF FORMER LOT 8 NEW VIEW SUBDIVISION; THENCE N 40°40'22" W ALONG THE EAST LINES OF LOTS 3-7 OF SAID NEW VIEW SUBDIVISION, IN COMMON WITH THE WEST LINE OF FORMER LOT 4 RIVER VIEW ROAD SUBDIVISION, AND THE WEST LINE OF SAID RIVER VIEW REPLAT, A DISTANCE OF 436.20 FEET TO THE NORTHWEST CORNER FORMER LOT 4 RIVER VIEW ROAD SUBDIVISION, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE CONTINUING N 40°40'22" W ALONG THE EAST LINES OF LOTS 2 AND 3 OF NEW VIEW SUBDIVISION, IN COMMON WITH THE WEST LINE OF THE REMAINING PORTION OF SAID FORMER LOT 8, NEW VIEW SUBDIVISION, A DISTANCE OF 161.90 FEET TO THE NORTH-MOST CORNER OF LOT 2 NEW VIEW SUBDIVISION, SAID CORNER ALSO BEING THE EAST-MOST NORTHEAST CORNER OF LOT 1 NEW VIEW SUBDIVISION, SAID CORNER ALSO BEING AN INFLECTION POINT ON THE WEST LINE OF THE REMAINING PORTION OF SAID FORMER LOT 8, NEW VIEW SUBDIVISION; THENCE N 08°09'04" W CONTINUING ALONG SAID WEST LINE OF LOT 8, A DISTANCE OF 21.83 FEET TO THE NORTH-MOST NORTHEAST CORNER OF SAID LOT 1 NEW VIEW SUBDIVISION, SAID CORNER ALSO BEING THE NORTHWEST CORNER OF SAID LOT 8 NEW VIEW SUBDIVISION, SAID POINT ALSO BEING ON THE SOUTH LINE OF VILAS STREET AS SHOWN ON PLATS OF SOUTH SIDE PARK, NEW VIEW SUBDIVISION, AND RIVER VIEW REPLAT; THENCE N 23°15'41" W, A DISTANCE OF 32.53 FEET TO A POINT ON THE CENTERLINE OF VILAS STREET AS NOW ESTABLISHED; THENCE N 89°28'18" E ALONG SAID CENTERLINE, A DISTANCE OF 349.90 FEET THENCE N 00°52'52" W, A DISTANCE OF 186.44 FEET TO THE NORTHWEST CORNER OF THE LOT 23, BLOCK 27, SOUTH SIDE PARK, SAID POINT ALSO BEING ON THE SOUTH SIDE OF A 16.5 FEET WIDE ALLEY IN BLOCK 27, SOUTH SIDE PARK; THENCE N 89°05'38" E ALONG THE NORTH LINES OF LOTS 23, 22, AND 21, BLOCK 27, SOUTH SIDE PARK, A DISTANCE OF 180.85 FEET TO THE NORTHEAST CORNER OF LOT 21, BLOCK 27, SOUTH SIDE PARK; THENCE S 43°08'53" E, A DISTANCE OF 214.21 FEET TO THE SOUTHEAST CORNER OF LOT 21, BLOCK 27, SOUTH SIDE PARK, ALSO BEING A POINT ON THE NORTH RIGHT-OF-WAY LINE OF VILAS STREET AS NOW ESTABLISHED,



AND SAID POINT ALSO BEING THE NORTH-MOST NORTHWEST OF LOT 2 RIVER VIEW REPLAT; THENCE S 39°32'59" E ALONG THE WEST LINE OF SAID LOT 2 RIVER VIEW REPLAT, A DISTANCE OF 77.23 FEET TO AN INFLECTION CORNER ALONG THE WEST LINE OF SAID LOT 2 RIVER VIEW REPLAT, SAID CORNER ALSO BEING THE NORTHEAST CORNER OF THE REMAINING PORTION OF SAID FORMER LOT 8, NEW VIEW SUBDIVISION, AND ALSO BEING ON THE SOUTH LINE OF SAID VILAS STREET; THENCE S 39°32'59" E ALONG THE EAST LINE OF SAID FORMER LOT 8 NEW VIEW SUBDIVISION, A DISTANCE OF 191.07 FEET TO THE NORTHEAST CORNER OF FORMER LOT 2 RIVER VIEW ROAD SUBDIVISION; THENCE S 89°12'15" W ALONG THE NORTH LINE OF SAID FORMER LOT 2 RIVER VIEW ROAD SUBDIVISION, A DISTANCE OF 90.28 FEET TO THE NORTHWEST CORNER OF SAID FORMER LOT 2 RIVER ROAD SUBDIVISION; THENCE S 89°47'08" W ALONG THE NORTH LINES OF FORMER LOTS 3 AND 4 RIVER VIEW ROAD SUBDIVISION, A DISTANCE OF 633.45 FEET TO THE NORTHWEST CORNER OF SAID LOT 1 RIVER VIEW ROAD SUBDIVISION, SAID POINT ALSO BEING THE POINT OF BEGINNING, AND CONTAINING 177,448.63 SQ. FT.

And more commonly referred to as 28 Limit Street and 2 Vilas 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 summary 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 \_\_\_\_\_ day of \_\_\_\_\_ 2022.

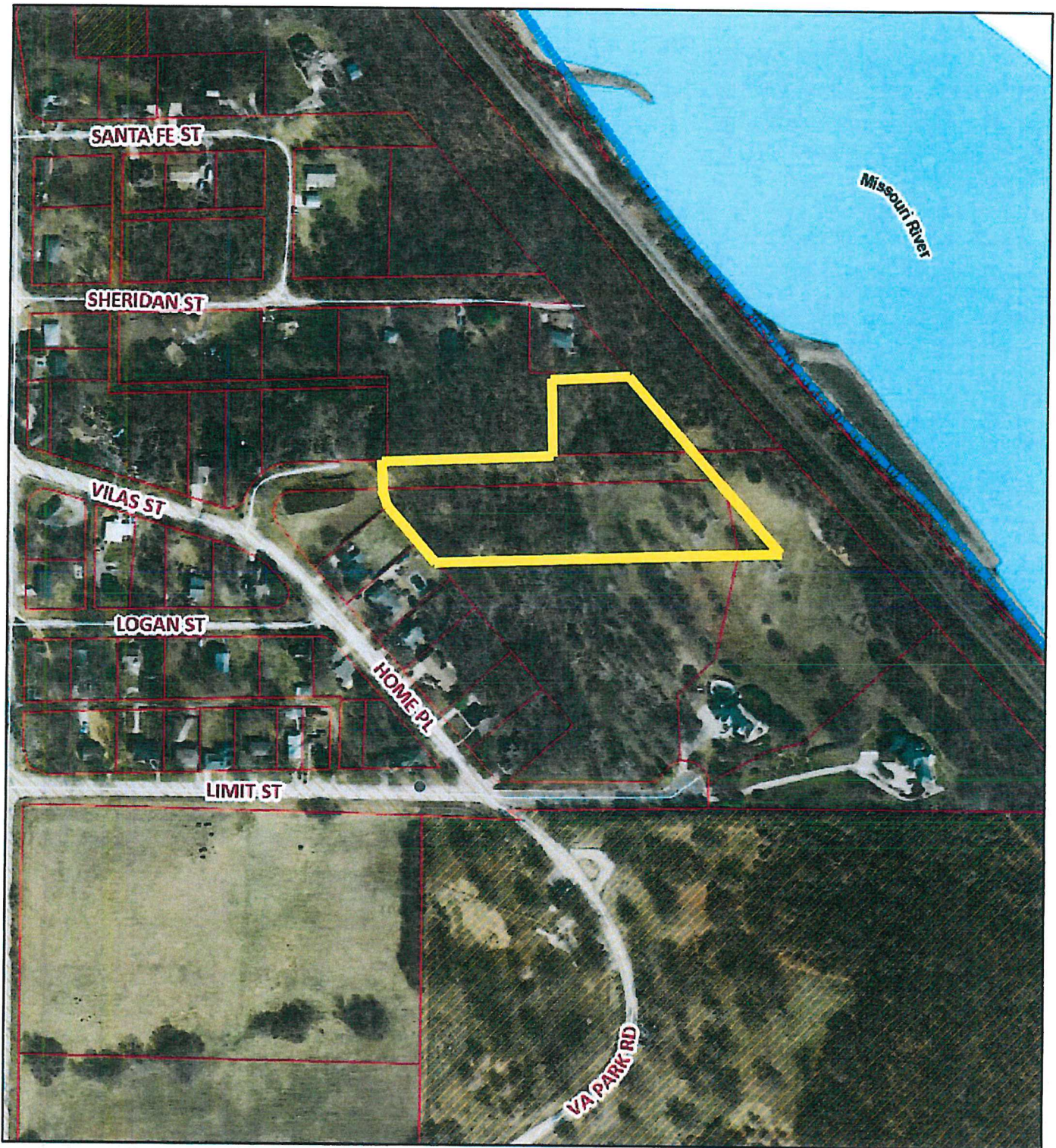
\_\_\_\_\_  
Mayor

{Seal}

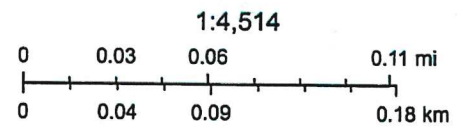
ATTEST:

\_\_\_\_\_  
Sarah Bodensteiner, CMC, City Clerk

# 2022-29-REZ

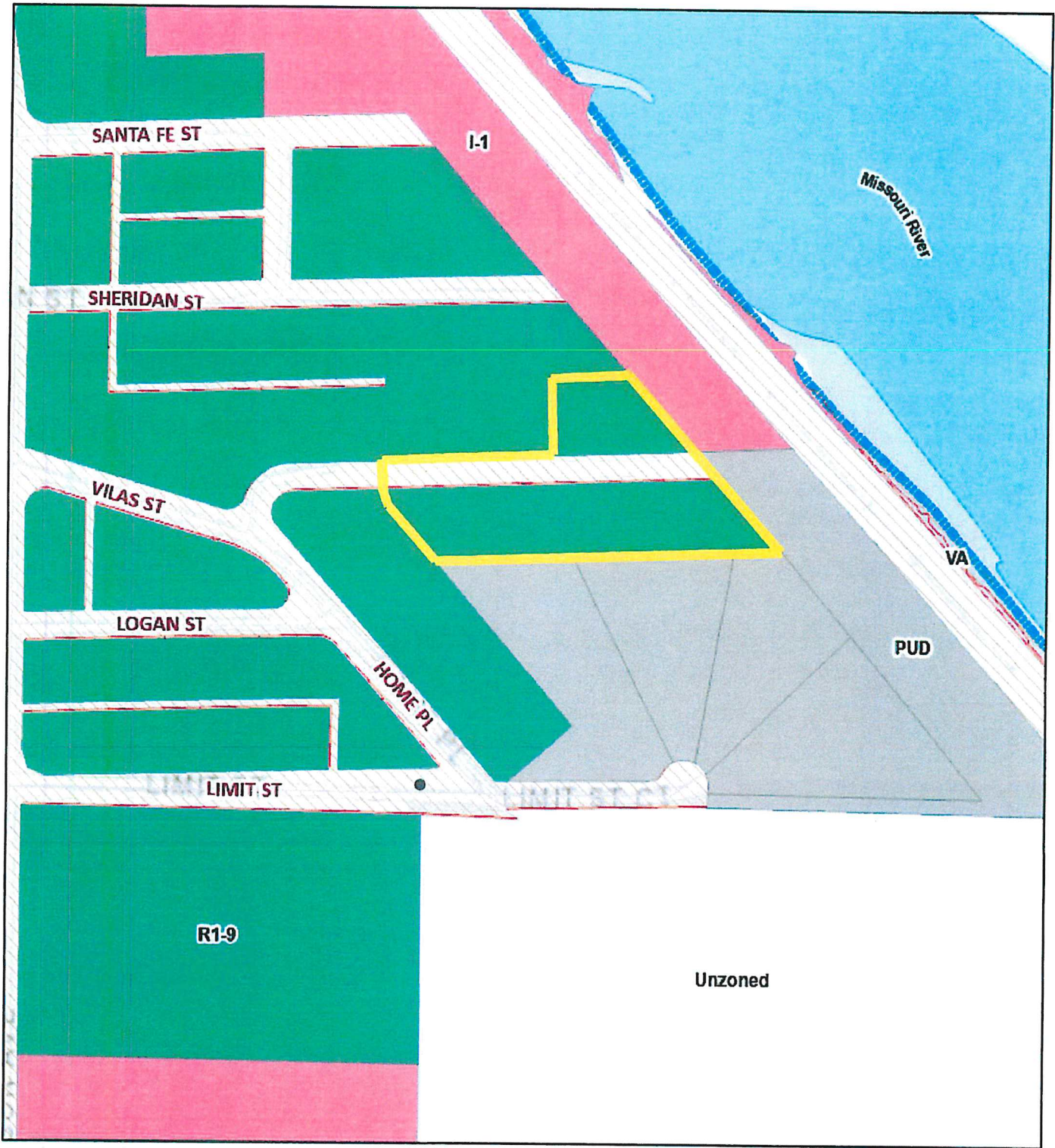


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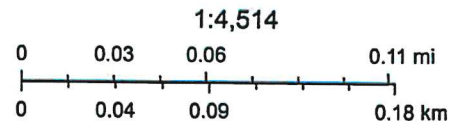


Platte County, Missouri Dept. of Conservation, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA

# 2022-29-REZ (Zoning)

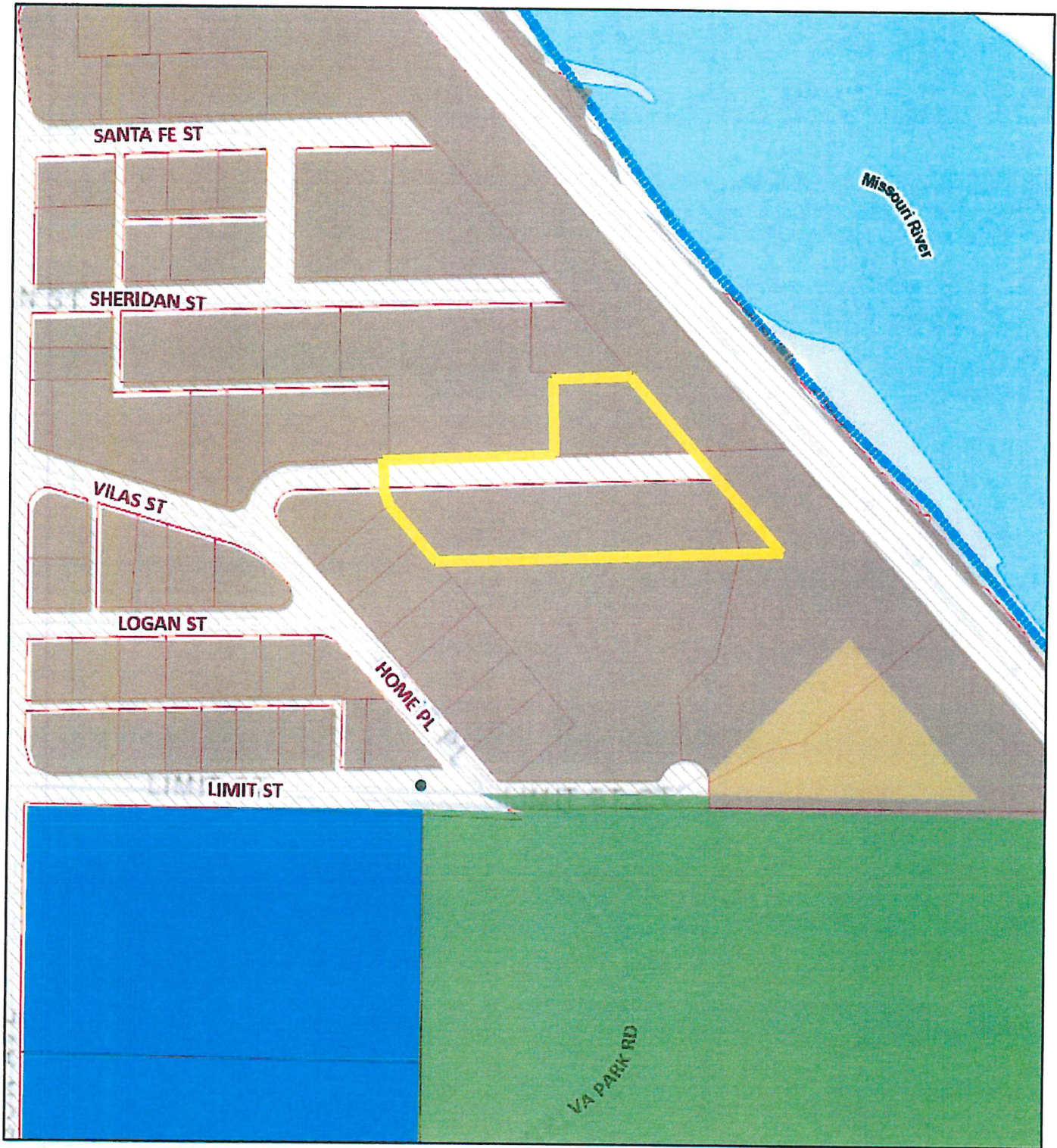


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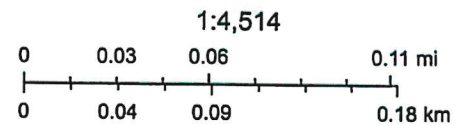
Platte County, Missouri Dept. of Conservation, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA

# 2022-29-REZ (Future Land Use)



11/2/2022, 4:47:22 PM

- Override 1
- Single-Family
- Future Land Use (Comp Plan 2030)
- Commercial
- Parcels (City Owned)
- Conservation/Open Space
- Multi-Family
- Park
- Parcels\_Current
- Missouri River
- Leavenworth City Limits
- City Right-of-Way
- RoadCenterline



Platte County, Missouri Dept. of Conservation, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA



**APPLICATION FOR REZONING**  
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

CASE NO. 2022-29 REZ

Application #	12139
Fee (non-refundable)	\$350.00
Filing Date	9-23-22
Received By	<i>[Signature]</i>
Hearing Date	11-7-22
Publication Date	10-12-22

The undersigned owner(s)/agent for the owner(s) of the property described below, herein petition for a change in the zone of the following legally described property: (agent must have authorization to make application).

Subject Property:	28 Limit Street and 2 Vilas Street		
Rezoning:	Present classification of: R1-9	district to: PUD	
Legal Description:	(Attach full legal description provided by the REGISTER OF DEEDS OFFICE)		
Real Estate PID #:	0930603008008060, 0930603005001010	Historic District:	

I/We, \_\_\_\_\_ being duly sworn, depose and say that I am the owner/agent for the owner of the property involved in this petition and that the statements and answers herein contained and then information herewith submitted are in all respects true and correct to the best of my knowledge and belief.

Name(s) of Owner (print or type):	GREENAMYRE RENTALS, INC		
Address:	2500 S 2ND STREET, LEAVENWORTH, KS 66048		
Contact No.	913-828-4440	Email Address:	jeremy@greenamyre.com
Signature of Owner(s):	<i>[Signature]</i>		

State of Kansas ) (SEAL)  
County of Leavenworth )

NOTARY PUBLIC STATE OF KANSAS	EVA WILSON NOTARY PUBLIC STATE OF KANSAS My Appl. Exp. <u>3/13/24</u>
----------------------------------	--

Signed or attested before me on 9-16-22 by Jeremy Greenamyre  
(date) (name(s) of person(s))

Notary Public: Galko My Appointment Expires: 3/13/24

NOTE: All signatures must be in black or blue ink. Signature of owner(s) must be secured and notarized.

**If necessary, use additional sheets to respond to the following:**

**Briefly describe the present use and character of the property and of the surrounding area:** \_\_\_\_\_

Please see attached letter.

**Briefly describe the intended use and character of the property:** Please see attached letter.

**Briefly describe why you believe the land use (zoning) being requested is the most appropriate for this property:** Please see attached letter.

**Give the reason(s) why you believe this proposal will not be materially detrimental to the public welfare and surrounding properties and/or measures you have taken or intend to take to prevent detrimental impacts:** The proposed zoning does not change the use of the property and still aligns with the city's plan for single family residential in this area.

**Is the property affected by any easements, deed/plat restrictions or other conditions arising from previous Special Use Permits, Subdivisions, rezoning or variances? If so, briefly explain the origin and effect of such conditions:** No

Check List:	
<input checked="" type="checkbox"/>	Non-refundable fee of \$350.00 is due at time of application
<input checked="" type="checkbox"/>	Certified list of the property owners within two hundred (200) feet of the subject property
<input checked="" type="checkbox"/>	Full legal description obtained through the Register of Deeds Office
<input checked="" type="checkbox"/>	Site plan drawn to scale (see General Instructions)
<input checked="" type="checkbox"/>	Supporting documentation (see General Instructions)



September 22, 2022

Julie Hurley  
Director of Planning and  
Community Development  
City of Leavenworth  
100 N. 5<sup>th</sup> St.  
Leavenworth, Kansas 66048

**RE: Application for Rezoning  
Homeplace**

Ms. Hurley,

We are assisting Mr. Greenamyre in rezoning a portion of his property from R1-9 to PUD. Enclosed with this letter is Exhibit C, depicting the proposed lot configuration. The lot sizes and setbacks are intended to meet or exceed the minimum requirements of the adjacent R1-9 district. As part of the rezoning application process, we offer the following responses in support of rezoning the Greenamyre property from R1-9 to PUD to be congruent with the adjacent zoning to the south and east.

**A) Briefly describe the present use and character of the surrounding area.**

The area of rezoning is currently vacant with rolling terrain overlooking the Union Pacific Railway and Missouri River. The area abuts PUD zoning to the south consisting of large estate residential lots approximately 3 acres in size. The areas to the north and west consist of R1-9 zoning with single family residential homes, with lots ranging in size from 16,150 SF to 2.7 Acres. The property immediately to the northeast is currently zoned I-1.

**B) Briefly describe the intended use and character of the property.**

The applicant is seeking to expand the existing PUD land use immediately south of this area for the development of 4 estate lots ranging in size from 0.55 to 1.39 acres. The future single-family homes would be located east of a shared private drive running along the existing ridge line with a large tract on the west side that would serve as a natural buffer between the homes fronting Home Place.

**C) Briefly describe why you believe the land use (zoning) being requested is the most appropriate for this property.**

The modification of zoning in this area to PUD will make the entire parcel one consistent zoning. The change in zoning will allow for the addition of four single family lots situated in a similar manor as the two existing estate lots within the PUD zoning district. The proposed large lots are consistent with the neighborhood and will serve as a nice transition between the R1-9, I-1 and Riverfront. Furthermore, the extreme terrain in this area is not conducive for R1-9 zoning with the construction of a city standard curb and gutter streets and gravity sewers. As part of the final platting process the owner intends to have the City vacate the right-of-way for Vilas Street.

Ms. Julie Hurley  
Homeplace Rezoning  
Page 2 of 2

Included with this application is Exhibit A depicting existing zoning(s), Exhibit B showing the area of zoning change to PUD, and Exhibit C, companion plan depicting future residential lots.

If you have questions or require additional information for the application, please let us know.

Regards,



Matt Henderson, PE  
MCAFEE HENDERSON SOLUTIONS INC.

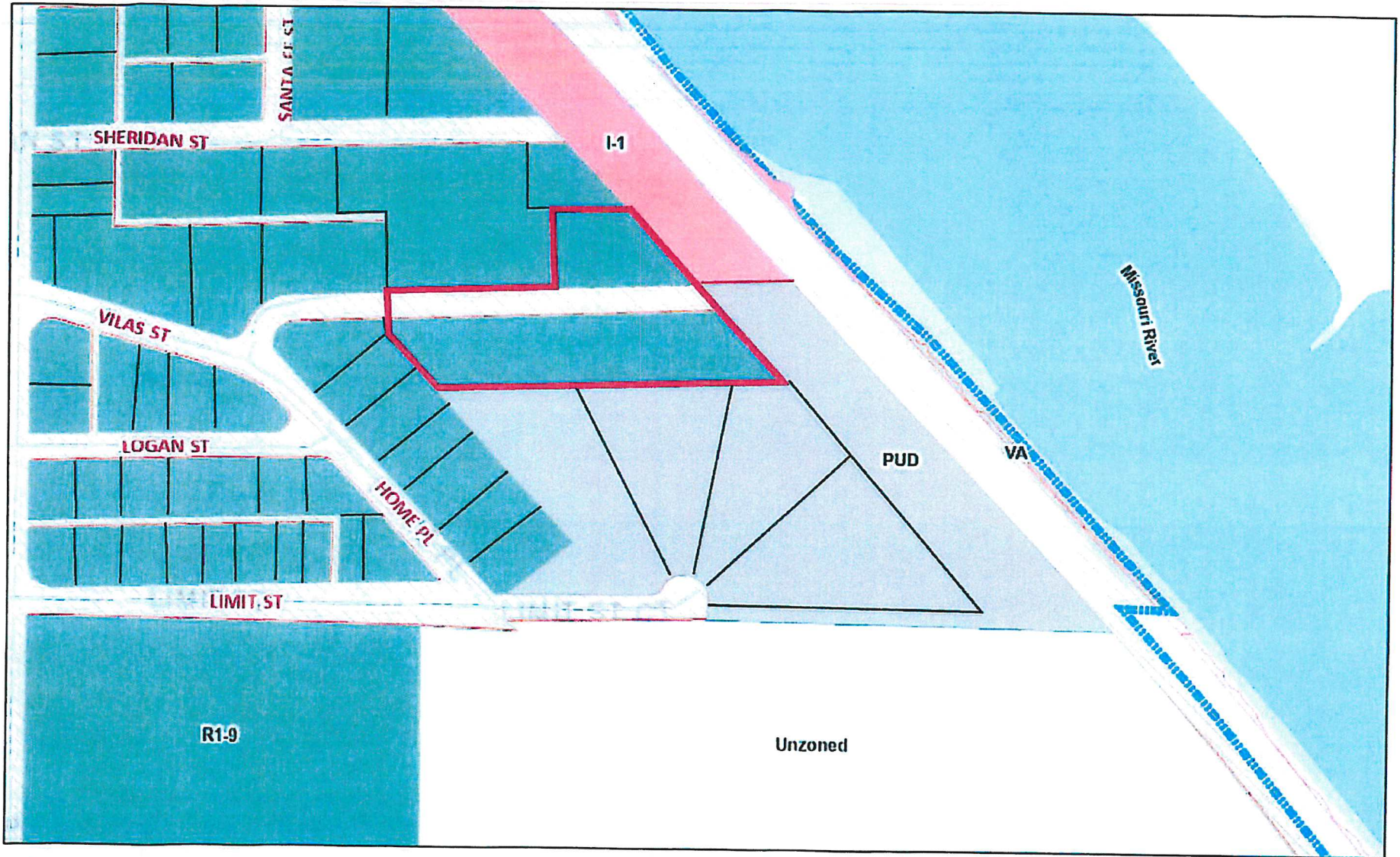
Enclosures

Zoning Exhibits A, B, and C

Cc: Jeremy Greenamyre  
File 2019060.007



# EXISTING ZONING



8/10/2022, 11:51:47 AM

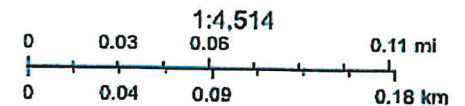
Zoning\_CURRENT

- I-1
- PUD

- R1-6
- R1-9
- Unzoned

- Parcels (City Owned)
- Parcels\_Current
- Missouri River

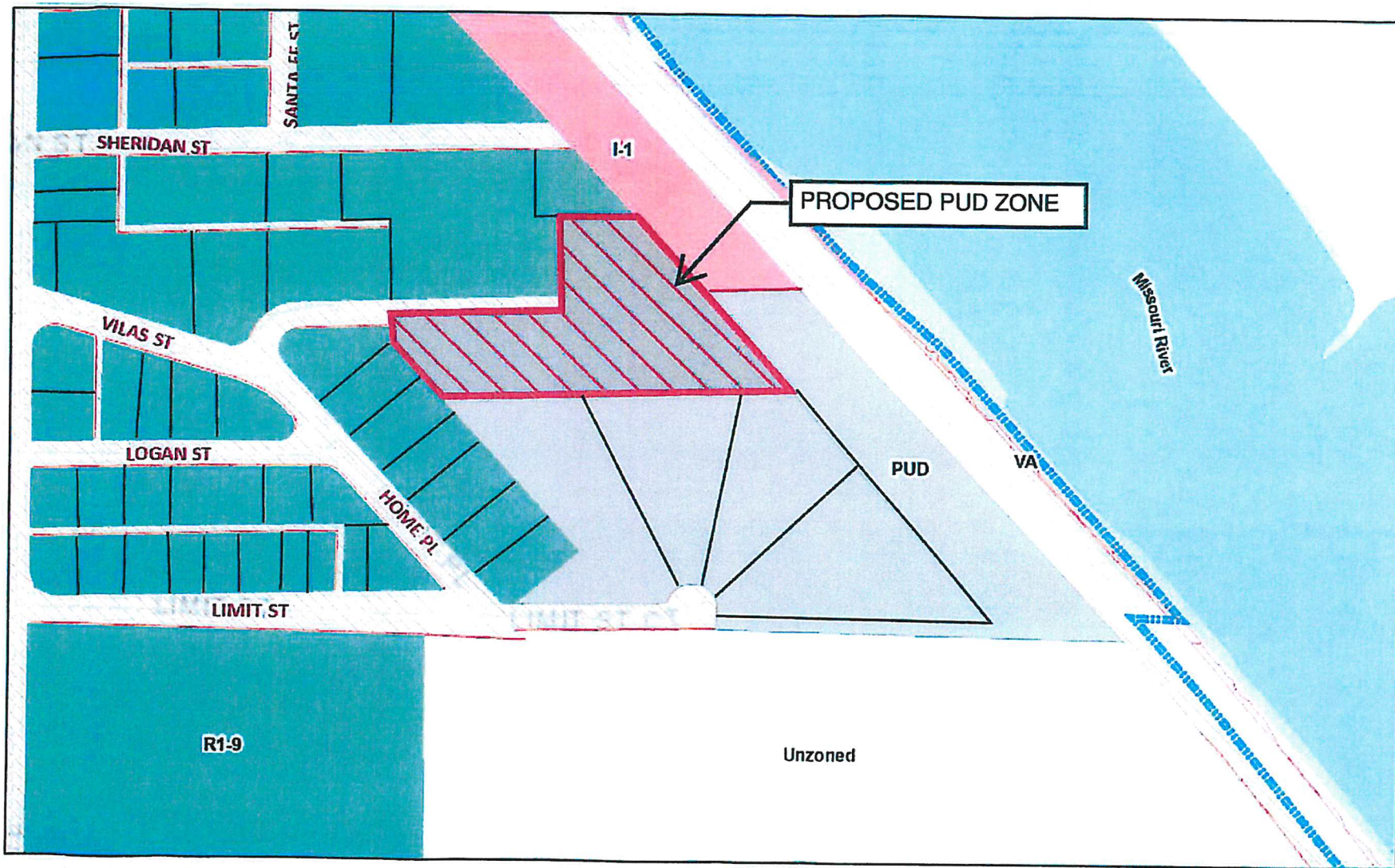
- Leavenworth City Limits
- City Right-of-Way
- RoadCenterline



Platte County, Missouri Dept. of Conservation, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA

Web AppBuilder for ArcGIS  
Platte County, Missouri Dept. of Conservation, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA

# PROPOSED ZONING



8/10/2022, 11:51:47 AM

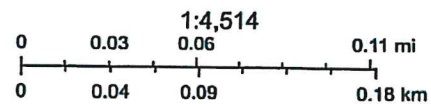
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EXECUTIVE SESSION  
TO DISCUSS PERSONNEL MATTERS OF NONELECTED PERSONNEL

NOVEMBER 22, 2022

**CITY COMMISSION ACTION:**

**Motion:**

Move the City Commission recess into executive session for a period of \_\_\_\_\_ minutes for the purpose of *discussing the annual evaluation of the City Manager, under the justification to discuss personnel matters of nonelected personnel* K.S.A. 75-4319 (b) 1. The City Commission and Human Resources Director will be present. The open meeting will resume in the City Commission Chambers at \_\_\_\_\_p.m.