



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

CITY COMMISSION REGULAR MEETING
COMMISSION CHAMBERS
TUESDAY, JANUARY 10, 2023 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

OLD BUSINESS

Consideration of Previous Meeting Minutes:

- Minutes from December 13, 2022 Regular Meeting and December 20, 2022 Special Meeting
Action: Motion (pg. 2)

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.*

General Items:

- Mayor's Appointments **Action:** Motion (pg. 12)
- Consider Cereal Malt Beverage License for Leavenworth Operations LLC (K-7 Stop), 300 N 4th Street
Action: Motion (pg. 13)

Bids, Contracts and Agreements:

- Consider Award of Bid for Planters II Flooring Project Floors 2 through 10 **Action:** Motion (pg. 14)
- Consider Award of a 4-Ton Trailer Mounted Falcon Hotbox **Action:** Motion (pg. 21)
- Consider Award of Design Services Contract for Vilas Street ADA and Sidewalk Upgrades Project
Action: Motion (pg. 25)
- Consider Bids for Water Pollution Control Division Chemicals **Action:** Motion (pg. 45)
- Consider Award of Contract for 2023 Biennial Bridge Inspection Services **Action:** Motion (pg. 48)
- Consider Award of Contract for Wollman Aquatic Center Revitalization Project **Action:** Motion (pg. 67)
- Consider Purchase of New Features for the Youth Pool at Wollman Aquatic Center **Action:** Motion (pg. 71)
- Consider Purchase and Installation of Stubby Park Shelter **Action:** Motion (pg. 74)

First Consideration Ordinance:

- First Consideration Ordinance for Special Use Permit for a Residential Home Stay at 723 S. 10th Street
Action: Consensus (pg. 78)
- First Consideration Ordinance Electric Franchise Agreement Evergy Kansas Central, Inc. **Action:** Consensus (pg. 86)

Consent Agenda:

Claims for December 10, 2022, through January 6, 2023, in the amount of \$3,393,447.02; Net amount for Payroll #25 effective December 16, 2022 in the amount of \$395,312.17 (Includes Police & Fire Pension in the amount of \$9,888.71) and Payroll #26 effective December 30, 2022 in the amount of \$381,388.53 (No Police & Fire Pension).

Action: Motion

Other:

Adjournment

Action: Motion



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

Staff members present: City Manager Paul Kramer, Assistant City Manager Penny Holler, Finance Director Roberta Beier, Planning & Community Development Director Julie Hurley, Police Chief Patrick Kitchens, Public Works Director Brian Faust, Chief Building Inspector Hal Burdette, Parks & Recreation Director Steve Grant, Parks & Recreation Superintendent Brian Bailey, Riverfront Community Center Manager Tammy Metzgar, Joe Hatley attended for 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.

Mayor's Award - Mayor Leonhard presented the Mayor's Award for Community Service to "Coach" Jim Mathis for his continued service to the City of Leavenworth for over 55 years and his 22 years of service on the Leavenworth Parks and Community Activities Advisory Board. "Coach" Jim Mathis was present to accept the award.

OLD BUSINESS:

Consideration of Previous Meeting Minutes:

Commissioner Wilson moved to accept the minutes from the November 22, 2022 regular meeting. Commissioner Hingula seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 5-0.

Second Consideration Ordinance:

Second Consideration Ordinance No. 8201 Amending Chapter 46, Article III, Division 2 and Division 4, Grease Trap/Interceptor Regulations - City Manager Paul Kramer reviewed the Ordinance. There have been no changes since first introduced on November 22, 2022.

Mayor Leonhard called the roll and the Ordinance No. 8201 was unanimously approved.

Second Consideration Ordinance No. 8202 Amending Chapter 44 Traffic and Vehicles, Article II Street Use Designations, Section 44-32 School Zones - City Manager Paul Kramer reviewed the Ordinance. There have been no changes since first introduced on November 22, 2022.

Mayor Leonhard called the roll and the Ordinance No. 8202 was unanimously approved.

Second Consideration Ordinance No. 8203 Rezoning 2700 State Street from Multi-Family Residential District to Residential Mixed Use District - City Manager Paul Kramer reviewed the Ordinance. There have been no changes since first introduced on November 22, 2022.

Mr. Joe Hadley:

- Referenced that the Golden Factors were considered in this rezoning matter

Mayor Leonhard called the roll and the Ordinance No. 8203 was unanimously approved.

Second Consideration Ordinance No. 8204 Rezoning 212, 220, and 224 Maple Street from High Density Single Family Residential District to Light Industrial District - City Manager Paul Kramer reviewed the Ordinance. Stated the Golden Factors were considered in this rezoning matter. There have been no changes since first introduced on November 22, 2022.

Mayor Leonhard called the roll and the Ordinance No. 8204 was unanimously approved.

Second Consideration Ordinance No. 8205 Rezoning 28 Limit Street and 2 Vilas Street from Medium Density Single Family Residential District to Planned Unit Development - City Manager Paul Kramer reviewed the Ordinance. Stated the Golden Factors were considered in this rezoning matter. There have been no changes since first introduced on November 22, 2022.

Mayor Leonhard called the roll and the Ordinance No. 8205 was unanimously approved.

Second Consideration Ordinance No. 8206 Authorizing the Issuance of Taxable Industrial Revenue Bonds, Series 2022 (MAPS Project) - City Manager Paul Kramer reviewed the Ordinance. There have been no changes since first introduced on November 22, 2022.

Mayor Leonhard called the roll and the Ordinance No. 8206 was unanimously approved.

Public Comment: *(Public comment on non-agenda items or receipt of petitions- limited to 2-3 minutes)*
None

General Items:

Commission Nominations for Terms December 13, 2022 to December 12, 2023

Mayor

Mayor Leonhard moved to nominate Edd Hingula for Mayor December 13, 2022 to December 12, 2023. Commissioner Martin seconded the motion and the motion was approved. Commissioners Bauder and Wilson voted against the motion. Mayor Leonhard declared the motion carried 3-2.

Mayor Pro-Tem

Mayor Hingula moved to nominate Griff Martin for Mayor Pro-Tem December 13, 2022 to December 12, 2023. Commissioner Leonhard seconded the motion and the motion was approved. Commissioners Bauder and Wilson voted against the motion. Mayor Hingula declared the motion carried 3-2.

Financial Claims Reviewer

Commissioner Martin moved to nominate Nancy Bauder for Financial Claims Reviewer December 13, 2022 to December 12, 2023. The motion died due to a lack of a second.

Commissioner Martin moved to nominate Camalla Leonhard for Financial Claims Reviewer December 13, 2022 to December 12, 2023. Commissioner Bauder seconded the motion and the motion was approved. Commissioner Wilson voted against the motion. Mayor Hingula declared the motion carried 4-1.

2022 Cereal Malt Beverage Licenses – City Clerk Sarah Bodensteiner presented for approval 19 establishments that have applied for a 2023 Cereal Malt Beverage License. These include both off-premise and on-premise consumption licenses. They are as follows:

OFF-PREMISE CONSUMPTION:

7-Eleven	609 Metropolitan Ave
Casey's General Store #1261	2004 Spruce St
Casey's General Store #2609	950 Eisenhower Rd
Casey's General Store #2826	2100 S 4 th St
Dillons #40	720 Eisenhower Rd
Home Town	111 N Broadway St
Minit Mart #600576	3122 S 4 th St
Murphy USA #7486	1050 Eisenhower Rd
Price Chopper #20	2107 S 4 th St
Sam's Food Mart LLC	1031 Metropolitan Ave
Star Gas	788 Spruce St
Walgreens #12923	2900 S 4 th St
Walmart #26	5000 10 th Ave

ON-PREMISE CONSUMPTION:

Abe's Place	5101 10 th Ave
Ava's Island Café	732 Shawnee St
Eddie's Grocery	1101 Spruce St
Little Bar	1431 10 th Ave
Nu Way Drive Inn	510 Shawnee
Towne Pub Restaurant	1001 Ottawa St

Commissioner Leonhard moved to approve the Cereal Malt Beverage Licenses for 2023 as presented. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Hingula declared the motion carried 5-0.

Cancellation of the December 27, 2022 Regular Meeting – City Manager Paul Kramer presented a request to cancel the December 27, 2022 City Commission Regular meeting. Regular meeting dates and times are set by the City Code of Ordinances and allows for cancellation by the City Commission.

Commissioner Bauder moved to cancel the December 27, 2022 regular meeting. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Hingula declared the motion carried 5-0.

Update for Unsafe Structure 717 Spruce Street – Chief Building Inspector Hal Burdette reviewed the repairs to the structure located at 717 Spruce Street that was damaged by fire on November 13, 2021. The City received a check from insurance proceeds for \$15,000.00. A public hearing was held on March 22, 2022 and the City Commission adopted Resolution B-2311 requiring the owner to make repairs. The Commission has given extensions for the repairs to be completed. At this time, the repairs that staff was waiting for have been completed. The window has been repaired, a furnace was installed and the

installation was inspected and approved on December 1, 2022. Staff recommends that the City Commission approve releasing the funds back to the property owner.

Commissioner Martin moved to release the funds back to the property owner. Commissioner Leonhard seconded the motion and the motion was unanimously approved. Mayor Hingula declared the motion carried 5-0.

Public Hearing:

Public Hearing for Amending the 2022 Budget:

Finance Director Roberta Beier presented the proposed amendments to the 2022 Budget as follows:

- Add \$200,000 spending authority to the Storm Water Fund to cover expenditures related to the Storm Water Capital Project expenditures
- Increase the Auto TIF spending authority by \$100,000 due to increased revenues that need to be distributed according to the terms of the TIF Development Agreements

Open Public Hearing:

Commissioner Bauder moved to open the public hearing. Commissioner Leonhard seconded the motion and the motion was unanimously approved. Mayor Hingula declared the motion carried 5-0.

Staff and Public Comments:

None

Close Public Hearing:

Commissioner Bauder moved to close the public hearing. Commissioner Leonhard seconded the motion and the motion was unanimously approved. Mayor Hingula declared the motion carried 5-0.

Commissioner Leonhard moved to approve the amendments to the 2022 Budget as presented. Commissioner Martin seconded the motion and the motion was unanimously approved. Mayor Hingula declared the motion carried 5-0.

Resolutions:

Resolution B-2325 Planters II Tenant Write-Off Accounts – Planning & Community Development Director Julie Hurley presented Resolution B-2325 removing twelve tenant accounts from the rent registry at Planters II. Past Due rent or damage assessments are determined to be uncollectible for various reasons. Some tenants are deceased or have been moved to nursing homes and have no ability to repay. Others have moved from the forwarding address provided. Attempts to recover the monies has been unsuccessful. The Resolution deletes the accounts in accordance with the procedures to keep the Housing Authority's rent register current. The process is required by HUD and is included in management policy resolutions adopted for the operation of Planters II.

Mayor Hingula:

- Would this forgive the amounts

Ms. Hurley:

- Yes, this is required by HUD in order to do that

Commissioner Leonhard moved to adopt Resolution B-2325 deleting uncollectable tenant accounts. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Hingula declared the motion carried 5-0.

Bids, Contracts and Agreements:

Consider Commercial Insurance Package for 2022 – City Clerk Sarah Bodensteiner presented for consideration the insurance renewal for 2023 with Traveler’s Insurance in the amount of \$454,141.00. The City’s insurance broker, Mike Reilly reviewed the quote, the buy-down option and answered questions from the Commission.

Commissioner Martin moved to approve the 2023 commercial insurance package with Travelers, without the buy-down option, in the amount not to exceed \$454,141.00. Commissioner Leonhard seconded the motion and the motion was unanimously approved. Mayor Hingula declared the motion carried 5-0.

Consider Agreement between Kansas State Historical Preservation Officer and the City of Leavenworth – Planning & Community Development Director Julie Hurley presented for consideration an agreement with the Kansas State Historical Preservation Officer (SHPO) which authorizes the City to make recommendations or to perform certain statutory responsibilities. The City first entered into an agreement with the State of Kansas in 2000. The agreement is renewable every five-years.

Commissioner Leonhard moved to approve the agreement between the City and the Kansas State Historic Preservation Officer for performance of project reviews. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Hingula declared the motion carried 5-0.

Consider Award of Poly-Cart Tippers for Refuse Trucks – Public Works Director Brian Faust presented for consideration the purchase of six poly-cart tippers along with truck modifications and installation. The purchase and installation of the poly-cart tippers are needed as the City transitions from manual refuse collection to a hybrid system that utilizes both poly-carts and manual collection. During the October 4, 2022 Work Session, the City Commission provided consensus to staff to move forward with the hybrid approach to solid waste collection. Staff developed specifications and bid the poly-cart tippers, the needed modifications to the trucks, along with the installation of the equipment. The bids were advertised plus the City notified five equipment companies that would likely be able to provide the tippers. Funding for the tippers will be from the American Rescue Plan Act.

Commissioner Leonhard:

- Asked how the tippers would work

Mr. Faust:

- Described that there would be 1 tipper per truck and it would allow for the cart to be attached to it and it would dump the cart and still leave room for manual collection

Commissioner Martin:

- Asked about a warranty

Mr. Faust:

- We asked for a 3 year warranty

Mayor Hingula:

- Asked when will we have the poly-carts

Mr. Faust:

- Hope to have something before the Commission in January or February regarding the poly-carts

Commissioner Martin moved to approve the purchase, truck modifications and installation of the poly-cart tippers from Elliott Equipment Company in an amount not to exceed \$61,158.00. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Hingula declared the motion carried 5-0.

Consider Purchase of Water Pollution Control Ultraviolet Lamps – Public Works Director Brian Faust presented for consideration the purchase of 480 low-pressure, high-volume ultraviolet (UV) lamps and associated parts to replace all lamps in Channel #3 of the Trojan 3000plus UV System. The Ultraviolet disinfection system was placed in service in 2012. New lamps are warranted for 12,000 hours or 36 months from the date of purchase. The current lamps were replaced in 2017 and 11,647 hours on them. In an effort to save on the cost of replacing lamps, the City has maintained a steady flow to UV System by installing Variable Speed Drives for several of our upstream pumps. This has resulted in less on and off cycles for the lamps meaning fewer hours and fewer chances of lamps and ballasts burning out. Staff has worked with Ray Lindsey Company to reprogram the lighting controller. This adjusted the number and intensity of the lamps that are on at any one time, further reducing hours on the lamps and extending their operational life. Staff will remove and replace lamps to eliminate 3rd-party installation costs. Funding for this purchase is from the Sewer Fund Operating Budget. There is also funding in 2023 for replacement of the next channel of lamps. Staff recommends approval of the purchase of 480 UV lamps with the associated parts and supplies from EPEC Water for a not to exceed cost of \$88,440.00. City staff will install the lamps and monitor the performance of the 3rd party vendor over a six-month period. Based on their performance, staff will determine if they are more cost effective and meet the permit requirements compared to the original manufacturer.

Commissioner Martin:

- Asked if the brands of bulbs from each vendor are the same or different

Mr. Faust:

- The brands are different but the bulb specifications are all the same and match what our system is designed for

Commissioner Bauder moved to accept the bid from EPEC Water for the purchase of 480 Ultraviolet lamps, with the associated parts and supplies in an amount not to exceed \$88,440.00. Commissioner Leonhard seconded the motion and the motion was unanimously approved. Mayor Hingula declared the motion carried 5-0.

Consider Award of Bid for Planters II Painting Project Floors 2 through 10 – Planning & Community Development Director Julie Hurley presented for consideration award of the bid for prepping and painting all walls, ceilings and doors on floors 2 through 10 at Planters II. The Leavenworth Housing Authority contacted three companies to supply a proposal for the specified work. All three companies responded and provided a quote. This procedure was performed in accordance with HUD’s procurement policy and in compliance with Davis-Bacon wages. There are sufficient funds available in the Capital Fund Program grant for this project.

Commissioner Leonhard:

- Asked when was the last time it was painted

Ms. Hurley:

- About 12 and half years ago

Commissioner Bauder moved to award the bid for the prepping and painting all walls, ceilings and doors on floors 2 through 10 of Planters II to Swann Painting Co., LLC, in an amount not to exceed \$60,110.00. Commissioner Leonhard seconded the motion and the motion was unanimously approved. Mayor Hingula declared the motion carried 5-0.

Consider Award of Bid for Planters II Flooring Project Floors 2 through 10 - Planning & Community Development Director Julie Hurley presented for consideration award of the bid for the replacement of flooring and cove base at Planters II to include hallways, laundry rooms and elevator lobbies on floors 2 through 10. The Leavenworth Housing Authority contacted five companies to supply a proposal for the specified work. Three companies responded and two provided a quote. This procedure was performed in accordance with HUD’s procurement policy and in compliance with Davis-Bacon wages. There are sufficient funds available in the Capital Fund Program grant for this project. The flooring was last updated 12 and half years ago.

Mayor Hingula:

- Pointed out that one bid includes sales tax and one does not
- Asked for the sales tax issue to be resolved before award of bid is made

Mayor Hingula tabled the item to allow for staff to get clarification on the bids regarding sales tax.

Consent Agenda:

Commissioner Martin moved to approve claims for November 19, 2022 through December 9, 2022, in the amount of \$1,745,637.88; Net amount for Longevity Pay effective November 25, 2022 in the amount of \$41,698.07; and Payroll #24 effective December 2, 2022 in the amount of \$370,169.85 (No Police & Fire Pension). Commissioner Leonhard seconded the motion and the motion was unanimously approved. Mayor Hingula declared the motion carried 5-0.

Other:

Commissioner Bauder:

- Commended Mr. Wilson for the amount of work he has done for the community and was caught off guard he did not receive the nomination for Mayor

- Mr. Wilson was elected by a large margin for the work he has done for his community, especially for the youth of the community

Commissioner Martin:

- Can't believe December is almost over and excited for 2023
- Wished everyone Merry Christmas

Commissioner Wilson:

- Disappointed in the outcome but his record and attendance stands for itself
- Stated that he serves to make a difference in this community
- Thanked those who elected and continue to support him

Commissioner Leonhard:

- Grateful for her time as Mayor
- There is more to accomplish in the next year
- Wished everyone happy holidays

Mayor Hingula:

- Appreciate the trust and confidence in the vote to become Mayor
- Will try to promote the City the best way possible and continue to make Leavenworth a great city

Adjournment:

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

Time Meeting Adjourned 7:11 p.m.

Minutes taken by City Clerk Sarah Bodensteiner, CMC



Open Special Meeting:

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

The Governing Body opened the special meeting and the following commission members were present in the commission chambers: Mayor Edd Hingula, Mayor Pro-Tem Griff Martin, Commissioners Nancy Bauder and Jermaine Wilson. Absent: Commissioner Camalla Leonhard

Staff members present: City Manager Paul Kramer, Assistant City Manager Penny Holler and City Clerk Sarah Bodensteiner.

Reconsideration of the position of Mayor for 2023 – Mayor Hingula read a statement regarding the Mayor Position nomination proceedings from the December 13, 2022 City Commission Meeting.

Mayor Hingula resigned as Mayor of the City of Leavenworth but will remain as a City Commissioner.

Commissioner Bauder moved to nominate Jermaine Wilson to serve as Mayor from December 20, 2022 to December 12, 2023. Commissioner Martin seconded the motion and the motion was unanimously approved. Mayor Hingula declared the motion carried 4-0.

Mayor Wilson:

- Honored to serve the community of Leavenworth as Mayor again
- Thanked his family for their sacrifices while he serves the community
- Thanked his parents for never giving up on him and their words of encouragement
- Thanked the citizens for supporting him and not giving up on him
- Thanked Commissioner Bauder for her support
- Thanked Commissioner Hingula for doing the right thing

Public Comment:

Senator Jeff Pittman:

- Thanked the Commission for their service and commends them for making the decision they did this evening

Mike Lay:

- Thanked Mr. Hingula and requested the City Commission stay non-partisan

Matt Thomas:

- Happy to see a community rally around a cause; it was great to see

Kat McIntyre:

- Happy for Mayor Wilson's opportunity to continue to serve this community

Tony Majors:

- Commends Mayor Wilson for his character during the hardship he faced last week

Close Special Meeting:

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

Time Meeting Adjourned 6:20 p.m.

Minutes taken by City Clerk Sarah Bodensteiner, CMC

MAYOR'S APPOINTMENTS

JANUARY 10, 2023

Mayor Wilson

"Move to

*Reappoint to the **Airport Advisory Board** Jeffery Bouma, Greg Kaaz, Bob Euler and Lisa Haack to terms ending December 31, 2025;*

*Reappoint to the **Deer Management Advisory Committee** Clay McDaniel, Ed Menard and Jamie Whitworth to a term ending December 31, 2025;*

*Reappoint to the **Parks & Community Activities Board** David Davis, Wendy Sachen, Edna Wagner and Esteban Zamora to terms ending January 15, 2026;*

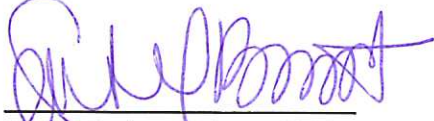
*Reappoint to the **Sister City Advisory Board** Maxine Hunter and Terry Weakley to a term ending December 31, 2025.*

Requires a second and vote by the Governing Body.

**POLICY REPORT
CONSIDER CEREAL MALT BEVERAGE LICENSE FOR
LEAVENWORTH OPERATIONS LLC (K-7 STOP), 300 N 4TH STREET**

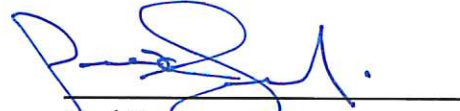
JANUARY 10, 2023

Prepared by:



Sarah Bodensteiner, CMC
City Clerk

Reviewed by:



Paul Kramer
City Manager

ISSUE:

Consider approving the issuance of a 2023 Cereal Malt Beverage (CMB) License to Leavenworth Operations LLC (K-7 Stop), 300 N 4th Street.

BACKGROUND:

Leavenworth Operations LLC (K-7 Stop) submitted an application for an off premise consumption Cereal Malt Beverage License on December 29, 2022. They currently have a City Health Permit and the Police Department has reviewed and approved the application.

STAFF RECOMMENDATIONS:

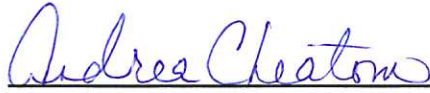
Staff recommends approving the issuance of the CMB license.

ACTION:

Motion to approve the issuance of a 2023 off premise consumption Cereal Malt Beverage License for Leavenworth Operations LLC (K-7 Stop) at 300 N 4th Street.

POLICY REPORT
ACCEPT LOW BID FOR PLANTERS II REMOVAL AND INSTALLATION OF ALL
FLOORING AND COVE BASE ON ALL FLOORS 2 THROUGH 10
JANUARY 10, 2023

PREPARED BY:



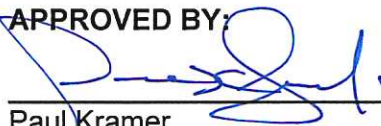
Andrea Cheatom, Housing Manager
Leavenworth Housing Authority

REVIEWED BY:



Julie Hurley, Executive Director
Director of Planning and Community
Development

APPROVED BY:



Paul Kramer
City Manager

ISSUE:

Review and award of bid for the replacement of flooring and cove base at Planters II to include hallways, laundry rooms and elevator lobbies on floors 2 through 10.

REVIEW OF PROPOSALS:

Proposals were received by Andrea Cheatom, Housing Manager, at the Leavenworth Housing Authority. Following are the proposals received:

- | | |
|----------------------------|-----------------|
| 1. Seifert's Flooring Inc. | \$99,755.72 |
| 2. Midwest Carpet Center | \$100,028.00 |
| 3. Purecraft LLC | Declined to bid |

The Leavenworth Housing Authority contacted five companies to supply a proposal for the specified work. Three companies responded and only two provided a proposal. Procedure was performed in accordance with HUD's procurement policy. Proposal was also given in compliance with Davis-Bacon wages.

STAFF RECOMMENDATION:

Staff recommends that the proposal of \$99,755.72 be awarded to Seifert's Flooring, LLC.

BUDGET IMPACT:

There are sufficient funds available in the Capital Fund Program grant for Planters II for this project.

COMMISSION ACTION:

Acting as the Housing Authority, authorize the low proposal for the removal and installation of all flooring on floors 2 through 10 of Planters II of \$99,755.72 to Seifert's Flooring LLC.

LEAVENWORTH HOUSING AUTHORITY
REQUEST FOR QUOTATION

REMOVAL AND INSTALLATION OF ALL FLOORING AND COVE BASE IN ALL
COMMON AREAS ON FLOORS 2 THROUGH 10 AT PLANTERS II BUILDING AT 200
SHAWNEE ST, LEAVENWORTH, KS 66048

TOTAL PRICE FOR THIS PROJECT: \$ 99,755^{2c}

LIST OF REFERENCES ATTACHED: COMPLY YES NO

ABLE TO PROVIDE INSURANCE AS SPECIFIED IF AWARDED CONTRACT COMPLY YES NO

COMPANY SUBMITTING QUOTATION: SEIFERT'S FLOORING INC

ADDRESS: 18025 FAIRMOUNT RD

CITY, STATE, ZIP CODE: LEAVENWORTH, KS 66048

PHONE NUMBER: 913-724-3777 FAX NUMBER: 913-724-1818

AUTHORIZED SIGNATURE: 

PRINTED NAME: MARK W. SEIFERT

DATE QUOTATION EXPIRES: 2/1/2023

SPECIAL NOTES: _____

ACKNOWLEDGE RECEIPT OF DAVIS-BACON WAGE DETERMINATION: YES NO

ACKNOWLEDGE RECEIPT OF HUD FORM 5370-EZ, General Contract Conditions for Small Construction/Development Contracts YES NO

ACKNOWLEDGE RECEIPT OF TABLE 5.1, Handbook No. 7460.8 REV 2 YES NO

ACKNOWLEDGE RECEIPT OF SECTION 3-Required Contract Language YES NO

***Please return Quotation Form on or before November 30, 2022.**

FLOORING ESTIMATE SHEET

Customer's Name PLUMMER Date 11/22/2022 Email _____
 Address 200. SHAWNEE Cell 913-348-2232
 City LEAWOOD State KS Phone 913-547-2645

9 FLOORS MONARK LINCOLN EFFERS 257 GEORGIAN BLVD		
1328 SQS @ 25.82 SQYD		34,355 ³⁶
KICKOUT		1620 ^{CU}
MASTIC 20 PAIRS @ 125		2500 ^{SS}
TRANSITIONS		235 ⁹⁶
MONARK BASE 2840' @ 126 FT. ASH BROWN		3598 ⁴⁰
MASTIC		366 ⁵¹
ALL COMMON AREAS & UTILITY ROOMS		
LVT KILAY KF 151-1 PRINCIPAL GRAY 2828 SQFT		10,746 ⁴⁰
380 SQFT		
MASTIC		600 ¹⁰⁰
KICKOUT		280 ¹⁰
TRANSITION		600 ¹⁰⁰
360 HRS LABOR @ 123 x 2		44375 ⁶⁰
		TOTAL 99755 ⁷²

SEIFERT'S FLOORING, INC.

Free Estimates

PHONE: 913.724.3777
 FAX: 913.724.1818

18025 FAIRMOUNT ROAD
 TONGANOXIE, KS 66086

LEAVENWORTH HOUSING AUTHORITY
REQUEST FOR QUOTATION

REMOVAL AND INSTALLATION OF ALL FLOORING AND COVE BASE IN ALL
COMMON AREAS ON FLOORS 2 THROUGH 10 AT PLANTERS II BUILDING AT 200
SHAWNEE ST, LEAVENWORTH, KS 66048

TOTAL PRICE FOR THIS PROJECT: \$100,028.⁰⁰

LIST OF REFERENCES ATTACHED: COMPLY YES NO

ABLE TO PROVIDE INSURANCE AS SPECIFIED IF AWARDED CONTRACT COMPLY YES NO

COMPANY SUBMITTING QUOTATION: MIDWEST CARPET CENTER

ADDRESS: 621 E 4th ST.

CITY, STATE, ZIP CODE: TONGANOXIE, KS 66086

PHONE NUMBER: 913 369 2842 FAX NUMBER: 913 845 2278

AUTHORIZED SIGNATURE: 

PRINTED NAME: KRISSEY DYE

DATE QUOTATION EXPIRES: 3/31/2023

SPECIAL NOTES: _____

ACKNOWLEDGE RECEIPT OF DAVIS-BACON WAGE DETERMINATION: YES NO

ACKNOWLEDGE RECEIPT OF HUD FORM 5370-EZ, General Contract Conditions for Small Construction/Development Contracts YES NO

ACKNOWLEDGE RECEIPT OF TABLE 5.1, Handbook No. 7460.8 REV 2 YES NO

ACKNOWLEDGE RECEIPT OF SECTION 3-Required Contract Language YES NO

***Please return Quotation Form on or before November 30, 2022.**

Midwest Carpet Center Enterprises LLC
 621 East 4th St
 Tonganoxie, KS 66086
 913-369-2842

Proposal #: MI001859
 Sale Date: 10/19/2022
 Install Date:
 Sales Rep: Hollingsworth, M
 Sales Rep:

SOLD TO

Planters II, Bob
 200 Shawnee Street
 Leavenworth KS 66048
 913-682-2200

SHIPPED TO

Printed 12/02/22 12:05:34

Planters II
 200 Shawnee Street
 Leavenworth KS 66048
 Andrea 913-682-2200

1	Proposal Linear Effect 24x24	Georgian Brick	Install carpet tiles in hallway on floors 2-10 10695sf SqYd 1192.00 SqYd 1192.00	\$38.00	\$45,296.00
2	Proposal Kolay LVP		Install luxury vinyl plank in 8 laundry rooms & 9 entries 3481' SqFt 3481.00 SqFt 3481.00	\$7.00	\$24,367.00
3	Proposal Mohawk Cove Base 4" R Ash Brown		Install covebase 5000 lineal feet LnFt 5000.00 LnFt 5000.00	\$2.95	\$14,750.00
4	Proposal		Install flat metal 5 sticks Each 5.00	\$50.00	\$250.00
5	Proposal Rubber Reducer & Track		Install black rubber reducer and track LnFt 20.00 LnFt 20.00	\$30.00	\$600.00
6	Proposal		Tear out vct in laundry rooms-possible lay over with lvp TBD SqFt 680.00	\$1.00	\$680.00
7	Proposal		Take up and haul off existing glue down carpet in hallways & entries SqFt 13300.00	\$0.70	\$9,310.00
8	Proposal Enpress Adhesive 4 gall .		Adhesive for carpet tiles Each 13.00 Each 13.00	\$175.00	\$2,275.00

9	Proposal	THIS DOES NOT INCLUDE ADDITIONAL MATERIAL FOR REPAIRS		
10	Proposal	ALL MATERAIL IS ORDERD TO THE FULLEST CARTON		
11	Proposal	THERE IS A 3% CONVIENENCE FEE WHEN PAYING BY CARD		
12	Proposal	Remove existing covebase		
			LnFt 5000.00	\$0.35
				\$1,750.00
13	Proposal	Adhesive for luxury vinyl flooring		
	Diverse Adhesive 4-gall		Each 150.00	\$5.00
				\$750.00
14	Proposal	THIS DOES NOT INCLUDE MOVING ANY FURNITURE		

Subtotal:	\$100,028.00
Sales Tax:	\$6,602.85
Total:	\$106,630.85
Payments:	\$0.00
Balance:	\$106,630.85

Andrea Cheatom

From: Bob Knudson <purecraftllc@gmail.com>
Sent: Tuesday, November 29, 2022 3:20 PM
To: Andrea Cheatom

Hello

I apologize - I will be declining Your bid request

We are on a large job for 6 months beginning in January

*** THIS EMAIL CAME FROM AN EXTERNAL SOURCE. PLEASE BE CAUTIOUS WHEN CLICKING ON LINKS OR ATTACHMENTS.

POLICY REPORT NO. PWD 23-01

CONSIDER AWARD OF A 4-TON TRAILER MOUNTED FALCON HOTBOX
PUBLIC WORKS DEPARTMENT - STREETS DIVISION

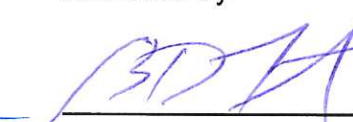
January 10, 2023

Prepared by:

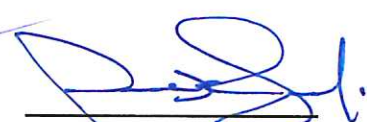


Derek Burleson,
Operations Superintendent

Reviewed by:



Brian Faust, P.E.,
Public Works Director



Paul Kramer,
City Manager

ISSUE:

Consider the approval of the cooperative purchasing bid from Sourcewell for the purchase of a 4-Ton Trailer Mounted Falcon Hotbox.

BACKGROUND:

The 2023 CIP included a new trailer mounted hotbox for the Streets Division. The hotbox is crucial for Operations and will allow two (2) crews to pothole patch Citywide. Streets Foreman Becky Beaver prepared bid specifications and researched options for purchasing the hotbox. After reviewing available purchase option, department staff chose to utilize the cooperative purchase available through Sourcewell. This program allows the City to purchase the hotbox that meets our needs while guaranteeing that standard governmental purchasing practices are followed.

FINANCE:

The 2023 CIP included funding in the amount of \$45,170 for the purchase of the 4-Ton Trailer Mounted Falcon Hotbox. The actual cost, \$54,279, is higher than contained in the CIP by \$9,109. The difference will be made up by the reserves in the CIP Sales Tax Fund.

STAFF RECOMMENDATIONS:

Staff recommends the City Commission approve the purchase of a 4-Ton Trailer Mounted Falcon Hotbox for \$54,279 from Kirby-Smith Machinery, 8320 Ruby Avenue, Kansas City, Kansas 66111.

The City Commission can approve or reject this bid.

ATTACHMENTS:

- Quote from Kirby-Smith Machinery
- 2023 CIP Sheet for Trailer Mounted Hotbox



SOURCEWELL PRICE QUOTE

Contract #052417-FRM

No. OZ06212022-456

2600 W Salzburg
 Freeland, MI 48623
 Phone: (989) 495 – 9332
 Fax: (989) 495 – 9342

Requested By: Kirby Smith Machinery
 For: Leavenworth, KS

Quote Date	Quote Good Through	Freight Terms	Requested By	Payment Terms
11/15/2022	2/01/2023	FOB Freeland, MI	Joel Thomason	Net 30 Days

Qty	Item No	Description	Price
1	MI10259	4 ton Falcon Asphalt Recycler & Hot Box Trailer 12-Volt Battery Triple Wall Construction and Fully Insulated Automatic Temperature Control Diesel Fuel Source VIP Technology – Single Voltage Indicator and Protector Controller Automatically Prevents Burner(s) from Operating Below Burner Manufacturer's Required Voltage One-Piece, Seamless Ceramic Combustion Chamber Independently Certified 92% Fuel Efficiency Trailer Frame - 2" x 6" x 1/4" Tubular Steel Diamond Tread Plate Hopper Access Platform Tires – 16” Electric Brakes w/ Safety Breakaway Conspicuity Tape Included Options: Battery Charger Package Dual Burner Recycling Package (2 nd Burner, 24 hour Timer Included) Dump Box (12-Volt Electric Over Hydraulic) Standard frame – 16’ LED Lighting Upgrade - Two Red Stop/Tail/Turn Lights and One Amber Strobe Per Side LED night work lights Warning/strobe light Tool Holder – 3-Positions Release agent basket Solar battery maintainer Flaming river disconnect 30-Gallon Heated Rejuvenator / Tack Tank – Gravity Feed Rejuvenator Spray System – Honda 5.5 HP Motor, Viking HL32	\$54,279

Pump, 10-Gallon Flush Tank and Spray Wand with ½” Hoses
Hose Reel for Rejuvenator Spray System
Compactor basket – 24x24
Hoist with 12v winch

Operator, Parts and Service Manual
Two-Year Machine Warranty and Lifetime Frame Warranty
Freight to Kansas City, KS

Plus Applicable Sales Tax

Why Falcon?

It's Versatile

- Recycle leftover asphalt, chunks and millings (a dual burner unit is required to recycle millings)
- Transport asphalt and keep it hot all day and hold it overnight
- Heat and re-heat cold patch

It's Cost-Effective

- When used as a hot box, it eliminates asphalt waste that occurs in the back of an unheated truck bed
- When used as a recycler, it recycles leftover asphalt and asphalt chunks torn up from the pavement
- Independently certified 92% fuel efficiency – uses less than 3 gallons of fuel per 8-hour shift

It's Reliable

- VIP Technology (patent pending) – Protects burner components by automatically preventing burner from operating with low battery voltage
- A Falcon is designed to allow the burner to run while in tow - preventing material from cooling while being transported
- Heat management system is engineered to provide even hopper temperatures – eliminating material scorching from hot spots and material hardening from cold spots
- Standard 2-year machine warranty and lifetime frame warranty

It's a Falcon

Included
Included
\$2,334

INCLUDED IN
THE TOTAL
OF \$54,279
PER 1/5/2023
CONVERSATION
WITH FALCON
307

**Capital Improvements Program
2023 - 2027
Public Works - Street Equipment**

Purpose:

This allocation provides funding for replacement of several pieces of streets equipment through 2026.

Source	Comments	Year	Requested	Projected
Sales Tax	4-ton trailer-mounted hot box	2023	\$ 45,170	\$ 45,170
Sales Tax	Street sweeper	2023	230,000	230,000
Sales Tax	Tandem axle dump truck	2023	195,000	195,000
Sales Tax	1-ton single axle w/boom	2023	85,000	85,000
Sales Tax	2-ton aerial truck	2024	95,000	95,000
Sales Tax	Crack seal machine	2024	30,000	30,000
Sales Tax	Tandem axle dump truck	2025	165,000	165,000
Sales Tax	Flush truck	2025	85,000	85,000
Sales Tax	Vactron tow behind	2025	35,000	35,000
Sales Tax	Single axle dump truck	2026	165,000	165,000
Sales Tax	Single axle dump truck	2026	165,000	165,000
			\$ 1,295,170	\$ 1,295,170

Uses	Comments	Year	Requested	Projected
Public Works	4-ton trailer-mounted hot box	2023	\$ 45,170	\$ 45,170
Public Works	Street sweeper	2023	230,000	230,000
Public Works	Tandem axle dump truck	2023	195,000	195,000
Public Works	1-ton single axle w/boom	2023	85,000	85,000
Public Works	2-ton aerial truck	2024	95,000	95,000
Public Works	Crack seal machine	2024	30,000	30,000
Public Works	Tandem axle dump truck	2025	165,000	165,000
Public Works	Flush truck	2025	85,000	85,000
Public Works	Vactron tow behind	2025	35,000	35,000
Public Works	Single axle dump truck	2026	165,000	165,000
Public Works	Single axle dump truck	2026	165,000	165,000
			\$ 1,295,170	\$ 1,295,170



Crack Seal Machine



Tandem Axle Dump Truck



Flush Truck



4-ton Hot Box

Street Sweeper

POLICY REPORT PWD NO. 23-03

CONSIDER APPROVAL OF THE DESIGN SERVICES CONTRACT WITH BARTLETT & WEST
FOR THE VILAS STREET ADA AND SIDEWALK UPGRADES PROJECT

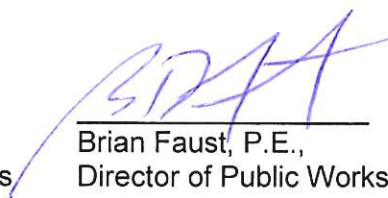
City Project No. 2022-997

January 10, 2023

Prepared By:

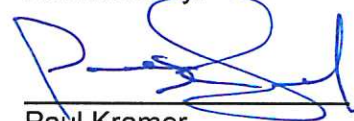


Earl Wilkinson,
Deputy Director of Public Works



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

Reviewed By:



Paul Kramer,
City Manager

ISSUE:

Consider approval of the contract with Bartlett & West for the development of the Vilas Street ADA and Sidewalk Upgrades Project plans and specifications.

BACKGROUND:

The City of Leavenworth initially submitted two Transportation Alternatives (TA) grants to KDOT on March 1, 2022, and during the review process, KDOT asked that the two projects be combined into one grant application. The City was notified that the project was selected to receive federal funds from the TA Program on July 29, 2022, and on October 26th 2022, the City formally accepted the KDOT TA grant for the Vilas Street ADA and Sidewalk Upgrades Project. The total estimated cost for the construction of the project is \$1,582,300, and the Federal TA award was for \$1,265,840 (80%) and the local share will be \$316,460 (20%). The Federal TA funding is only available for construction and construction inspection. Therefore, the City is financially responsible for the preliminary engineering, design, right-of-way and utility relocation along with the 20% local construction match.

Once the design begins in early February 2023, it will take approximately 14 months for the project to go through the KDOT design and review requirements before it can be finalized and ready to advertise for construction. Based on that timeframe, the construction of the project will start in June of 2024. The contractor will focus on construction near Henry Leavenworth Elementary School while school is out for summer break, and the remaining project can be constructed any time after the contractor is selected.

BUDGET IMPACT:

The cost will be funded with Federal Fund Exchange funds in an amount not to exceed \$198,666.

POLICY:

The City generally uses the Qualifications Base Selections (QBS) process to select engineers for professional services. Bartlett & West is one of our on-call engineers that was selected through a QBS process, and they have significant experience with this type of work in Kansas.

RECOMMENDATION:

Staff recommends approval of the design services contract with Bartlett & West for the Vilas Street ADA and Sidewalk Upgrades Project in an amount not to exceed \$198,666.

ATTACHMENTS:

Design Contract – Bartlett & West
KDOT Award Letter



Dwight D. Eisenhower State Office Building
700 S.W. Harrison Street
Topeka, KS 66603-3745

Julie L. Lorenz, Interim Secretary
Michael J. Moriarty, Chief

Phone: 785-296-3841
Fax: 785-296-8168
kdot#publicinfo@ks.gov
http://www.ksdot.org
Laura Kelly, Governor

July 29, 2022

Paul Kramer
pkramer@firstcity.org
City of Leavenworth
100 N. Fifth St.
Leavenworth, KS 66048
913-680-2600

Re: KDOT Transportation Alternatives Award for Federal Fiscal Years 2023-24

Dear Mr. Kramer,

I am pleased to inform you that your project is selected to receive federal funds and will be included in our state's Transportation Alternatives (TA) Program.

Project Title	Estimated Total Construction/CE Costs	Federal TA Award (80%)	Local Share (20%)
Vilas St ADA and Sidewalk Upgrades (10-20 and 20-22)	\$1,582,300	\$1,265,840	\$316,460

The project referenced above is selected to receive a maximum federal award of **\$1,265,840** and is expected to aid in the completion of “**Vilas St ADA and Sidewalk Upgrades (10-20 and 20-22)**” as proposed in your project application with the following considerations:

- Consider moving estimated let date to at least Fall of 2023

Based on an 80:20 matching ratio to participating costs, it is estimated that the City 20% match on participating items will be approximately \$316,460.

You are now encouraged to immediately begin work on the following items:

- Project consultant selection, PE and Design work
- Request for Project Form 1302 – complete, sign, and submit
- DUNS number and SAM registration updates and confirmation – save screenshots or confirmation emails to submit
- KDOT Info Sheet – complete and submit

Please submit all items listed above to Jenny.Kramer@ks.gov to add to your project file. Once you submit your Form 1302, we will program your project, assign a KDOT Project Number, and begin drafting a City/State Agreement which you will later receive for review and signatures.

Please remember that you are 100% financially responsible for the following items:

- 20% local cash match on participating items (construction and CE)
- Preliminary Engineering (PE) and Design
- Right-of-Way
- Utilities
- Other non-participating items

If you have any questions, please feel free to contact me by email at Jenny.Kramer@ks.gov or by phone at 785-296-5186. A paper copy of this letter will be sent via mail for your records.

We look forward to working with you on this project.

Sincerely,

A handwritten signature in cursive script that reads "Jenny Kramer". The signature is written in black ink and is positioned to the left of the typed name and contact information.

Jenny Kramer
Bicycle & Pedestrian Coordinator
Bureau of Transportation Planning
Kansas Department of Transportation
700 SW Harrison Street
Topeka, KS 66603
Phone: 785-296-5186
Email: Jenny.Kramer@ks.gov

**CITY OF LEAVENWORTH
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION**

**STANDARD AGREEMENT
FOR
ENGINEERING SERVICES**

THIS AGREEMENT, is between the City of Leavenworth, Kansas (Owner) and Bartlett & West Inc. (Engineer);

WITNESSETH:

WHEREAS, the Owner wishes to employ the Engineer to perform professional engineering services on Project Number: 2022-997, Project Name: Vilas Street Sidewalk and ADA Upgrades. These services include providing engineering design and construction documents for the sidewalk and ADA improvements of approximately 8,000 feet of Vilas Street from 10th Street to 22nd Street (the Project); and,

WHEREAS, the Owner requires certain engineering services in connection with the Project (the Services);
and,

WHEREAS, the Engineer is prepared to provide the Services;

NOW THEREFORE, in consideration of the promises contained in this Agreement, the Owner and Engineer.
agree to the following:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be _____

ARTICLE 2 - GOVERNING LAW

This Agreement shall be governed by the laws of the State of Kansas and the codes of the City of Leavenworth

ARTICLE 3 - SERVICES TO BE PERFORMED BY ENGINEER

Engineer shall perform the Services described in Attachment A, Scope of Services, in accordance with applicable sections of the City of Leavenworth Design Criteria and Drafting Standards of latest revision.

ARTICLE 4 - COMPENSATION

Owner shall pay Engineer in accordance with the Attachment B, Compensation.

ARTICLE 5 – OWNER’S RESPONSIBILITIES

Owner shall be responsible for all matters described in Attachment C, Owner's Responsibilities.

ARTICLE 6 - SUPPLEMENTAL AGREEMENTS

The provisions set forth in Attachment D, Supplemental Agreements shall be incorporated into this Agreement.

ARTICLE 7 - PROJECT SCHEDULE

The provisions set forth in the Attachment E, Project Schedule shall be incorporated into this Agreement.

ARTICLE 8 - STANDARD OF CARE

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

ARTICLE 9 - INDEMNIFICATION AND INSURANCE

Engineer hereby agrees to fully indemnify and hold harmless Owner and any of its departments, divisions, agencies, officers, employees and elected officials from all loss, damage, cost, or expenses specifically including attorneys' fees and other expenses of litigation recoverable under applicable law incurred by or on behalf of the Owner and any of its officers, employees or elected officials arising out of Engineer's negligent performance of Services under this Agreement. Engineer specifically agrees that this duty to indemnify and hold harmless will apply to the following:

- a. Claims, suits, or action of every kind and description when such suits or actions arise from the negligent acts, errors, or omissions of the Engineer, its employees, agents, or subcontractors.

- b. Injury or damages received or sustained by any party because of the negligent acts, errors, or omissions of the Engineer, its employees, agents, or subcontractors.

Engineer shall purchase and maintain during the life of this Agreement, insurance coverage which will satisfactorily insure him against claims and liabilities which arise because of the execution of this Agreement.

The insurance coverages are as follows:

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

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

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

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

ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY

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

ARTICLE 11 - OPINIONS OF COST AND SCHEDULE

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

ARTICLE 12 - REUSE OF DOCUMENTS

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

ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, engineering documents, drawings, and specifications prepared by Engineer as part of the Services provided Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due shall become the sole property of Owner, however, that both Owner and Engineer shall have the unrestricted right to their use on the Project for which they were prepared. Engineer shall retain its rights in its standard drawing details, specifications, data bases, computer software, and other proprietary property protected under the copyright laws of the United States. Rights to intellectual property developed, utilized, or modified in the performance of services shall remain the property of Engineer. Owner shall have the unlimited right to the use of intellectual property developed, utilized, or modified in the performance of the Services at no additional cost to the Owner.

ARTICLE 14 - TERMINATION

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

ARTICLE 15 - DELAY IN PERFORMANCE

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

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

For delays in performance by Engineer, as set forth in Attachment E, Project Schedule, which are caused by circumstances which are within its control, such delays shall be documented on the Engineer's Project Performance Evaluation form. Said form shall be completed at the conclusion of Project and acknowledged by both Owner and Engineer. Completed form shall be retained by Owner for a period of five years and reviewed prior to consultant selection for City projects.

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

ARTICLE 16 - COMMUNICATIONS

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

Engineer: Scott Komarek
544 Columbia Dr., Lawrence, KS 66049
(913) 544-9530

Owner: City of Leavenworth Engineering Division
100 N. 5th Street
Leavenworth, KS 66048
(913)-684-0375

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

ARTICLE 17 - WAIVER

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

ARTICLE 18 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

ARTICLE 19 - INTEGRATION

This Agreement represents the entire and integrated agreement between Owner and Engineer. All prior and contemporaneous communications, representations, and agreements by Engineer, whether oral or written, relating to the subject matter of this Agreement, as set forth in Attachment D, Supplemental Agreements are hereby incorporated into and shall become a part of this Agreement

ARTICLE 20 - SUCCESSORS AND ASSIGNS

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

ARTICLE 21 - ASSIGNMENT

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

ARTICLE 22 - THIRD PARTY RIGHTS

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

ARTICLE 23 – RELATIONSHIP OF PARTIES

Nothing contained herein shall be construed to hold or to make the Owner a partner, joint venturer, or associate of Engineer, nor shall either party be deemed the agent of the other, it being expressly understood and agreed that the relationship between the parties hereto is and shall at all times remain contractual as provided by the terms and conditions of this Agreement.

IN WITNESS WHEREOF, Owner and Engineer have executed this Agreement.

CITY OF LEAVENWORTH

Owner

By: Jermaine Wilson

Mayor
Title

Date:

Attest:
City Clerk, Sarah Bodensteiner

BARTLETT & WEST INC.

Engineer


By: Scott Komarek, P.E.

Sr. Project Manager
Title

1/3/2023

Date:

Attest: 

**ATTACHMENT A
TO
AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Leavenworth, Kansas
Engineer: Bartlett & West Inc.
Project Number & Name: 2022-997 Vilas ADA and Sidewalk Upgrades

SCOPE OF SERVICES

BASIC SERVICES

The project is specifically defined below:

The Project is to improve approximately 8,000 feet of Vilas Street in the City of Leavenworth. The improvements include adding approximately 3,300 feet of sidewalk to the south side of Vilas Street from 10th Street to 15th Street, evaluating and incorporating ADA ramp improvements and spot improvements throughout the corridor, adding approximately 2,250 feet (road centerline) of curb & gutter, with an enclosed storm sewer system and sidewalk on the north side of Vilas Street between 20th Street and 22nd Street. We assume the existing horizontal alignment and vertical profile will be retained and that a complete redesign/reconstruction of the corridor is not included in the scope of work. The plan for this improvement is shown in the attached Exhibit at the end of the scope.

The Engineer agrees to provide the following services.

The Project will be designed and constructed per the City of Leavenworth's, APWA, KDOT Standard Technical Specifications as approved by the owner. Engineering Services include the following:

1. SURVEY

- 1.1 Survey Control and Bench Marks
- 1.2 Survey Boundary
- 1.3 Survey Topo, and Base Map
- 1.4 Legal Descriptions and Exhibits (20 properties)

2. CONCEPTUAL DESIGN SERVICES

- 2.1 Value Engineering Study
- 2.2 Concept Drawings and Maps
- 2.3 Engineer's Estimate of Probable Cost

3. PRELIMINARY DESIGN SERVICES

- 3.1 Conduct field check of survey and perform on-site design determining the location of sidewalk/green space width, driveway locations, retaining wall needs, and drainage improvements.

- 3.2 Develop linework consisting of the sidewalk, curb ramps, retaining walls, 35 driveways, 15 side streets, and curb & gutter.
- 3.3 Develop profiles of sidewalk and curb/gutter through complex areas only.
- 3.4 Develop driveway profiles (35 drives).
- 3.5 Cut various cross-sections to determine grading limits and where retaining walls are needed.

- 3.6 Drainage area delineation, hydraulics, and storm sewer layout
- 3.7 Determine retaining wall locations and heights based on grading.
- 3.8 Create preliminary plans for the project, utilizing AUTOCAD/Civil 3D, consisting of the following:
 - 3.8.1 Cover Sheet
 - 3.8.2 Typical Sections (assumes 1 sheet)
 - 3.8.3 Right-of-Way Plans (assumes 8 sheets)
 - 3.8.4 Roadway Plan/Profile Sheets (assumes 8 sheets)
 - 3.8.5 Cross Sections (assumes 6 sheets, 1 section every 50 feet)
- 3.9 Conduct 1st design review meetings with City staff
- 3.10 Identify all private property to be affected and provide a written document that clearly states the impacts a given property owner will face with construction activity.
- 3.11 Prepare utility conflict plans for the project.
- 3.12 Attend/host utility coordination meetings with impacted utility companies.
- 3.13 Prepare preliminary opinion of probable costs.
- 3.14 Submit the preliminary plans and opinion of probable cost to the city for review in PDF format. Address comments
- 3.15 Attend/host a public meeting.

4. LPA SERVICES

- 4.1 Develop mailers/fliers with required LPA documentation for landowner rights. Scope assumes that the City will mail these items and handle the right-of-way acquisition process.
- 4.2 Coordinate with KDOT, perform "desktop" environmental assessment and obtain permits. (Archeological, wetland delineation, or other "field" environmental services are not included in this SOW)
- 4.3 Develop maps and exhibits for public meetings and property owners
- 4.4 Submittals

5. FINAL DESIGN SERVICES

- 5.1 Create final plans for the project, utilizing AUTOCAD/Civil 3D, consisting of the following:
 - 5.1.1 Cover Sheet
 - 5.1.2 Typical Sections (assumes 1 sheet)
 - 5.1.3 General Notes and Quantities (assumes 2 sheets)
 - 5.1.4 Removal of Improvements/Demolition Sheets (assumes 4 sheets)
 - 5.1.5 Right-of-Way Plans (assumes 8 sheets)
 - 5.1.6 Roadway Plan/Profile Sheets (assumes 8 sheets)
 - 5.1.7 Intersection Layout Sheets (assumes 6 sheets)
 - 5.1.8 ADA Ramp Detail Sheets (assumes 6 sheets)

- 5.1.9 Drainage Profiles (assumes 5 sheets)
 - 5.1.10 Driveway Profile Sheets (assumes 8 sheets)
 - 5.1.11 Retaining Wall Profile Sheet (assumes 1 sheet)
 - 5.1.12 Erosion Control Plan (assumes 8 sheets)
 - 5.1.13 Traffic Control Plan (assumes 5 sheets)
 - 5.1.14 Pavement Marking and Signing Plan (assumes 8 sheets)
 - 5.1.15 Lighting Plans (excluded from the scope)
 - 5.1.16 Traffic Signal Plans (excluded from the scope)
 - 5.1.17 Cross Sections (assumes 6 sheets, 1 section every 50 feet)
- 5.2 Compute final quantities, develop bid form, and prepare a final estimate of probable cost.
- 5.3 Develop project-specific technical specifications and project manual
- 5.4 Address final comments from KDOT.
- 5.5 Submit the final plans, bid forms, and Engineer's Estimates to the City for review in electronic form.
- 5.6 Prepare a set of final utility coordination plans for the project.
- 5.7 Attend a final design coordination meeting with utility companies.
- 5.8 Make final changes to plans, technical special provisions, bid form, and Engineer's Estimate based on City staff comments. Sign and Seal.
- 6. PROJECT MANAGEMENT AND COORDINATION**
- 6.1 Perform duties necessary for the administration of project contracts. Prepare and administer project expenses and invoicing to CITY.
- 6.2 General communication with CITY. This includes email updates, phone conversations, and general correspondence on approximately a bi-weekly basis during the project.
- 6.3 Review submittals, and paperwork for LPA compliance.
- 7. BIDDING PHASE SERVICES**
- 7.1 Attend/Host a pre-bid meeting (optional)
- 7.2 Respond to RFI
- 7.3 Tabulate bid tabs and recommendation letter
- 8. RIGHT-OF-WAY NEGOTIATION SERVICES (OPTIONAL - NOT INCLUDED WITH SCOPE OF WORK)**
- 8.1 Print and mail fliers with required LPA documentation for landowner rights
- 8.2 Order title reports
- 8.3 Order appraisals of affected landowners that need easements
- 8.4 Negotiate compensation for ROW and TCE
- 8.5 Coordinate with City staff through the negotiation process
- 8.6 Develop and maintain a list of property owners along the alignment to track, and document all negotiations with landowners
- 8.7 Complete the LPA ROW process checklist
- 8.8 Coordinate payments to landowners
- 8.9 File necessary documents with the Courthouse

SUPPLEMENTAL SERVICES

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

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

1. Changes in the general scope, extent, or character of the project or its design, including but not limited to changes in size, complexity, Owner's schedule, the character of construction or method of financing; and revising previously accepted studies, reports, or design documents when such revisions are required by changes in laws, regulations, ordinances, codes, or orders enacted after the preparation of such studies/reports/documents or designs or due to any other causes beyond the Engineer's control.
2. Revisions to the plans and specifications when inconsistent with previous approvals or instructions by the Owner.
3. Potholing existing utilities, geotechnical investigations, and pavement core samples.
4. Additional property acquisition efforts and/or condemnation services.
5. Street lighting plans and traffic signal modifications.
6. Construction phase and post-construction services.
7. Survey staking of easements.

CLARIFICATIONS

1. Survey topo and boundary data/base map linework will be limited to only areas with new sidewalks, ramps, and curb & gutter and no more than 10' outside of the right-of-way as shown on the attached exhibits
2. Driveway profiles developed will be limited to only driveways with new sidewalks
3. Plan and profile sheets include only areas with new sidewalks, ramps, and curb & gutter
Cross-section sheets include only areas with new sidewalks, and curb & gutter

**ATTACHMENT B
TO
AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Leavenworth, Kansas
Engineer: Bartlett & West Inc.
Project Number & Name: 2022-997 Vilas ADA and Sidewalk Upgrades

COMPENSATION

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

- A. For the Basic Services described in Attachment A, hourly upper limit \$198,666.00]. Payments shall be made monthly in amounts which are consistent with the amount of engineering services provided, as determined by the Engineer.
- B. Compensation for Supplemental Services shall be made as defined below, when authorized in writing by the Owner. The maximum limit for each item of additional service shall be established individually and specifically agreed to by the Owner as stated below, unless the service is included in a subsequent agreement.

Hourly rates for each classification as defined by the Engineer's rate schedule, see Attachment F. Hourly charge rates are subject to adjustment annually on January 1. Overtime, when authorized by the Owner, will be billed at 1.5 times the rates listed (non-engineer time only).

Reimbursable charges will be considered the amount of actual costs of expenses or charges, including such items as staking materials, equipment rental, equipment hourly charges, mileage, toll telephone calls, reproduction and similar project related expenses.

- D. The entire amount of each statement shall be due and payable upon receipt by the Owner.
- E. It is understood and agreed:
 - 1. That the Engineer shall start the performance of Services within 10 days of receipt of a notice to proceed and shall complete the work in accordance with the contract times set forth in Attachment E, Project Schedule.
 - 2. That the Engineer shall keep records on the basis of generally accepted accounting practice of costs and expenses which records shall be available for inspection at all reasonable times.

**ATTACHMENT C
TO
AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Leavenworth, Kansas
Engineer: Bartlett & West Inc.
Project Number & Name: 2022-997 Vilas ADA and Sidewalk Upgrades

OWNER'S RESPONSIBILITIES

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

1. Make available to the Engineer all records, reports, maps, and other data pertinent to provision of the services required under this contract.
2. Examine all plans, specifications and other documents submitted by the Engineer and render decisions promptly to prevent delay to the Engineer.
3. Designate one City of Leavenworth employee as the Owner representative with respect to all services to be rendered under this agreement. This individual shall have the authority to transmit instructions, receive information and to interpret and define the Owner's policies and decisions pertinent to the Engineer's services.
4. Issue notices to proceed to the Engineer for each phase of the design services.

**ATTACHMENT D
TO
AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Leavenworth, Kansas
Engineer: Bartlett & West Inc.
Project Number & Name: 2022-997 Vilas ADA and Sidewalk Upgrades

SUPPLEMENTAL AGREEMENTS

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

**ATTACHMENT E
TO
AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Leavenworth, Kansas
Engineer: Bartlett & West Inc.
Project Number & Name: 2022-997 Vilas ADA and Sidewalk Upgrades

PROJECT SCHEDULE

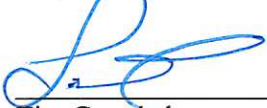
Owner and Engineer recognize that time is of the essence of the Agreement and that Owner will suffer financial loss if the work is not completed within the times stipulated herein, plus any extensions thereof. Owner recognizes Engineer's performance must be governed by sound professional practices. Accordingly, Engineer has established time intervals, in calendar days, for submittals at various stages of the project as detailed below. As each actual submittal date occurs, Engineer shall meet with Owner to discuss the progress of the work and the actual submittal date shall be documented. If project is behind schedule, the reason shall be recorded. Engineer shall not be responsible for the time required by Owner's representative to review Engineer's submittal. When review is complete, Owner shall, in writing, authorize Engineer to proceed to the next submittal date. After final submittal date, Engineer and Owner shall meet to evaluate Engineer's performance with regard to design schedule. An Engineer's Project Performance Evaluation form shall be completed and acknowledged by both Owner and Engineer. Completed form shall be retained by Owner for a period of five years and reviewed prior to consultant selection for City projects. Past performance shall be accounted for on the evaluation sheet used to rank consultants during the interview process.

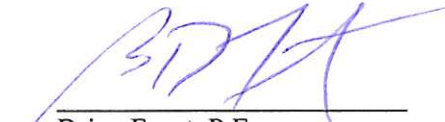
1. Schedule: Engineer will make plan submittals to Owner based on the following schedule:
 - a. Concept Drawings - Engineer will submit concept drawings within 60 calendar days after Notice to Proceed by Owner.
 - b. Field Check - Engineer will submit field check drawings within 90 calendar days after Notice to Proceed by Owner.
 - c. Right-of-Way Drawings - Engineer will submit right-of-way drawings within 60 calendar days after the Notice to Resume Work is given by Owner following Field Check.
 - d. Office Check - Engineer will submit office check drawings and specifications within 120 calendar days after the Notice to Resume Work is given by Owner following Field Check.
 - e. Bid Documents - Engineer will submit bid documents within 30 calendar days after the Notice to Resume Work is given by Owner following Office Check.
 - f. As-Built Plans – Engineer will submit as-built plans within 30 calendar days after marked-up plans are returned to the Engineer, from the Owner or within 30 calendar days after all punch list items have been completed if the Engineer's firm provided construction inspection services for the project.

POLICY REPORT NO. 23-02
BID APPROVAL – WATER POLLUTION CONTROL DIVISION CHEMICALS
BID NO. 01WW-2022-07

January 10, 2023

Prepared by:


 Tim Guardado,
 WPC Superintendent


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

Reviewed by:


 Paul Kramer,
 City Manager

ISSUE:

Consider approval of bids for the purchase of chemicals used in the operation and maintenance of the Wastewater Treatment Plant.

BACKGROUND:

These chemicals are used for a variety of processes in the treatment of wastewater. A summary of the uses is shown below.

- **Hydrogen Peroxide** is injected into the raw sludge line before the belt press to control the release of hydrogen sulfide gas in the pressroom.
 - Projected year usage: 23 drums (513 lb/drum)
- **Sodium Hypochlorite and Sodium Hydroxide** are used in the wet air scrubber to control odors from the dewatering operation.
 - Projected year usage: 5 drums of each chemical
 - Sodium Hypochlorite (55 gallon/drum)
 - Sodium Hydroxide (564 lbs/drum)
- **Ferrous Chloride** is added to the influent to control odors from the plant processes.
 - Previous year usage was 24,517.23 lbs.
 - Projected usage for 2023 33,000 lbs. (estimate)
- **Polymer** is a coagulating agent used in the sludge dewatering process.
 - Previous year usage was 6,600 lbs.
 - Projected usage for 2023 is 11,000 lbs. (estimate)

Notice of bid was posted in the Leavenworth Times and bid information was sent to the various chemical suppliers.

BIDS RECEIVED:

Chemical	Price Paid 2021	Price Paid 2022	2023 Bid	2023 Total	Vendors for 2023
Ferrous Chloride	\$0.96/lbs.	\$0.95/lbs.	1.29/lbs.	\$42,570	OFS, INC
Hydrogen Peroxide	\$0.31/lbs.	\$.35/lbs.	<i>No bid</i>	(see below)	
Sodium Hypochlorite	\$1.50/gal	\$1.66/gal	\$3.30/gal	\$907.50	Edwards Chemicals
Sodium Hydroxide	\$0.235/lbs.	\$0.329/lbs.	<i>No bid</i>	(see below)	
Polymer	\$1.92/lbs.	\$2.53/lbs.	\$2.77/lbs.	\$30,470	Atlantic Coast Polymers

The two (2) chemicals where no bids were received (Hydrogen Peroxide and Sodium Hydroxide) will be purchased separately. The quantity of these two (2) chemicals is small enough to only require quotes based on the City's Purchasing Policy.

STAFF RECOMMENDATION:

Staff recommends approval by the City Commission of the low bids received for the chemicals shown.

OPTIONS/ALTERNATIVES: The City Commission can accept any or all of the low bids as recommended by the City Staff, or can ask the Staff to re-bid any or all of these.

ATTACHMENT:

Bid Spreadsheet

**City of Leavenworth
Bid Tabulation**



Project or Purchase: Chemical Bid 01WW-2022-07
Bid Opening Date: December 28, 2022
Bid Opening Time: 1:00 PM

All bids are subject to review and approval by City Staff and/or the City Commission

Bidder	Address (City/State)	Sodium Hypochlorite	Sodium Hydroxide	Hydrogen Peroxide	Ferrous Chloride	Polymer
OFS, INC	Oklahoma, Ok	No Bid	No Bid	No Bid	\$1.29 Per lb/\$42,570.00	No Bid
Univar USA	Kent, WA	No Bid	No Bid	No Bid	No Bid	No Bid
Edwards Chemical's	Elwood, KS	\$181.50 Barrel/907.50	No Bid	No Bid	No Bid	No Bid
Atlantic Coast Polymers	Lauderdale-By-The-Sea, FL	No Bid	No Bid	No Bid	No Bid	\$2.77 lb/ \$30,470.00

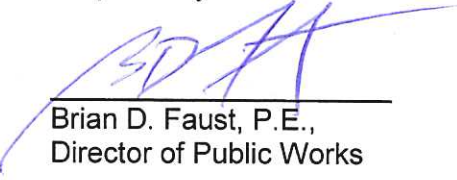
POLICY REPORT PWD NO. 23-04

CONSIDER CONTRACT WITH ALFRED BENESCH & COMPANY
FOR THE 2023 BIENNIAL BRIDGE INSPECTION SERVICES


City Project 2023-004

January 10, 2023

Prepared by:


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

Reviewed by:


Paul Kramer,
City Manager

ISSUE:

Consider contract award of the 2023 Biennial Bridge Inspection Services to Alfred Benesch & Company.

BACKGROUND:

The Federal Highway Administration (FHWA) issued National Bridge Inspection Standards (NBIS) that both states and localities must comply with. Cities that own bridges that are not on the state system are responsible for inspections of those structures and the inspections must be completed at least every two (2) years. KDOT's Bureau of Local Projects is responsible for documenting that bridge owners comply with the NBIS through a biennial inspection program. There are 39 bridges located within the City limits that are to be inspected with this project. Of the 39 bridges, 26 are on the National Bridge Inventory with the remaining structures functioning as bridges, but not meeting the criteria (including pedestrian bridges).

In 2021, the City selected Alfred Benesch & Company based on their experience and response to our Request for Qualifications (RFQs). As part of their work, Benesch inspected the bridges and imported the data into an electronic format that can be used moving forward to create an asset management component – similar to what we are doing with streets and traffic signals.

Using the same firm for several inspection cycles creates consistency in the inspections and reduces cost as a new firm will need to familiarize their staff with our bridges and prior evaluations.

BUDGET IMPACT:

The adopted 2023 CIP contains \$40,000 for the biennial bridge inspections.

RECOMMENDATION:

Staff recommends the City Commission approve the contract submitted by Alfred Benesch & Company for the 2023 Biennial Bridge Inspection services in an amount not to exceed \$35,536.

ATTACHMENTS:

Contract with Alfred Benesch
Map of Bridge Locations
2023 CIP Budget Sheet for Bridge Inspections

**CITY OF LEAVENWORTH
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION**

**STANDARD AGREEMENT
FOR
ENGINEERING SERVICES**

THIS AGREEMENT, is between the City of Leavenworth, Kansas (Owner) and Alfred Benesch & Company (Engineer);

WITNESSETH:

WHEREAS, the Owner wishes to employ the Engineer to perform professional engineering services on 2023 Biennial Bridge Inspections. These services include providing inspection consulting services for Leavenworth's Bridges. (the Project); and,

WHEREAS, the Owner requires certain consulting engineering services in connection with the Project (the Services);

and,

WHEREAS, the Engineer is prepared to provide the Services;

NOW THEREFORE, in consideration of the promises contained in this Agreement, the Owner and Engineer agree to the following:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be _____

ARTICLE 2 - GOVERNING LAW

This Agreement shall be governed by the laws of the State of Kansas and the codes of the City of Leavenworth.

ARTICLE 3 - SERVICES TO BE PERFORMED BY ENGINEER

Engineer shall perform the Services described in Attachment A, Scope of Services, in accordance with applicable sections of the City of Leavenworth Design Criteria and Drafting Standards of latest revision.

ARTICLE 4 - COMPENSATION

Owner shall pay Engineer in accordance with the Attachment B, Compensation.

ARTICLE 5 - OWNER'S RESPONSIBILITIES

Owner shall be responsible for all matters described in Attachment C, Owner's Responsibilities.

ARTICLE 6 - SUPPLEMENTAL AGREEMENTS

The provisions set forth in Attachment D, Supplemental Agreements shall be incorporated into this Agreement.

ARTICLE 7 - PROJECT SCHEDULE

The provisions set forth in the Attachment E, Project Schedule shall be incorporated into this Agreement.

ARTICLE 8 - STANDARD OF CARE

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

ARTICLE 9 - INDEMNIFICATION AND INSURANCE

Engineer hereby agrees to fully indemnify and hold harmless Owner and any of its departments, divisions, agencies, officers, employees and elected officials from all loss, damage, cost, or expenses specifically including reasonable attorneys' fees and other expenses of litigation incurred by or on behalf of the Owner and any of its officers, employees or elected officials to the extent caused by Engineer's negligent performance of Services under this Agreement. Engineer specifically agrees that this duty to indemnify and hold harmless will apply to the following:

- a Claims, suits, or action of every kind and description to the extent such suits or actions are caused by the negligent acts, errors, or omissions of the Engineer, its employees, agents, or subcontractors.

- b. Injury or damages received or sustained by any party to the extent caused by the negligent acts, errors, or omissions of the Engineer, its employees, agents, or subcontractors.

Engineer shall purchase and maintain during the life of this Agreement, insurance coverage which will satisfactorily insure him against claims and liabilities which arise because of the execution of this Agreement.

The insurance coverages are as follows:

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

Prior to issuance of the Notice to Proceed by Owner, Engineer shall have on file with Owner certificates of insurance acceptable to Owner. Said certificates of insurance shall be filed with Owner within ten (10) days of renewal or may be submitted with each agreement.

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

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

ARTICLE 10- LIMITATIONS OF RESPONSIBILITY

Engineer shall not be responsible for: (1) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project, (2) the failure of any contractor, subcontractor, vendor, or other Project participant, not under contract to Engineer, to fulfill contractual responsibilities to the Owner or to comply with federal, state or local laws, regulations, and codes; or (3) procuring permits, certificates, and licenses required for any construction unless such responsibilities are specifically assigned to Engineer in Attachment A, Scope of Services. Notwithstanding anything contained herein to the contrary, in recognition of the relative risks and benefits of the Project to both Owner and Engineer, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of Engineer to the Owner (and anyone that claims through it) for any and all claims, losses, costs, damages of any nature whatsoever (whether arising in negligence, professional errors or omissions, strict liability, breach of contract or otherwise) and claim expenses from any cause or causes, so that the total aggregate liability of Engineer shall not exceed the limits of insurance. Owner and Engineer agree that to the fullest extent permitted by law neither party shall be liable to the other for any special, indirect, or consequential damages whatsoever, whether caused by either party's negligence, errors, omissions, strict liability, breach of contract, breach of warranty, or other cause or causes.

ARTICLE 11 - OPINIONS OF COST AND SCHEDULE

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

ARTICLE 12 - REUSE OF DOCUMENTS

All documents, including, but not limited to, drawings, specifications, and computer software prepared by Engineer pursuant to the Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any

reuse without prior written verification or adaptation by Engineer for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Engineer. Any verification or adaptation requested by Owner shall entitle Engineer to compensation at rates to be agreed upon by Owner and Engineer.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, engineering documents, drawings, and specifications prepared by Engineer as part of the Services shall become the sole property of Owner upon receipt of payment by Engineer of amounts due and owing under this Agreement, however, that both Owner and Engineer shall have the unrestricted right to their use. Engineer shall retain its rights in its standard drawing details, specifications, data bases, computer software, and other proprietary property protected under the copyright laws of the United States. Rights to intellectual property developed, utilized, or modified in the performance of services shall remain the property of Engineer. Owner shall have the unlimited right to the use of intellectual property developed, utilized, or modified in the performance of the Services at no additional cost to the Owner.

ARTICLE 14 - TERMINATION

This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The nonperforming party shall have fifteen calendar days from the date of the termination notice to cure or to submit a plan for cure reasonably acceptable to the other party. Owner may terminate or suspend performance of this Agreement for Owner's convenience upon written notice to Engineer. Engineer shall terminate or suspend performance of the Services on a schedule acceptable to Owner. If termination or suspension is for Owner's convenience, Owner shall pay Engineer for all Services performed prior to the date of the termination notice. Upon restart, an adjustment acceptable to Owner and Engineer shall be made to Engineer's compensation. Neither Engineer, nor its subconsultants shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this Agreement.

ARTICLE 15 - DELAY IN PERFORMANCE

Neither Owner nor Engineer shall be considered in default of the Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonconforming party. For purposes of this Agreement, such

circumstances include abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, or other civil disturbances; sabotage, judicial restraint, and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either Owner or Engineer under this Agreement. Should such circumstances occur, the nonconforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of the Agreement.

For delays in performance by Engineer, as set forth in Attachment E, Project Schedule, which are caused by circumstances which are within its control, such delays shall be documented on the Engineer's Project Performance Evaluation form. Said form shall be completed at the conclusion of Project and acknowledged by both Owner and Engineer. Completed form shall be retained by Owner for a period of five years and reviewed prior to consultant selection for City projects.

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

ARTICLE 16 - COMMUNICATIONS

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

Engineer: Bradley D. Johnson, PE
Alfred Benesch & Company
123 SE 6th Avenue, Suite 200
Topeka, KS 66603
(785) 408-9413

Owner: Brian Faust, PE, Director of Public Works
City of Leavenworth
100 N. 5th Street
Leavenworth, KS 66048
(913) 684-0375

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

ARTICLE 17 - WAIVER

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

ARTICLE 18 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

ARTICLE 19 - INTEGRATION

This Agreement represents the entire and integrated agreement between Owner and Engineer. All prior and contemporaneous communications, representations, and agreements by Engineer, whether oral or written, relating to the subject matter of this Agreement, as set forth in Attachment D, Supplemental Agreements are hereby incorporated into and shall become a part of this Agreement

ARTICLE 20 - SUCCESSORS AND ASSIGNS

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

ARTICLE 21 - ASSIGNMENT

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

ARTICLE 22 -THIRD PARTY RIGHTS

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

ARTICLE 23 - RELATIONSHIP OF PARTIES

Nothing contained herein shall be construed to hold or to make the Owner a partner, joint venturer, or associate of Engineer, nor shall either party be deemed the agent of the other, it being expressly understood and agreed that the relationship between the parties hereto is and shall at all times remain contractual as provided by the terms and conditions of this Agreement.

IN WITNESS WHEREOF, Owner and Engineer have executed this Agreement.

CITY OF LEAVENWORTH

Owner

By: Jermaine Wilson

City Mayor

Title

Date:

Attest: _____
Sarah Bodensteiner, City Clerk

Alfred Benesch & Company

Engineer

Christopher B. Harker

By: Christopher Harker, PE

Vice President

Title

January 4, 2023

Date:

Attest: *Robert R. K*

**ATTACHMENT A
TO
AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Leavenworth, Kansas
Engineer: Alfred Benesch & Company
Project Number & Name: 2023-004, 2023 Biennial Bridge Inspections

SCOPE OF SERVICES

BASIC SERVICES

The project is specifically defined below:

The Federal Highway Administration (FHWA) has issued National Bridge Inspection Standards (NBIS) with which states and localities must comply. Cities that own bridges not on the state system are responsible for inspections of those structures. The inspections must be completed at least every two years. KDOT's Bureau of Local Projects is responsible for documenting that bridge owners comply with the NBIS through a biennial inspection program. There are 39 bridges located within the City limits that are to be inspected with this project.

Task 1: Project Management

- Kickoff Meeting (1)
- Project Management and Administration

Task 2: Bridge Inspection

The following activities are required for all routine bridge inspections on the local system in Kansas. This following Contract Scope of Services was developed by the KDOT Bureau of Local Projects (BLP) and published for use by Kansas Local Bridges Owners in January 2020.

- Routine bridge inspections shall be conducted in accordance with federal regulations.
- All National Bridge Inspection (NBI) data items and condition states shall be verified during the inspection and updated. This may require coordination with the City on items not observable.
- City bridge inspections are subject to review by the Owner as well as the Kansas Department of Transportation (KDOT). If errors or discrepancies are found, the Consultant shall be required to make corrections at no additional cost. KDOT BLP will oversee QC/QA evaluations of bridge inspections during field reviews, review of ratings, bridge inspection files, and data entry. Substandard work is grounds for removal of the inspector from the Kansas Local Bridge Inspection Team Leader list.
- The City has 26 (twenty-six) NBI bridges requiring a Routine inspection. The City has 13 non-NBI structures requiring similar Routine inspections.
- Bridge Inspection Team Leaders qualified as Routine Bridge Inspection Team Leaders on the Kansas Local Bridge Inspection Team Leader list maintained by KDOT Bureau of Local Projects (BLP) shall be present for duration of all Routine Bridge Inspections. A Bridge Inspection Team Leader is not required for the inspection of non-NBI structures maintained by the City.

- The appropriate standard KDOT BLP Bridge Inspection Form (BIF) shall be used to record the field data for the inspected bridges. A similar form shall be used for the non-NBI structures.
- Critical Inspection Findings (CIFs) shall be reported (by telephone or in person) to the City immediately. CIFs shall be recorded on the standard KDOT BLP Critical Inspection Findings form. All CIFs shall be in accordance with the Critical Inspection Finding section in Chapter 1 - Policies & Procedures of the KDOT BLP Bridge Inspection Manual.
- Review inspection frequencies for all inspected bridges within contracted bridge group to verify proper inspection cycles have been set and followed.
- Review scour analysis/assessments and Scour Plans of Action for the inspected bridges and update per KDOT BLP Contract Scope of Services.
- Review photographs in the bridge records and add any required photographs not in the bridge records for the inspected bridges. Provide new photographs of items as necessary to adequately document significant deficiencies, changed conditions, or repairs needed. Approach photographs should include the weight limit posting signs at each end of the bridge for all load posted bridges.
- Required reports and assembly of updates to the bridge folder shall be completed within 90 days of the completion of the field inspection.
- The Inspection Data shall be entered in the KDOT BLP Bridge Inspection Portal (BIP) no later than 90 days following the bridge inspection. All NBI Data Items in the existing database shall be checked while performing data entry and errors in the data shall be corrected. Items 113 Justification Forms, Scour Plans of Action, and Load Rating Summary Sheets for Inventory Inspections, supplied by the Owner, shall be uploaded.
- The Routine Bridge Inspection Submittal forms shall be sealed and signed by the Professional Engineer in charge of the inspection group and submitted along with the Data Validation and Sufficiency Rating Calculations forms to the KDOT. 'BLP Bridge Team at KDOT.BLPBridge@ks.gov at the completion of the Routine Bridge Inspection process.

BRIDGE INSPECTION PROGRAM DELIVERABLES

The following deliverables will be submitted to the City as part of Benesch's Scope of Services for the 2023 Bridge Inspection Program:

- Reports to the City shall be submitted as paper copy and PDF on a flash drive. Two (2) paper copies will be provided (if requested) of the summary report and one (1) paper copy (if requested) of the individual bridge report for each bridge.
- Individual Bridge Reports will contain:
 - o Customized cover sheet. A sample of the sheet will be submitted for approval before inspections begin
 - o Updated SIA sheet with notes
 - o KDOT Routine Inspection Photo Log Template
 - o Maintenance Recommendations
 - o Field Notes (Inspection Forms)
- Summary Bridge Report will contain (for the bridges inspected):
 - o All items found in the Routine & Inventory Scope of Services
 - o Maintenance and repair recommendations will be included as separate tables within the Summary Report, not as a standalone report.
 - o PE Stamped Inspection Submittal Form
 - o Web Portal Validation
 - o Web Portal Sufficiency Rating Results

Assumptions:

1. Benesch field inspection visits (39 total - 1 per bridge site) will be performed by a Two-Man Team. No rental equipment will be utilized. If bridges are inaccessible during field visit, then information will be collected from Google Earth (or equivalent). Direct costs assumed to be 5 days @40 miles/day plus 5 miles between bridges @ \$0.625/mile. Also, lunch per diem at \$12/day for 5 days for 2 people. Inspection crews traveling from KCK. Direct costs also includes printing of hard copy reports noted in the scope.
2. Utility, Right-of-Way, or property valuation information used in the deliverables for this scope will be provided by the City to Benesch. If information is not provided (or unavailable), then program assumptions will be documented in the Summary Report.

SUPPLEMENTAL SERVICES

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

- A. Asset Management Plan including the following:
 - Service Components & Priority Listings
 - Deterioration Modeling & Forecasting
 - CIP Plan & Summary
 - GIS Platform Integration
- B. Development of Applications and Service levels
- C. Integration of Data with ArcGIS platform
- D. Network Forecasting Scenario Comparisons
- E. Capital Finance Strategies
- F. Cross Asset Category Comparisons
- G. Tailored Work Action Benefits
- ff. Unique Bridge Element Deterioration Curves
- I. Risk Management Integration
- J. Gap Analysis Functionality
- K. Support services for City Works or similar software.
- L. Engineering design, surveying, geotechnical, or utility engineering/coordination.
- M. The following items are not anticipated to be needed to execute this scope.
 1. Railroad or other Access Permits
 2. Equipment for Routine Inspections (such as manlifts, boats, ladders, etc.)
 3. NDT, Underwater, or F/C Inspections.
 4. Traffic Control devices or upfront traffic control plans.
 5. DBE Goals
 6. Load Ratings

**ATTACHMENT B
TO
AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Leavenworth, Kansas
Engineer: Alfred Benesch & Company
Project Number & Name: 2023-004, 2023 Biennial Bridge Inspections

COMPENSATION

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

- A. For the Basic Services described in Attachment A, a time and materials basis in the amount of \$35,536.00. Payments shall be made monthly in amounts which are consistent with the amount of engineering services provided, as determined by the Engineer.

Project Management	\$ 3,732
Bridge Inspection and Report	\$31,377
Direct Costs	\$ 426
Total	\$35,536

- B. Compensation for Supplemental Services shall be made as defined below, when authorized in writing by the Owner. The maximum limit for each item of additional service shall be established individually and specifically agreed to by the Owner as stated below, unless the service is included in a subsequent agreement.

Hourly rates for each classification as defined by the Engineer's rate schedule, see Attachment F. Hourly charge rates are subject to adjustment annually on January 1. Overtime, when authorized by the Owner, will be billed at 15 times the rates listed (non-engineer time only).

Reimbursable charges will be considered the amount of actual costs of expenses or charges, including such items as staking materials, equipment rental, equipment hourly charges, mileage, toll telephone calls, meal per diems, reproduction and similar project related expenses.

- D. The entire amount of each statement shall be due and payable upon receipt by the Owner.

- E. It is understood and agreed:

1. That the Engineer shall start the performance of Services within 10 days of receipt of a notice to proceed and shall complete the work in accordance with the contract times set forth in Attachment E, Project Schedule.
2. That the Engineer shall keep records on the basis of generally accepted accounting practice of costs and expenses which records shall be available for inspection at all reasonable times.

**ATTACHMENT C
TO
AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Leavenworth, Kansas
Engineer: Alfred Benesch & Company
Project Number & Name: 2023-004, 2023 Biennial Bridge Inspections

OWNER'S RESPONSIBILITIES

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

1. Make available to the Engineer all records, reports, maps, and other data pertinent to provision of the services required under this contract, upon which Engineer may reasonably rely.
2. Examine all plans, specifications and other documents submitted by the Engineer and render decisions promptly to prevent delay to the Engineer.
3. Designate one City of Leavenworth employee as the Owner representative with respect to all services to be rendered under this agreement. This individual shall have the authority to transmit instructions, receive information and to interpret and define the Owner's policies and decisions pertinent to the Engineer's services.
4. Issue notices to proceed to the Engineer for each phase of the design services.

**ATTACHMENT D
TO
AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Leavenworth, Kansas
Engineer: Alfred Benesch & Company
Project Number & Name: 2023-004, 2023 Biennial Bridge Inspections

SUPPLEMENTAL AGREEMENTS

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

**ATTACHMENT E
TO
AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Leavenworth, Kansas
Engineer: Alfred Benesch & Company
Project Number & Name: 2023-004, 2023 Biennial Bridge Inspections

PROJECT SCHEDULE

Owner and Engineer recognize that time is of the essence of the Agreement and that Owner will suffer financial loss if the work is not completed within the times stipulated herein, plus any extensions thereof. Accordingly, Engineer shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project, and has established time intervals, in calendar days, for submittals at various stages of the project as detailed below. As each actual submittal date occurs, Engineer shall meet with Owner to discuss the progress of the work and the actual submittal date shall be documented. If project is behind schedule, the reason shall be recorded. Engineer shall not be responsible for the time required by Owner's representative to review Engineer's submittal. When review is complete, Owner shall, in writing, authorize Engineer to proceed to the next submittal date. After final submittal date, Engineer and Owner shall meet to evaluate Engineer's performance with regard to design schedule. An Engineer's Project Performance Evaluation form shall be completed and acknowledged by both Owner and Engineer. Completed form shall be retained by Owner for a period of five years and reviewed prior to consultant selection for City projects. Past performance shall be accounted for on the evaluation sheet used to rank consultants during the interview process.

1. Schedule: Engineer will complete the following project per the following schedule subject to a Notice to Proceed being provided by February 1, 2023:
 - a. Bridge Inspections - No later than August, 2023
 - b. Data Upload to KDOT BLP Bridge Web Portal- No later than 11/1/23
 - c. Bridge Inspection Draft Report- No later than 12/1/23
 - d. Bridge Inspection Final Report - 2 weeks after receipt of all City Comments

Leavenworth Bridges

Corral Creek

Corral Creek

Twelve Mile Creek



Leavenworth

Leavenworth Creek

Five Mile Creek

Five Mile Creek

Legend

-  Bridge
-  City Boundary



**Capital Improvements Program
2023 - 2027
Engineering - Biennial Bridge Inspection**

Purpose:

This allocation provides funds for the biennial bridge inspection program that is mandated by the State of Kansas. Failure to perform this inspection could cause a loss of federal and state funding for the bridge replacement program.

Source	Comments	Year	Requested	Projected
Sales tax	2023 bridge inspections	2023	\$ 40,000	\$ 40,000
		2024	-	-
Sales tax	2025 bridge inspections	2025	40,000	40,000
		2026	-	-
Sales tax	2027 bridge inspections	2027	40,000	40,000
			\$ 120,000	\$ 120,000

Uses	Comments	Year	Requested	Projected
Infrastructure	2023 bridge inspections	2023	\$ 40,000	\$ 40,000
		2024	-	-
Infrastructure	2025 bridge inspections	2025	40,000	40,000
		2026	-	-
Infrastructure	2027 bridge inspections	2027	40,000	40,000
			\$ 120,000	\$ 120,000

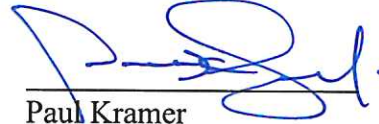
POLICY REPORT NO. P&R 01-23
Parks & Recreation Department
Wollman Aquatic Center Re-vitalization Project
January 10, 2023

PREPARED BY:

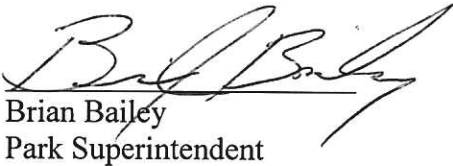


Steve Grant
Parks and Recreation Director

REVIEWED BY:



Paul Kramer
City Manager



Brian Bailey
Park Superintendent

ISSUE:

Consider contract for re-vitalization of Wollman Aquatic Center

BACKGROUND:

The City of Leavenworth received funding through the American Rescue Plan Act (ARPA) resulting from the Covid pandemic. Staff have presented several potential projects to the City Commission for review and implementation. One of these projects is to re-vitalize the Wollman Aquatic Center (WAC) after now completing its 20th season of operation to provide a new look and opportunities for patrons. This re-vitalization will include the following:

- 1) Rebuild/overhaul of existing main pool pump and slides pumps.
- 2) Refurbish existing Starburst water feature in main pool.
- 3) Replace water features in the youth pool with more interactive features.
- 4) Replace missing tiles, re-grout tile, and repaint the youth pool.
- 5) Replace canopy fabric of existing shade structures.
- 6) Install three new cantilever shade structures.

Staff has selected the Greenbush Cooperative Purchasing program for execution of this project. This program allows for the purchase of specified items and services that meet our needs through a manufacturer with a proven record of customer service in the region. It ensures that we are receiving the best possible price while guaranteeing standard governmental competitive purchasing practices are followed. Staff recommends Playscape Recreation LLC for execution of the re-vitalization project. Playscape specializes in play features, shade structures, and aquatic features, as well as proper installation and flow requirements for features. The City's experience with Playscape Recreation LLC was a very positive one as they installed the new splash pad at Hawthorne Park in 2022.

BUDGET IMPACT:

Total cost for purchase and installation, as well as maintenance items, is \$155,523.00. The City Commission approved ARPA funds to be utilized for the purpose of re-vitalizing the Wollman Aquatic Center.

RECOMMENDATION:

Staff recommends the proposal from Playscape Recreation LLC on the Greenbush Cooperative Purchasing contract #20.6 ESC-PLAYGROUNDREC-2022 for the Wollman Aquatic Center Re-vitalization Project in an amount not to exceed \$155,523.00.

ATTACHMENT:

Playscape Recreation LLC, Greenbush contract and price proposal summary.

Playscape Recreation

101 S Pratt | PO Box 146

Yates Center, KS 66783

(620) 625-3800

kate@playscaperecreation.com

www.playscaperecreation.com



Quote

ADDRESS	SHIP TO	QUOTE # QUO-02324
Steve Grant	Steve Grant	DATE 12/31/2022
City of Leavenworth	City of Leavenworth	
123 S. Esplanade St	790 Thornton St.	
Leavenworth, KS 66048	Leavenworth, KS 66048	

ACTIVITY	QTY	RATE	AMOUNT
Labor Saw cut and redirect 3 lines waterlines	1	24,000.00	24,000.00
replacementfabric 12x12 replacement Fabric for shades & installation for summer season.	11	1,450.00	15,950.00
Custom Amount Custom Shade Design - Rectangle Hanging Cantilever Shade: 25' Length x 12' Width x 8' Entry Height. (2) Columns on Base Plates + 6" surfacing at 8"x6". Beams at 6"x4". Rafters at Ø2.875" 12-Ga With Glide Elbows. . Frame Color: TBD Fabric Color: TBD	3	8,547.00	25,641.00
M-Engineer Signed & Sealed Engineered Drawings, calculations, and footing design	1	1,250.00	1,250.00
Labor install 3 new hanging cantilevers, remove 1 square and patch concrete	1	26,000.00	26,000.00
ShadeCage Custom Built Rebar Cages for Shade Structures	6	600.00	3,600.00
0010-4589 Gully	1	7,280.00	7,280.00
Installation installation of slide, fun form, regrout tile replacement of shown tile with inlet tile and gully	1	8,500.00	8,500.00
Misc	1	10,194.00	10,194.00

ACTIVITY	QTY	RATE	AMOUNT
brush blast new/existing basin for bond /uniformity with old/new sections. Flared edges sanded smooth before second coat and antiskid using Tnemec series 161 primer and 1074 top coat. Includes 3 coats, however deduct \$1000 if only 2 coats applied.			
Misc raindrop handwheel assembly, and hardware and installation	5	581.60	2,908.00
Misc Paint in 5 colors two part specialty	1	2,400.00	2,400.00
Labor Sand and paint star burst	1	3,000.00	3,000.00
stainless cable Stainless cable replacement and installation	1	500.00	500.00
Labor Uninstalling and re-installing starburst feature also including 6 new gaskets	1	2,200.00	2,200.00
Misc slide mat 4x4, hilti epoxy, and installation	1	2,100.00	2,100.00
contigency bid is for pipe capping and extension only, and assumption standard compacted material/concrete depths as per drawings. Covers items If integrity of piping is lost we may need to replace lines and even valves in equipment pit next to baby pool, specialty core drilling equipment if needed, additional concrete placement if we go beyond original footprints per drawings.	1	20,000.00	20,000.00
Greenbush 20.6 ESC-PLAYGROUNDREC-2022 (CATEGORY: Playground)	1	0.00	0.00

FREIGHT & SURCHARGE-DUE TO THE VOLATILE NATURE OF THE TRANSPORTATION INDUSTRY & SUPPLY CHAIN AT THIS TIME THESE ITEMS MUST BE RE-QUOTED AT THE TIME OF SHIPMENT. Installation: A certified manufacturer approved Installer is recommended for equipment install. Customer responsible for scheduling coordination and site preparation. Site should be level and permit installation equipment access. Purchaser shall be responsible for unknown conditions such as buried utilities, tree stumps, bedrock or any concealed material or conditions that may result in additional labor & material costs. Exclusions: unless specifically included, this quotation excludes all permits, site work and landscaping; removal of existing equipment; acceptance of equipment and off-loading storage of goods prior to installation; equipment assembly and installation; safety surfacing; borders and drainage provisions.

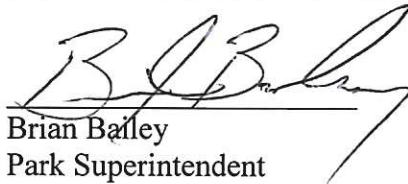
SUBTOTAL	155,523.00
TAX	0.00
TOTAL	\$155,523.00

POLICY REPORT NO. P&R 02-23
Parks & Recreation Department
Wollman Aquatic Center Youth Pool Features
January 10, 2023

PREPARED BY:

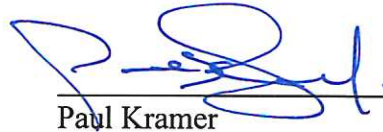


Steve Grant
Parks and Recreation Director



Brian Bailey
Park Superintendent

REVIEWED BY:



Paul Kramer
City Manager

ISSUE:

Consider purchase and installation of new features for the youth pool at Wollman Aquatic Center.

BACKGROUND:

As part of the Wollman Aquatic Center re-vitalization project, staff consulted with the original WAC design firm, as well as our current aquatics maintenance consultant, as to potential replacement features in the youth pool to provide patrons a new experience with interactive features. Water Odyssey was recommended for replacement features. The current features and controls for those features are manufactured by Water Odyssey. After discussions and a site visit with a Water Odyssey representative, staff is recommending the purchase of two features: Devan Dolphin Water Slide and Billy Box Turtle play forms. Each play form will be custom made to fit the youth pool at WAC.

Staff has selected the Omnia Partners Cooperative Purchasing program for purchase and delivery of these items from Water Odyssey. This program allows for the purchase of specified items that meet our needs through a manufacturer with a proven record of customer service in the region. It ensures that we are receiving the best possible price while guaranteeing standard governmental competitive purchasing practices are followed.

BUDGET IMPACT:

Cost of the two features to include delivery is \$27,764.44. The City Commission approved ARPA funds to be utilized for the purpose of re-vitalizing the Wollman Aquatic Center.

RECOMMENDATION:

Staff recommends the purchase of the two water features from Water Odyssey on the Omnia Cooperative Purchase contract for the youth pool in the amount not to exceed \$27,764.44.

ATTACHMENTS:

Water Odyssey, Omnia Contract 20170011334





Customer Name	City of Leavenworth
Contact Name	Steve Grant
Contact Phone	505-707-2345 Mark Singleton ACCO
Contact Email	msingleton@accounlimited.com

Proposal Number	Quote 2101791
Quote Date	Dec 12, 2022
Expiration Date	Mar 22, 2023
Created by	Tish Tatem
Created by Email	tish.tatem@fountainpeople.com

PROJECT NAME W80400 Wollman Aquatic Center

PLAY FEATURES-OMINA CONTRACT 20170011334

Model Number	Product Name	Product Description	Quantity	Price Each	Discount	Subtotal	GPM Each
F1005-W80400	Fun Forms™ Devan Dolphin Slide 	This Aqua Slide is designed for ages 2-5 with a straight chute that exits below the cresting dolphin. Customized for slope.	1	\$21,089.00	-\$1,687.12	\$19,401.88	8
F3032-W80400	Fun Forms™ Billy Box Turtle Aqua Spout 	This nature-themed Aqua Spout emits a water crown of gentle arching streams and is ideal for ages 2-5. Customized with 6 inch base, for installation in standing water.	1	\$3,693.00	-\$295.44	\$3,397.56	4

Play Products Total \$22,799.44

Operating Equipment



FREIGHT AND PACKAGING

Description	Quantity	Price	Subtotal
Packaging and Crating	1	\$465.00	\$465.00
<input checked="" type="checkbox"/> Freight	1	\$4,500.00	\$4,500.00
<input checked="" type="checkbox"/> Early Embed Freight	1	\$0.00	\$0.00

Freight and Packaging Total \$4,965.00

GRAND TOTAL THIS PROPOSAL WITH OPTIONS SELECTED \$27,764.44

By Signing this agreement I agree to The Fountain People/Water Odyssey's general terms and conditions of sale.

AGREED TO AND ACCEPTED:

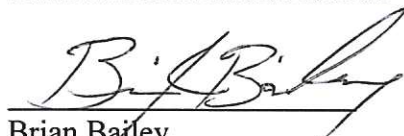
	SHIP TO	BILL TO
ADDRESS 1		
ADDRESS 2		
CITY		
STATE		
ZIPCODE		
CONTACT NAME		
CONTACT PHONE		
CONTACT EMAIL		

POLICY REPORT NO. P&R 03-23
Parks & Recreation Department
Stubby Park Shelter
January 10, 2023

PREPARED BY:




Steve Grant
Parks and Recreation Director



Brian Bailey
Park Superintendent

REVIEWED BY:



Paul Kramer
City Manager

ISSUE:

Consider purchase and installation of shelter facility at Stubby Park.

BACKGROUND:

In 2020, the playground equipment at Stubby Park was replaced. The overall footprint was widely expanded to multiple play features and composite play structures. The parking lot was also expanded along with additional access walkways installed. This expansion has made the site a destination playground, making it readily apparent for the need of a permanent restroom and a much larger shelter.

After considering purchasing options, staff elected to utilize the Sourcewell Cooperative Purchasing contract with BKM Construction, LLC to construct a shelter at the site. BKM is a Leavenworth based general contractor and was the general contractor on the construction in 2020 at the park for the playground and 2022 for the park restroom. The shelter will be of wood construction very similar in style to our park shelters at Hawthorn and Stubby Park. The work by BKM in 2020 and 2022 was very professional, and staff feels very confident with their ability to construct a high quality shelter at Stubby Park.

The City has successfully utilized Sourcewell Cooperative Purchasing contracts in the past. This purchasing contract allows for the purchase and installation of a shelter facility that meets our needs by a qualified contractor. It ensures that we are receiving the best possible price while guaranteeing standard governmental competitive purchasing practices are followed.

BUDGET IMPACT:

In 2022, the City issued temporary notes in the amount of \$800,000 to fund park projects. Funded projects included the Splash Park, Stubby Park Restroom, Havens Park Restroom, and finally the Stubby Park Shelter pending availability of funds. The final contract amount for the Stubby Park shelter project of \$70,316.43 can be accommodated with this funding. This will exhaust the issued temporary notes, with all four projects totaling approximately \$790,000.

RECOMMENDATION:

Staff recommends the proposal from BKM Construction, LLC on the Sourcewell Cooperative Purchasing contract for the construction of the shelter facility at Stubby Park in the amount not to exceed \$70,316.43.

ATTACHMENTS:

BKM Construction, LLC, Sourcewell contract and price proposal summary.



Work Order Signature Document

EZIQC Contract No.: KS-E-GC02-111319-BKM

New Work Order Modify an Existing Work Order

Work Order Number: 111883.00 Work Order Date: 01/03/2023

Owner PO No:

Work Order Title: City of Leavenworth Stubby Park Shelter 24 X 44

Owner Name: City of Leavenworth Contractor Name: BKM Construction, LLC

Contact: Brian Bailey Contact: Richard Templeton

Phone: 913-758-6610 Phone: 913-297-0049

Work to be Performed

Work to be performed as per the Final Detailed Scope of Work Attached and as per the terms and conditions of EZIQC Contract No KS-E-GC02-111319-BKM.

Brief Work Order Description:

Provide and install 24 X 44 Wooden Pavilion

Time of Performance See Schedule Section of the Detailed Scope of Work

Duration

Liquidated Damages Will apply: Will not apply:

Work Order Firm Fixed Price: \$70,316.43

Owner Purchase Order Number:

Approvals

Owner _____ Date _____ Contractor _____ Date _____

Contractor's Price Proposal - Summary

Date: January 03, 2023

Re: IQC Master Contract #: KS-E-GC02-111319-BKM
Work Order #: 111883.00
Owner PO #:
Title: City of Leavenworth Stubby Park Shelter 24 X 44
Contractor: BKM Construction, LLC
Proposal Value: \$70,316.43

01 - General Requirements	\$3,000.00
02 - Site Work	\$869.78
03 - Concrete	\$18,551.81
05 - Metals	\$456.60
06 - Wood, Plastic, and Composites	\$25,216.68
07 - Thermal & Moisture Protection	\$5,434.06
09 - Finishes	\$1,437.80
22 - Plumbing	\$1,016.06
31 - Earthwork	\$9,246.09
32 - Exterior Improvements	\$2,538.64
33 - Utilities	\$1,160.45
34 - Transportation	\$1,388.46
Proposal Total	\$70,316.43

**POLICY REPORT
FIRST CONSIDERATION ORDINANCE
2022-34-SUP
723 S. 10TH STREET**

JANUARY 10, 2023

SUBJECT:

Place on first consideration an ordinance to approve 2022-34-SUP



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



Reviewed By:
Paul Kramer,
City Manager

NATURE OF REQUEST

The applicants, Christopher and Anna Wilson, are requesting a Special Use Permit to allow a Residential Home Stay in the R1-6 zoning district, located at 723 S. 10th Street. Residential Home Stays are allowed in the R1-6 zoning district with the approval of a Special Use Permit.

The Development Regulations define a Residential Home Stay as:

***Residential Home-Stay:** Any furnished residential structure wherein one limited-term boarder (not to exceed 180 days) is allowed the use of an entire structure, or a portion of a structure, and its grounds. No management or owner presence is required and no meals are served. In approval of a **Residential Home Stay** the city may consider impact on neighbors' parking needs, etc. and place additional requirements as deemed appropriate. Such a business shall be registered with the City Clerk as a rental property.*

Per the applicant, they intend to utilize the single family structure for short-term rentals with a focus on providing housing for military families while locating to and from Leavenworth, as well as anyone visiting the area. The property provides a driveway for off-street parking and a fenced back yard for privacy.

COMMISSION FINDINGS

The Commission may recommend issuance of a special use permit whenever it finds that:

1. The proposed special use complies with all applicable provisions of this ordinance.

Staff believes that this application complies with all provisions of City of Leavenworth Development Regulations.

2. The proposed special use at the specified location will contribute to and promote the economic development, welfare or convenience of the public.

Short-term residential rental units fill a need in the community, by allowing another lodging option for visitors to Leavenworth. Many visitors whose stay may extend beyond what would normally be served by a hotel but who do not have need to obtain a standard 12 month lease for a residential unit may prefer the comforts of a single-family dwelling. Additionally, short-term rental units may provide an important

convenience for existing residents of Leavenworth who may need temporary alternative housing due to home renovations or other similar activities.

3. The special use will not cause substantial injury to the value of other property in the neighborhood in which it is located.

Staff does not feel that the proposed use will cause any substantial injury to the value of other property in the neighborhood.

4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.

No new structures or building modifications are proposed as part of this special use permit. The property will continue to function as a single-family residence.

Notification was sent to property owners within 200' of the subject property, as required by Kansas statute. Since notifications were mailed, staff has received no inquiries or comments regarding the proposed residential home stay.

The Planning Commission considered this item at their December 5, 2022 meeting and voted 4-0 to recommend approval of the Special Use Permit.

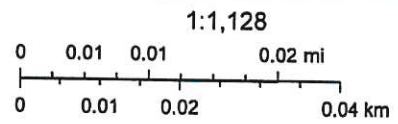
ACTION:

- Place an ordinance on first consideration to approve the Special Use Permit request to allow a Residential Home Stay at 723 S. 10th.
- Deny the Special Use Permit request to allow a Residential Home Stay at 723 S. 10th.
- Remand the Special Use Permit request to allow a Residential Home Stay at 723 S. 10th to the Planning Commission for further consideration.

2022-34-SUP



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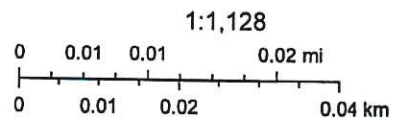
Platte County, Missouri Dept. of Conservation, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA

Web AppBuilder for ArcGIS
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2022-34-SUP Zoning



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Web AppBuilder for ArcGIS
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SPECIAL USE PERMIT
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

CASE NO.: 2022-34 SUP

Application No.	12239
Fee (non-refundable)	\$350.00
Filing Date	10/17/22
Received By	RS
Hearing Date	12/5/22
Publication Date	11/10/22

As provided in Section 2.04 of the 2016 Development Regulations, application is hereby made for a SPECIAL USE PERMIT for the operation of a: Airbnb

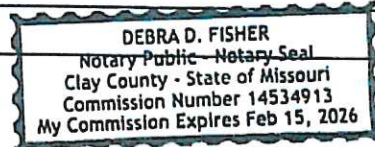
in accordance with the attached site plan on the following described property:

Subject Property:	<u>723 S. 10th St. Leavenworth, KS 66048</u>		
Legal Description:	<i>(Attach a full legal description provided by the Register of Deeds Office)</i>		
Real Estate PID #:	<u>077-35-0-20-34-007.00-0</u>		
Zoning:	<u>Residential</u>	Historic District:	

I/We, the undersigned, depose and state we are the owners of the above described property:

Name(s) of Owner (print):	<u>Christopher & Anna Wilson</u>		
Owner Address:	<u>8705 Hillview Rd Cir. KC MO 64153</u>		
Contact No.	<u>816-517-1882</u>	Email:	<u>Anna @ HouseFinder KC.com</u>

Signature of Owner(s): [Signature]
Anna M Wilson



State of Missouri
County of Platte (SEAL)

Signed or attested before me on: October 6, 2022

Notary Public: [Signature]

My Appointment Expires: 02-15-2026

If business is operated by someone other than the owner, provide name and address of operator(s).

Name of Lessee:	
Address:	
Contact No.	
Email:	

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

Check list below...

<input type="checkbox"/>	Non-Refundable Fee of \$350.00 is due at time of application
<input type="checkbox"/>	Certified list of property owners within two hundred (200) feet of the subject property
<input type="checkbox"/>	Attach 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)

City of Leavenworth, Kansas
Planning and Zoning Department
100 North 5th Street
Leavenworth, Kansas 66048

October 12, 2022

Letter of Intent

To Whom It May Concern:

King Icon, Inc would like to present this Letter of Intent to signify our interest in short term rental at 723 S. 10th Street, Leavenworth, Kansas 66048

Chris and Anna Wilson are the owners of King Icon, Inc. We reside in the Parkville area which is approximately 15 min to the subject property. We are easily accessible at any time. Along with owning King Icon, Anna is also a licensed Real Estate Agent licensed in both Kansas and Missouri. We are always looking for ways to better the community. If we could offer our services to our military for short term housing while relocating to and from the base, to military families coming to visit or anyone wanting to visit and see how wonderful Leavenworth is, that is our goal.

Renters will be screened and under contract with Airbnb to ensure quality short-term renters. Rate will be competitive with local area short term rentals that are already in place.

We have over 30 years in residential rental experience and licensed and insured in both Kansas and Missouri.

Thank you for your time and consideration in this matter.

Respectfully,



Chris and Anna Wilson

(Summary Published in the Leavenworth Times on _____, 2023)

ORDINANCE NO. XXXX

**AN ORDINANCE ALLOWING A SPECIAL USE FOR A
RESIDENTIAL HOME STAY TO BE LOCATED AT 723 S.
10th 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 5th day of December, 2022 in the Commission Room, 1st Floor of City Hall, 100 N. 5th Street, Leavenworth, Kansas, the official date and time set as was published in the Leavenworth Times newspaper and mailed to all property owners within 200 feet of the said property on the 10th day of November 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 723 S. 10th 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 22 AND 23, BLOCK 19, CENTRAL SUBDIVISION, CITY OF
LEAVENWORTH, LEAVENWORTH COUNTY, KANSAS.

More commonly referred to as: 723 S. 10th 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 _____ day of _____, 2023.

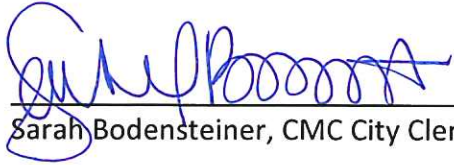
Jermaine Wilson, Mayor

ATTEST:

Sarah Bodensteiner, CMC, City Clerk

**POLICY REPORT
FIRST CONSIDERATION ORDINANCE
ELECTRIC FRANCHISE AGREEMENT EVERGY KANSAS CENTRAL, INC.**

JANUARY 10, 2023



Sarah Bodensteiner, CMC City Clerk



Paul Kramer, City Manager

ISSUE:

Consider the Electric Franchise Agreement with Evergy Kansas Central, Inc.

BACKGROUND:

On August 26, 2003 the City of Leavenworth and Westar Energy, Inc., now Evergy Kansas Central, Inc., entered into a Contract Franchise Agreement via Ordinance as required by Kansas Statute K.S.A. 12-2001 et. seq. The contract became effective upon passage by the governing body of the City and its publication in the official City newspaper and continued to be in effect until September 30, 2013, and per the terms of the agreement could be renewed automatically for ten (10) additional one (1) year terms.

On October 18, 2022 the City received notice from Evergy of their intent to negotiate a new Contract Franchise Agreement, in advance of the expiration of the 2003 agreement. The proposed agreement has been reviewed by the City Attorney and City Staff. There are no substantive changes to the agreement. The following are some of the highlights of the agreement:

- Evergy Kansas Central, Inc. will continue to remit to the City a franchise fee of 5% of Gross Receipts as is currently in place
- Evergy Kansas Central, Inc. is still required to obtain necessary permits and licenses
- Use of Public Right-of-Way – The City still maintains its home rule powers in administration and management of public right-of-way
- The Franchise ordinance shall be in effect for ten (10) calendar years, unless terminated sooner as provided in the ordinance. Thereafter, this Franchise ordinance will renew automatically for ten (10) one (1) year terms

ACTION:

Place on first consideration Ordinance an Electric Franchise Agreement with Evergy Kansas Central, Inc.

ATTACHMENTS:

- Proposed Ordinance Franchise Agreement
- Ordinance 7575 dated August 26, 2003

ORDINANCE NO. XXXX

AN ORDINANCE GRANTING TO EVERY KANSAS CENTRAL, INC., AN ELECTRIC FRANCHISE INCLUDING THE RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN ELECTRIC TRANSMISSION, DISTRIBUTION AND STREET LIGHTING FACILITIES WITHIN THE CORPORATE LIMITS OF THE CITY OF LEAVENWORTH, KANSAS.

WHEREAS, the City of Leavenworth, Kansas ("City"), a municipal corporation and a City of the First Class, duly organized and existing under the laws of the State, has the right pursuant to Article 12, Section 5 of the State constitution and K.S.A. 12-2001, to grant a franchise to permit a Person to provide Service to persons within the City limits and in accordance therewith, to construct, operate and maintain electric transmission, distribution and street lighting facilities in the City; and

WHEREAS, Everyg Kansas Central, Inc., ("Franchisee") desires to operate its Facilities for the purpose of providing said Service in the City and therefore has applied to the City for a franchise in order to operate its Facilities; and

WHEREAS, any such permission requires a franchise to be granted by the City in accordance with said State constitutional provision and K.S.A. 12-2001 *et al*; and

WHEREAS, the City Commission considered this Franchise Ordinance for first reading at its regular meeting held on January 10, 2023, with the second and final reading held at a regular meeting of the City Commission on January 24, 2023.

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

Section 1. Definitions. For the purpose of this Franchise Ordinance, the following words and phrases and their derivations shall have the following meaning:

"City" means City of Leavenworth, Kansas, a municipal corporation, and if applicable, the territorial boundaries of the City of Leavenworth as now constituted or as shall hereafter exist.

"Facilities" means all appropriate facilities and plants for carrying on a power and light business and all other operations connected therewith or incident thereto for the purpose of selling and distributing within the City, electric energy in such forms as may be reasonably required for domestic, residential, commercial, industrial, municipal and other purposes.

"Franchise Ordinance" means this ordinance passed to grant the franchise to Franchisee. This ordinance shall operate as a grant of permission by the City for Franchisee to utilize the City's public right-of-ways and to operate its Facilities in the City as defined herein. Such grant shall at all times be subject to the laws of the State.

"Franchisee" means Everyg Kansas Central, Inc., and its successors, transferees, or assigns.

"Franchise Fee" means the fee imposed by the City on Franchisee solely because of its status as a franchisee in accordance with said State constitutional provision and K.S.A. 12-2001, as set forth in Section 4 below. It shall not include: (a) any tax, fee, or assessment of general

applicability including any which are imposed on Franchisee; (b) requirements or charges incidental to the awarding or enforcing the Franchise Ordinance, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages, (c) any permit fee or other fee imposed under any valid right-of-way ordinance, or (d) any other fee imposed by federal, state or local law.

“Gross Receipts” means those receipts, less uncollectible amounts, derived from the sale of electricity for domestic, residential, commercial, or industrial purposes used within the City’s corporate limits as they now exist or may be extended during the term of the franchise granted by this Franchise Ordinance.

“KCC” means the Kansas Corporation Commission.

“Person” means any natural, governmental or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

“Right-of-way” shall mean only the area of real property in which City has a dedicated or acquired right-of-way interest in the real property, and shall include any area on, below or above the present and future streets, alleys, avenues, roads, sidewalks, highways, parkways or boulevards dedicated or acquired as right-of-way.

“Service” means the transmission of electric energy through Franchisee’s Facilities.

“State” means the State of Kansas.

“Subscriber” means any person who receives Service from Franchisee.

Section 2. Grant.

- (a) Franchisee is hereby granted the right, privilege, and franchise to provide Service to the residents of the City, and in connection therewith, to construct, operate, and maintain its Facilities in, through and along the City’s right-of-way on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this Franchise Ordinance. As a condition of this grant, Franchisee shall be required to obtain and shall be responsible for any necessary permit, license, certification, grant, registration or any other authorization required by an appropriate governmental entity, including, but not limited to, the City, the State or the KCC, subject to Franchisee’s right to challenge in good faith such authorization as established by the State, KCC or other City ordinance.
- (b) Grantee may allow attachments to its Facilities only if its Facilities are covered by a separate pole attachment agreement or similar agreement with the City. This Franchise shall not:
 - (i) Permit the use of the Franchise or the right-of-way by Grantee or other parties for any other purpose, and a separate franchise shall be required therefor;
 - (ii) Convey equitable or legal title in the right-of-way;

- (iii) Grant authority to construct, maintain or operate any Facilities or related appurtenance on property owned or controlled by the City outside of the right-of-way, specifically including, but not limited to, city easements, city parks, city hall property, police or fire property, or public works facility property.

Section 3. Use of Public Right-of-Way. Franchisee's Facilities shall be located in the right-of-way as now constructed and as further authorized by the City in accordance with all applicable laws, statutes and/or ordinances. Placement, changes, additions, replacements, maintenance, and repairs for the Facilities shall be conducted in compliance with any applicable ordinance and/or permit requirements. Franchisee shall be responsible for obtaining all necessary permits as required by the City for work performed in the right-of-way, as well as paying any associated permit fees. In its use of the right-of-way within the City, Franchisee shall be subject to all applicable rules, regulations, policies, laws, orders, resolutions, and ordinances now or hereafter adopted or promulgated by any appropriate governmental entity now or hereafter having jurisdiction, including, but not limited to the City in the reasonable exercise of its police powers. Such police powers include, but are not limited to, the following:

- (a) Franchisee's use of right-of-way shall in all matters be subordinate to the City's use of the right-of-way. Franchisee shall coordinate with the City or its designee the placement of its Facilities in a manner that minimizes adverse impact on public improvements and maximizes public safety, as reasonably determined by the City. Such placement, as it relates to City parking lot, area lighting and street lighting shall include, but not be limited to, the installation, removal and/or the relocation of power and light wires and poles in the City, whether or not they are in use or usable in the Franchisee's Facilities.
- (b) All earth, materials, sidewalks, pavings, crossings, utilities, public improvements or improvements of any kind damaged or removed by Franchisee in its activities under this franchise shall be fully repaired or replaced promptly by Franchisee at its sole expense and to the reasonable satisfaction of the City.
- (c) All new utility lines shall be placed underground within designated easements in all residential subdivisions within the City of Leavenworth that were approved after the effective date of that certain franchise ordinance no. 7575 (2003), adopted for the benefit of Franchisee when operating under its previous name of Westar Energy, Inc.. The provisions of this subsection shall not apply to any of the following:
 - (1) Existing poles, overhead wires, and associated overhead structures, when part of a continuous line, or service to individual properties from existing overhead lines that are within a subdivision previously approved in conformance with these requirements.
 - (2) Electric distribution or transmission lines with capabilities of three thousand (3,000) kVA or more.
 - (3) Electric substations and the accompanying equipment and apparatus necessary to provide adequate electric service.
 - (4) Transformers, transformer pads, junction cabinets, or other above-ground facilities normally used with and as a part of an underground distribution system.
 - (5) Underground installation of wiring or electrical power equipment shall not be required in flood plain areas, drainage easements, major or other drainage ways.

- (d) Franchisee shall keep and maintain accurate records and as-build drawings depicting approximate horizontal location of all Facilities constructed, reconstructed, or relocated in the right-of-way. Upon request by the City, Franchisee shall provide to the City a set of plans showing Franchisee's Facilities within the right-of-way or easements in a commonly agreed upon industry standard format. Franchisee shall designate a person familiar with the Facilities who is responsible for timely response to information requests of the City and other users of the right-of-way. Such person or such person's designee shall be available on a scheduled basis in the City to talk to City officials and citizens, including regular City scheduled utility coordinating staff meetings.
- (e) Not less than three (3) working days prior to construction or relocation of any Facilities in the right-of-way or easement, Franchisee shall give written notice to the Director of Public Works of the proposed activity.
- (f) Franchisee shall relocate or adjust any Facilities in the right-of-way for any public funded or public guaranteed improvement project. Such relocation or adjustment shall be performed by Franchisee at its sole expense without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the City. Franchisee shall not be required to relocate or adjust, at Franchisee's cost, any individual Facilities at the same specific location more often than once in any five (5) year period. Such relocation or adjustment shall be completed as soon as reasonably possible and within the time set forth in any request by the City for such relocation or adjustment. Any damages suffered by the City or its contractors as a result of Franchisee's failure to timely relocate or adjust its Facilities shall be borne by Franchisee.
- (g) It shall be the sole responsibility of the Franchisee to take reasonable measures to protect and defend its Facilities in the right-of-way from harm or damage. If Franchisee fails to accurately or timely relocate Facilities when requested, it shall have no claim, for costs or damages against the City and its authorized contractors unless such party is solely responsible for the harm or damage by its negligent or intentional conduct. Franchisee shall be responsible to the City and its authorized contractors for all damages including, but not limited to, delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of Franchisee to perform its obligations under this Franchise ordinance unless the damaged party is solely responsible for the harm or damage by its negligence or intentionally caused harm.
- (h) Franchisee shall notify the City not less than three (3) working days in advance of any construction, reconstruction, repair or relocation of Facilities which would require any street closure which reduces traffic flow to less than two (2) lanes of moving traffic. Except in the event of any emergency, as reasonably determined by Franchisee, no such closure shall take place without such notice and prior authorization from the City. The City shall follow its policies in the grant or denial of such authority, which shall not be unreasonably delayed. In addition, all work performed in the traveled way or in which in any manner impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected at Franchisee's expense. Such signing shall be in conformance with the latest edition of the Federal Highway Administration's Standards and Guidelines for Work Zone Traffic Control, unless otherwise agreed to by the City.
- (i) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the Facilities in the right-of-way shall be in accordance with the applicable present and future federal, state and city laws and

regulations, including but not limited to, the most recent editions of the National Electric Code, the National Electrical Safety Code, or such substantive equivalents as may hereafter be adopted or promulgated.

- (j) Franchisee, upon request of any appropriate applicant, shall remove or raise or lower its overhead Facilities temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering of overhead Facilities shall be paid by the party or parties requesting the same, and Franchisee may require such payment in advance. Franchisee shall be given not less than fifteen (15) days written notice from the applicant detailing the time and location of the moving operations, and not less than twenty-four (24) hours advance notice from the applicant advising of the actual operation. The City shall not be liable for any such expense or notice requirement for the moving of houses or structures by the City or its contractors.
- (k) Permission is hereby granted to the Franchisee to trim trees upon and overhanging the right-of-way and utility easements. Franchisee shall perform line clearance work in accordance with regulations established under OSHA 29 CFR 1910.269, as amended. All pruning operations shall be performed by personnel certified to perform the work and in accordance with ANSI Z-133.1.1994 and ANSI 300 (Standard Practices for Trees, Shrubs and Other Woody Plant Maintenance), or such substantive equivalents as may hereafter be adopted or promulgated. For routine trimming operations, customers shall be contacted at least one (1) week in advance by either personal contact or by informational door hanger. For emergency/electrical outage restoration, where possible, including ice and windstorms, a notification attempt shall be made before trimming and an accelerated tree trimming and Facilities repair time frame shall be immediately communicated to the City's Director of Public Works.
- (l) Lighting System Repairs. Within sixty (60) days after the effective date of this franchise, Franchisee shall provide to the City a written schedule of a reasonably expedient time frame for the completion of repairs which shall reflect an installation or light fixture outage schedule of no more than thirty (30) days to complete after written notice of such outage is given by the City. Such schedule shall be adhered to by Franchisee at all times in the event any repairs are needed to any light fixture, installation or item in that part of the Facilities which serves as a part of the City's street, parking or area lighting system. Such time frame shall commence upon the receipt by Franchisee of written notice from the City that repairs are required. Such schedule shall not be applicable to Franchisee initiated repairs, however, in the event the Franchisee fails to adhere to such time frame, subject to KCC tariff requirements, the Franchisee shall credit or rebate to the City the equivalent value of the daily cost to the City, if any, of the unrepaired lighting system fixture or installation.

Section 4. Franchise Fee. Effective the first day of the second month following the effective date of this franchise, Franchisee shall pay as its Franchise Fee an amount which will be equal to five percent (5%) of its Gross Receipts and thereafter for the term of this franchise or until changed by the City, Franchisee shall pay five percent (5%) of its Gross Receipts. The payments herein provided shall be in addition to, not in lieu of, all other taxes, charges, assessments, fees, and impositions of general applicability that are or may be imposed by the City, with the exception of any annual occupation license. Such fee shall be payable on or before the last day of each month without invoice or reminder from the City, and shall be based on the Gross Receipts of the previous month.

Section 5. City's Right to Audit and Access to Records. Franchisee shall annually file with the City a "Gross Receipts Report" regarding all applicable monthly revenues. The City acknowledges that Franchisee considers such information to be confidential and proprietary, that such information is the sole property of Franchisee, and that such records should not be subject to disclosure under the Kansas open records act, K.S.A. 45-215 *et seq.* ("KORA") To the extent City, in its sole determination, determines that such records are subject to disclosure under KORA, then to the extent permitted under KORA and subject to applicable time limitations under KORA, the City will use its reasonable commercial efforts to provide Franchisee with advance notice of its intent to disclose such information. The City shall also have access to and the right to examine, within two (2) years of any payment of fees hereunder, at all reasonable times, all relevant books, receipts, files, records and documents of the Franchisee necessary to verify the correctness of such statement and to correct the same, if found to be erroneous. If such statement of Gross Receipts is incorrect, then such payment shall be made upon such corrected statement, including interest on said amount at the annual statutory rate then in effect. Further, the City's acceptance of any payment determined as hereinabove provide to be deficient shall not be construed as a release of liability from the City or an accord or satisfaction of any claim that the City may have for additional sums owed by Franchisee. In addition to access to the records of Franchisee for audits, upon request, Franchisee shall provide reasonable access for records necessary to verify compliance with the terms of this Franchise Ordinance.

Section 6. Term. This Franchise ordinance shall be effective upon its passage by the governing body of the City and its publication in the official City newspaper and continue to be in effect until that date which is ten (10) calendar years after such effective date, unless sooner terminated as provided herein. Thereafter, this Franchise ordinance will renew automatically for ten (10) one (1) year terms, unless either party notifies the other party of its intent to terminate the franchise prior to ninety (90) days before the termination of the then current term.

Section 7. Franchisee Information. Franchisee shall, at its own expense, annually submit to the City the following information:

- (a) The Gross Receipts Report (as referenced by Section 5 herein);
- (b) A summary of the previous year's development of Facilities, including but not limited to, the location of Facilities during the year, and Franchisee's plan of development of Facilities for the next year. This requirement may be met by a meeting in person between Franchisee's designated representative and the City's public works director to discuss these issues: and
- (c) Information as to the number and address of subscribers in the City in digital format. Note: this requirement does not include giving the identification of the subscribers.

Section 8. Subscriber Rates. Franchisee's charges to subscribers shall comply with all applicable federal and state statutes and regulations. Upon request, Franchisee shall file with the City Clerk a schedule of current rates in effect when such rates are not on file and publicly available from KCC. If authorized by state or federal law, the City may at any time fix a reasonable schedule of maximum rates to be charged to the City and its residents.

Section 9. Transfer of Franchise. The rights granted by this franchise are exclusive to Franchisee and shall inure to the benefit of Franchisee and any parent, subsidiary, affiliate or successor entity now or hereafter existing. No other party may use Franchisee's rights granted herein (by retail "wheeling" or otherwise to consumers within the City) and the rights herein shall

not be assignable without the express written consent of the Governing Body of the City, except Franchisee may assign its rights under this Franchise to a parent, subsidiary, affiliate or successor entity without such consent. Provided, that no assignment shall be effective until the assignee assumes all of the obligations contained herein as of the effective date of the assignment, including, but not limited to, the obligations with regard to indemnity, insurance and bond (with the intent being that there shall be no lapse in any coverage as a result of the assignment). Any required consent is to be evidenced by an ordinance or resolution of the Governing Body of the City that fully recites the terms and conditions, if any, upon which consent is given. In the event of any assignment, Franchisee shall timely notify the City of the name of the assignee, provide a point of contact for the assignee, and advise the City of the effective date of the assignment.

Section 10. Other Service Providers. Franchisee shall not interfere with any agreement between the City and another service provider. Additionally, if and when the City requires or negotiates to have another service provider cease to use such service provider's existing poles and to relocate its services underground, all other service providers using the same poles, including Franchisee when applicable, shall also relocate their Facilities underground at that time; provided, however, that such placement is economically reasonable. Notice of any intent to enter into such an agreement will be timely provided to Franchisee.

Section 11. Notification Procedure. Any required or permitted notice under this Franchise Ordinance shall be in writing. Notice to the City shall be delivered to the City Clerk by first class United States mail or by personal delivery. Notice to the Franchisee shall be delivered by first class United States mail or by personal delivery to:

Evergy
Customer Solutions Manager
Ed Broxterman
23505 W 86th St.
Shawnee, KS 66227

Any notice concerning a change in the above shall be in writing delivered by first class United States mail or by personal delivery to the City.

Section 12. Indemnification. Upon notice by the City, Franchisee shall fully indemnify, defend and hold harmless the City, its officers, employees, agents and authorized contractors from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other Persons for damages, losses, costs, and expenses, including attorney fees or otherwise, to the extent caused by Franchisee's actions or operations rendered or offered in accordance with this ordinance. The City agrees to notify Franchisee of any such claim, demand, suit, proceeding, and/or action, by providing written notice via certified mail to Franchisee. Nothing herein shall be deemed to prevent the City or any Person from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve Franchisee from its duty to defend against liability or its duty to pay any judgment entered against the City or its officers, employee, agents and authorized contractors.

Section 13. Insurance Requirements.

- (a) During the term of this franchise, Franchisee shall procure and maintain insurance coverage at its sole expense, from an insurance company qualified to do business in the State of Kansas with a rating of A- or higher. Franchisee may elect to self-insure to the

extent of the insurance requirements in this Franchise Ordinance, as provided in subsection (b) below. Franchisee shall provide insurance in the following amounts:

- (i) Workers' compensation as provided under any workers' compensation or similar law in the State of Kansas, with an employers' liability limit equal to the amount required by law; and
 - (ii) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not claims made basis, with a limit of not less than two million dollars (\$2,000,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Franchise; and
 - (iii) Employer's liability limit with a limit of one million dollars (\$1,000,000.00) for each accident/disease/incident/occurrence.
- (b) As an alternative to the requirements of subsection (a), Franchisee may demonstrate to the satisfaction of the City that it is self-insured and as such Franchisee has the ability to provide coverage in an amount not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in aggregate, to protect the City from and against all claims by any person for loss or damage from personal injury, bodily injury, death or property damage occasioned by Franchisee, or alleged to so have been caused or occurred.
- (c) Franchisee shall, prior to the commencement of any work, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Franchisee shall make available to the City on request the policy declarations page and certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.

Section 14. Performance Bond Requirement. Franchisee shall at all times maintain in full force and effect a corporate surety bond in a form approved by the City Attorney, in an amount of fifty thousand dollars (\$50,000), for a term consistent with the term of this Franchise Ordinance plus one additional year, conditioned upon Franchisee's faithful performance of the provisions, terms and conditions conferred herein. An annual bond automatically renewed yearly during this period, or evidence of self-insurance as required by Section 13 hereof, shall satisfy this requirement.

Section 15. Reservation of Rights. In addition to any rights specifically reserved to the City by this Franchise Ordinance, the City reserves to itself every right and power available to it under the constitutions of the United States and the State, and any other right or power, including, but not limited to all police powers and authority to regulate and legislate to protect and promote the public health, safety and welfare. Nothing in this Franchise Ordinance shall limit or govern the right of the City to exercise its municipal authority to the fullest extent allowed by law. The City shall have the right to waive any provision of the franchise, except those required by federal or State law, if the City determines: (a) that it is in the public interest to do so; and (b) that the enforcement of such provision will not impose undue hardship on Franchisee or its subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by duly authorized

representative of the City. The waiver of any provision in any one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of this Franchise Ordinance unless the statement so recites. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

Section 16. Forfeiture of Franchise. In case of a material failure of Franchisee to comply with any of the provisions of this Franchise Ordinance, or if Franchisee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise Ordinance, Franchisee shall forfeit all rights and privileges granted by this Franchise and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings:

- (a) For violations concerning the use of the right-of-way as described in this Franchise Ordinance and deemed by the City to be a public nuisance and/or emergency, the following procedure shall apply. The City shall provide written notice by certified mail to Franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee shall have fourteen (14) days subsequent to receipt of such notice to inform the City in writing of the action Franchisee is taking to correct the violation. Such corrective action shall be completed within thirty (30) days subsequent to receipt of notice unless otherwise agreed to by the City. If at the end of such period the City deems that the conditions of such franchise have not been complied with by Franchisee and that such franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which such franchise is to be cancelled and terminated. If Franchisee fails to take corrective action within the 30-day period set forth above, nothing herein shall preclude the City from maintaining an action against Franchisee to recover damages as a result of such failure to take corrective action, including, but not limited to, reasonable attorney fees and the costs of corrective action incurred by the City.
- (b) For all other violations of the Franchise Ordinance, the following procedure shall apply. The City shall provide written notice by certified mail to Franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee shall have ninety (90) days after the mailing of such notice in which to comply with the conditions of this franchise. If at the end of such period the City deems that the conditions of such franchise have not been complied with by Franchisee and that such franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the ground upon which such franchise is to be cancelled and terminated.
- (c) If within thirty (30) days after the effective date of an ordinance to terminate the franchise in accordance with Section 16(a) or 16(b) herein, the Franchisee shall not have instituted an action in the District Court of Leavenworth County, Kansas to determine whether or not the Franchisee has violated the terms of such franchise and that the Franchise is subject to cancellation by reason thereof, such franchise shall be cancelled and terminated at the end of such 30-day period. If within such thirty (30) day period the Franchisee does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that such franchise is subject to cancellation by reason of the violation of its terms, such franchise shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

In addition to any other remedy available herein or and at law or equity, the City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of such franchise ordinance and/or to abate nuisances maintained in violation thereof.

Section 17. Revocation of Franchise. In addition to all other revocation rights and powers herein or otherwise enjoyed by the City, the City shall have the additional and separate right to revoke this franchise and all rights and privileges of the Franchisee as a result of and in response to any of the following events or reasons:

- (a) Any provision of this Franchise Ordinance is adjudged by a Court of competent jurisdiction to be invalid or unenforceable and said judicial act and declaration is deemed by the Governing Body to constitute such a material consideration for the granting of this franchise as to cause the same to become null and void; or
- (b) Franchisee commits an act of fraud or deceit against the City in obtaining the grant of this franchise herein conferred, or after or upon being granted, Franchisee commits such an act against the City.

To revoke this franchise in accordance with the provisions of this Section regarding Revocation of Franchise, the following procedure shall apply. The City shall enact an ordinance setting out the grounds upon which such franchise is to be cancelled and terminated. Prior to the enactment of such ordinance, Franchisee shall be provided with timely written notice by certified mail, and Franchisee shall be allowed to address the Governing Body before final consideration of such ordinance. If within thirty (30) days after the effective date of such ordinance to terminate such franchise, the Franchisee shall not have instituted an action in the District Court of Leavenworth County, Kansas to determine whether or not the Franchise was appropriately terminated in accordance to the provisions of this Section and is subject to cancellation by reason thereof, such franchise shall be cancelled and terminated at the end of such thirty-day period. If within such thirty (30) day period the Franchisee does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that such franchise is subject to cancellation by the reason addressed by this Section, such franchise shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

Section 18. Miscellaneous Provisions.

- (a) Nonexclusive Clause. The privilege to construct, erect, operate and maintain Facilities and to provide service within the City is nonexclusive. The City expressly reserves the right to grant other franchises to other Persons.
- (b) Exclusive Benefit of Franchise Right by Franchisee. The rights granted to Franchisee by this Franchise Ordinance shall be for the sole use of Franchisee to provide Facilities as authorized herein. The rights are for the exclusive benefit of Franchisee, except where otherwise provided herein, or when authorized by the City.
- (c) Franchisee is Without Remedy Against the City. Franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from the enactment of the provisions or requirements of this Franchise Ordinance, or for the failure of the City to have the authority to grant, all, or any part, of the Franchise Ordinance granted. Franchisee shall accept the provisions of this ordinance in writing, and in doing so the Franchisee: (i) expressly acknowledges that it accepted the Franchise Ordinance

granted in reliance on its independent and personal investigation and understanding of the power and authority of the City to grant the Franchise conferred upon Franchisee; (ii) expressly acknowledges by its acceptance of this Franchise Ordinance that it has not been induced to enter into this franchise upon an understanding, or promise, whether given verbally or in writing by or on behalf of the City, or by any other person concerning any term or condition of this Franchise Ordinance not expressed herein; and (iii) expressly acknowledges by the acceptance of this franchise that it has carefully read the provisions, terms, and conditions of this Franchise Ordinance and is willing to, and does accept, all of the risk directly or indirectly attendant to its provisions, terms, and conditions.

- (d) Federal, State and City Jurisdiction. This Franchise Ordinance shall be construed in a manner consistent with all applicable federal, State, and local laws. Notwithstanding any other provisions of this Franchise Ordinance to the contrary, the construction, operation and maintenance of the Facilities by Franchisee or its agents shall be in accordance with all laws and regulations of the United States, the State and any political subdivision thereof, or any administrative agency thereof, having jurisdiction hereof. In addition, Franchisee shall meet or exceed the most stringent technical standards set by regulatory bodies, including, but not limited to the City, now or hereafter having jurisdiction. Franchisee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Franchisee shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power. Unless authorized in writing by the KCC and the City, Franchisee shall not adopt or utilize a rate structure for City parking lot and area lighting that differs from the rate structure adopted or utilized for the City's street lighting. Finally, Franchisee acknowledges that its failure to comply with any law or regulation governing the operation of the Facilities could result in a forfeiture of the Franchise in accordance with the provisions of this Franchise Ordinance.
- (e) Special Lighting Agreements. Franchisee shall promptly, upon written notice from the City, negotiate the establishment of special lighting districts within the City's boundaries which may require, among other things, painted light or power poles, special and/or additional power receptacles and lighting fixtures for special occasions. All such agreements shall provide for the reasonably agreed upon Franchisee's additional expense, if any, to be incorporated in and paid for by the City by a modification in the City's street lighting rate structure unless forbidden by ruling from the KCC.
- (f) Attachment to Poles. Nothing in this Franchise Ordinance shall be construed to require or permit any telephone, television cable, electric light, wireless communications, or power wire attachments by either the City or Franchisee on the poles of the other. If such attachments are desired by either party, then a separate non-contingent agreement shall be prerequisite to such attachments. However, notwithstanding any provision in this franchise and subject to Franchisee approval that the proposed City activity does not violate the National Electric Code, the National Electrical Safety Code, or such substantive equivalents as may hereafter be adopted or promulgated, Franchisee authorizes the City to affix, at the City's cost, but with no charge assessed by the Franchisee to the City, signs, flags, bunting, cables and all necessary paraphernalia on Franchisee's light or power poles which give notice to or are, in the City's sole opinion, appropriate for City sponsored or authorized events. In the event the City utilizes the authority granted herein, it will give Franchisee seven (7) days' notice of its intent to do so, describing the paraphernalia in general terms along with its locations and within seven (7) days after the termination of

the event, the City will remove the paraphernalia at no cost to the Franchisee, leaving the light or power poles in their original condition, less ordinary wear and tear.

- (g) Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this franchise shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.
- (h) Force Majeure. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Franchisee's or the City's control.
- (i) Severability. Any section, subsection, sentence, clause, phrase, or portion of this Franchise Ordinance is for any reason held invalid or unconstitutional by any court or administrative agency or competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 19. Repeal of Other Ordinances. All other ordinances, agreements and resolutions or parts thereof inconsistent or in conflict with the terms hereof shall be cancelled, annulled, repealed, and set aside; provided, that this Franchise Ordinance shall not take effect or become in force until the requirements for adopting a Franchise Ordinance under Kansas Statutes have occurred.

Section 20. Effectiveness. This Franchise Ordinance shall take effect upon its final passage by the City Commission and its publication in the official City newspaper.

Section 21. Acceptance. Franchisee agrees to accept the terms of this Franchise Ordinance in writing within sixty (60) days after its effective date, upon which this franchise shall also become a contract between the City and the Franchisee. In the event this franchise is not timely accepted in writing by the Franchisee, the Franchisee shall be bound by its requirements for as long (during its Term) as the Franchisee provides its Services to the residents of the City; provided, that if Franchisee does not timely accept this Franchise Ordinance as provided herein, City may terminate this Franchise at any time upon written notice to Franchisee.

PASSED and APPROVED by the Governing Body on the _____ day of _____, 2023.

Jermaine Wilson, Mayor

{SEAL}

ATTEST:

Sarah Bodensteiner, CMC, City Clerk

ORDINANCE NO. 7575

AN ORDINANCE GRANTING TO WESTAR ENERGY, INC. AN ELECTRIC FRANCHISE INCLUDING THE RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN ELECTRIC TRANSMISSION, DISTRIBUTION AND STREET LIGHTING FACILITIES WITHIN THE CORPORATE LIMITS OF THE CITY OF LEAVENWORTH, KANSAS.

WHEREAS, the City of Leavenworth, Kansas ("City"), a municipal corporation and a City of the First Class, duly organized and existing under the laws of the State, has the right pursuant to Article 12, Section 5 of the State constitution and K.S.A. 12-2001, to grant a franchise to permit a Person to provide Service to persons within the City limits and in accordance therewith, to construct, operate and maintain electric transmission, distribution and street lighting facilities in the City; and

WHEREAS, Westar Energy, Inc., ("Franchisee") desires to operate its Facilities for the purpose of providing said Service in the City and therefore has applied to the City for a franchise in order to operate its Facilities; and

WHEREAS, any such permission requires a franchise to be granted by the City in accordance with said State constitutional provision and K.S.A. 12-2001 et al; and

WHEREAS, pursuant to said State constitutional provision and K.S.A. 12-2001, the City Commission directed the City's special counsel to prepare the proposed Franchise Ordinance, for first reading at its regular meeting to be held on August 12, 2003, with the second and final reading to be held at a regular meeting of the City Commission; to be held on August 26, 2003; and

WHEREAS, the City Commission directed the City's Assistant City Manager to file a copy of the proposed Franchise Ordinance in the office of the City Clerk

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

Section 1. Definitions. For the purpose of this Franchise Ordinance, the following words and phrases and their derivations shall have the following meaning:

"City" means City of Leavenworth, Kansas, a municipal corporation, and if applicable, the territorial boundaries of the City of Leavenworth as now constituted or as shall hereafter exist.

"Facilities" means all appropriate facilities and plants for carrying on a power and light business and all other operations connected therewith or incident thereto for the purpose of selling and distributing within the City, electric energy in such forms as may be reasonably required for domestic, residential, commercial, industrial, municipal and other purposes.

"Franchise Ordinance" means this ordinance passed to grant the franchise to Franchisee. This ordinance shall operate as a grant of permission by the City for Franchisee to utilize the City's public right-of-ways and to operate its Facilities in the City as defined herein. Such grant shall at all times be subject to the laws of the State

"Franchisee" means Westar Energy, Inc., and its successors, transferees, or assigns.

"Franchise Fee" means the fee imposed by the City on Franchisee solely because of its status in accordance with said State constitutional provision and K.S.A. 12-2001. It shall not include: (a) any tax, fee, or assessment of general applicability including any which are imposed on Franchisee; (b) requirements or charges

incidental to the awarding or enforcing the Franchise Ordinance, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages, (c) any permit fee or other fee imposed under any valid right-of-way ordinance, or (d) any other fee imposed by federal, state or local law.

"Gross Receipts" means those receipts, less uncollectibles, derived from the sale of electricity for domestic, residential, commercial or industrial purposes used within the City's corporate limits as they now exist or may be extended during the term of the franchise granted by this Franchise Ordinance.

"KCC" means the Kansas Corporation Commission.

"Person" means any natural, governmental or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

"Right-of-way" means any area on, below or above the present and future streets, alleys, avenues, roads, sidewalks, highways, parkways or boulevards dedicated as right-of-way.

"Service" means a commodity used by the public and provided through Franchisee's Facilities.

"State" means the State of Kansas.

"Subscriber" means any person who receives Service from Franchisee.

"Utility Easement" means, for the purposes of this Franchise Ordinance, an easement owned by or dedicated to the City for the purpose of providing Franchisee and other utilities access to customers and users of any utility service.

Section 2. Grant. Franchisee is hereby granted the right, privilege and franchise to provide Service to the residents of the City, and in connection therewith, to construct, operate, and maintain its Facilities in, through and along the City's right-of-way and Utility Easements on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this Franchise Ordinance. As a condition of this grant, Franchisee shall be required to obtain and shall be responsible for any necessary permit, license, certification, grant, registration or any other authorization required by an appropriate governmental entity, including, but not limited to, the City, the State or the KCC, subject to Franchisee's right to challenge in good faith such authorization as established by the State, KCC or other City ordinance.

Section 3. Use of Public right-of-way and Utility Easements. Franchisee's Facilities shall be located in the right-of-way and Utility Easement as now constructed and as further authorized by the City in accordance with all applicable laws, statutes and/or ordinances. Placement, changes, additions, replacements, maintenance and repairs for the Facilities shall be conducted in compliance with any applicable ordinance and/or permit requirement. Franchisee shall be responsible for obtaining all necessary permits as required by the City for work performed in the right-of-way and Utility Easements, as well as paying any associated permit fee. In its use of the right-of-way and Utility Easements within the City, Franchisee shall be subject to all applicable rules, regulations, policies, laws, orders, resolutions, and ordinances now or hereafter adopted or promulgated by any appropriate governmental entity now or hereafter having jurisdiction, including, but not limited to the City in the reasonable exercise of its police powers. Such police powers specifically, but not exclusively, referred to are as follows:

- (a) Franchisee's use of right-of-way shall in all matters be subordinate to the City's use of the right-of-way. Franchisee shall coordinate with the City or its designee the placement of its Facilities in a manner that minimizes adverse impact on public improvements and maximizes public safety, as reasonably determined by the City. Such placement, as it relates to City parking lot, area lighting and street

lighting shall include, but not be limited to, the installation, removal and/or the relocation of power and light wires and poles in the City, whether or not they are in use or usable in the Franchisee's Facilities.

- (b) All earth, materials, sidewalks, pavings, crossings, utilities, public improvements or improvements of any kind damaged or removed by Franchisee in its activities under this franchise shall be fully repaired or replaced promptly by Franchisee at its sole expense and to the reasonable satisfaction of the City.
- (c) All new utility lines shall be placed underground within designated easements in all residential subdivisions within the City of Leavenworth that are approved after the effective date of this franchise. The subdivider, developer or owner of the property being platted shall make the necessary arrangements with the Franchisee for the installation of underground electric lines.

The provisions of this subsection shall not apply to any of the following:

- (1) Existing poles, overhead wires, and associated overhead structures, when part of a continuous line, or service to individual properties from existing overhead lines that are within a subdivision previously approved in conformance with this requirements.
 - (2) Electric distribution or transmission lines with capabilities of three thousand (3,000) kVA or more.
 - (3) Electric substations and the accompanying equipment and apparatus necessary to provide adequate electric service.
 - (4) Transformers, transformer pads, junction cabinets, or other above-ground facilities normally used with and as a part of an underground distribution system.
 - (5) Underground installation of wiring or electrical power equipment shall not be required in flood plain areas, drainage easements, major or other drainage ways.
- (d) Franchisee shall keep and maintain accurate records and as-build drawings depicting approximate horizontal location of all Facilities constructed, reconstructed, or relocated in the right-of-way. Upon request by the City, Franchisee shall provide to the City and to the Leavenworth Area Development Council a set of plans showing Franchisee's Facilities within the right-of-way or easements in a commonly agreed upon industry standard format. Franchisee shall designate a person familiar with the Facilities who is responsible for timely response to information requests of the City and other users of the right-of-way. Such person or such person's designee shall be available on a scheduled basis in the City to talk to City officials and citizens, including regular City scheduled utility coordinating staff meetings.
 - (e) Not less than three (3) working days prior to construction or relocation of any Facilities in the right-of-way or easement, Franchisee shall give written notice to the Director of Public Works of the proposed activity.
 - (f) Franchisee shall relocate or adjust any Facilities in the right-of-way for any public funded or public guaranteed improvement project. In any such case which causes a need for Franchisee to relocate or adjust any Facilities, if necessary the City will acquire at its expense in connection with such project sufficient right-of-way to allow for the relocation or adjustment of Franchisee's Facilities within the right-of-way. Such relocation or adjustment shall be performed by Franchisee at its sole expense without expense to the City its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the City. Franchisee shall not be required to relocate or adjust any Facilities more often than once in any five- (5) year period. Such relocation or adjustment shall be completed as soon as reasonably possible and within the time set forth in any request by the City for such relocation or adjustment. Any damages suffered by the City or its contractors as a result of Franchisee's failure to timely relocate or adjust its Facilities shall be borne by Franchisee

- (g) It shall be the sole responsibility of the Franchisee to take reasonable measures to protect and defend its Facilities in the right-of-way from harm or damage. If Franchisee fails to accurately or timely relocate Facilities when requested, it shall have no claim, for costs or damages against the City and its authorized contractors unless such party is solely responsible for the harm or damage by its negligent or intentional conduct. Franchisee shall be responsible to the City and its authorized contractors for all damages including, but not limited to, delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of Franchisee to perform its obligations under this Franchise ordinance unless the damaged party is solely responsible for the harm or damage by its negligence or intentionally caused harm.
- (h) Franchisee shall notify the City not less than three (3) working days in advance of any construction, reconstruction, repair or relocation of Facilities which would require any street closure which reduces traffic flow to less than two (2) lanes of moving traffic. Except in the event of any emergency, as reasonably determined by Franchisee, no such closure shall take place without such notice and prior authorization from the City. The City shall follow its policies in the grant or denial of such authority, which shall not be unreasonably delayed. In addition, all work performed in the traveled way or in which in any manner impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected at Franchisee's expense. Such signing shall be in conformance with the latest edition of the Federal Highway Administration's Standards and Guidelines for Work Zone Traffic Control, unless otherwise agreed to by the City.
- (i) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the Facilities in the right-of-way shall be in accordance with the applicable present and future federal, state and city laws and regulations, including but not limited to, the most recent editions of the National Electric Code, the National Electrical Safety Code, or such substantive equivalents as may hereafter be adopted or promulgated.
- (j) Franchisee, upon request of any appropriate applicant, shall remove or raise or lower its overhead Facilities temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering of overhead Facilities shall be paid by the party or parties requesting the same, and Franchisee may require such payment in advance. Franchisee shall be given not less than fifteen (15) days written notice from the applicant detailing the time and location of the moving operations, and not less than twenty-four (24) hours advance notice from the applicant advising of the actual operation. The City shall not be liable for any such expense or notice requirement for the moving of houses or structures by the City or its contractors.
- (k) Permission is hereby granted to the Franchisee to trim trees upon and overhanging the right-of-way and utility easements. Franchisee shall perform line clearance work in accordance with regulations established under OSHA 29 CFR 1910.269. All pruning operations shall be performed by personnel certified to perform the work and in accordance with ANSI Z-133.1.1994 and ANSI 300 (Standard Practices for Trees, Shrubs and Other Woody Plant Maintenance). For routine trimming operations, customers shall be contacted at least one (1) week in advance by either personal contact or by informational door hanger. For emergency/electrical outage restoration, where possible, including ice and wind storms, a notification attempt shall be made before trimming and an accelerated tree trimming and Facilities repair time frame shall be immediately communicated to the City's Director of Public Works.
- (l) Lighting System Repairs. Within sixty (60) days after the effective date of this franchise, Franchisee shall provide to the City a written schedule of a reasonably expedient time frame for the completion of repairs which shall reflect an installation or light fixture outage schedule of no more than thirty (30) days to complete after written notice of such outage is given by the City. Such schedule shall be adhered to by Franchisee at all times in the event any repairs are needed to any light fixture, installation or item in that

part of the Facilities which serves as a part of the City's street, parking or area lighting system. Such time frame shall commence upon the receipt by Franchisee of written notice from the City that repairs are required. Such schedule shall not be applicable to Franchisee initiated repairs, however, in the event the Franchisee fails to adhere to such time frame, subject to KCC Tariff requirements, the Franchisee shall credit or rebate to the City the equivalent value of the daily cost to the City, if any, of the unrepaired lighting system fixture or installation.

Section 4. Franchise Fee.

- (a) Effective the first day of the second month following the effective date of this franchise, Franchisee shall pay an amount which will be equal to five percent (5%) of its Gross Receipts and thereafter for the term of this franchise or until changed by the City. Franchisee shall pay five percent (5%) of its Gross Receipts. The payments herein provided shall be in addition to, not in lieu of, all other taxes, charges, assessments, fees and impositions of general applicability that are or may be imposed by the City, with the exception of any annual occupation license. Such fee shall be payable on or before the last day of each month without invoice or reminder from the City, and shall be based on the Gross Receipts of the previous month.
- (b) The percentage of Gross Receipts payable to the City as provided herein shall be subject to revision at the option of the City on October 1, 2008. Notwithstanding the revision authority contained herein, the percentage of Gross Receipts payable to the City shall not exceed any applicable statutory maximum rate.

Section 5. City's Right to Audit and Access to Records. Franchisee shall annually file with the City of Leavenworth Gross Receipts Report regarding all applicable monthly revenues. The City agrees that such information is confidential and proprietary and agrees that such information shall remain the sole property of Franchisee and agrees that pursuant to K.S.A. 45-221(18), as amended, such information does not constitute public records subject to K.S.A. 45-218, as amended. In the event the City is required by law to disclose such information, the City will provide Franchisee seven (7) days advance notice of its intent to disclose such information and will take such action as may be reasonably required to cooperate with the Franchisee to safeguard such information. The City shall also have access to and the right to examine, within two (2) years of any payment of fees hereunder, at all reasonable times, all relevant books, receipts, files, records and documents of the Franchisee necessary to verify the correctness of such statement and to correct the same, if found to be erroneous. If such statement of Gross Receipts is incorrect, then such payment shall be made upon such corrected statement, including interest on said amount at the annual statutory rate then in effect. Further, the City's acceptance of any payment determined as hereinabove provide to be deficient shall not be construed as a release of liability from the City or an accord or satisfaction of any claim that the City may have for additional sums owed by Franchisee. In addition to access to the records of Franchisee for audits, upon request, Franchisee shall provide reasonable access for records necessary to verify compliance with the terms of this Franchise Ordinance

Section 6. Term. This Franchise ordinance shall be effective upon its passage by the governing body of the City and its publication in the official City newspaper and continue to be in effect until September 30, 2013. Thereafter, this Franchise ordinance will renew automatically for ten (10) one (1) year terms, unless either party notifies the other party of its intent to terminate the franchise prior to ninety (90) days before the termination of the then current term.

Section 7. Franchisee Information. Franchisee shall, at its own expense, annually submit to the City the following information:

- (a) Leavenworth Gross Receipts Report (as referenced by Section 5 herein);
- (b) A summary of the previous year's development of Facilities, including but not limited to, the location of Facilities during the year, and Franchisee's plan of development of Facilities for the next year. This requirement may be met by a meeting in person between Franchisee's designated representative and the City's public works director to discuss these issues; and

(c) Information as to the number and address of subscribers in the City in digital format. Note: this requirement does not include giving the identification of the subscribers.

Section 8. Subscriber Rates. Franchisee's charges to subscribers shall comply with all applicable federal and state statutes and regulations in effect on April 1, 2003. Upon request, Franchisee shall file with the City Clerk a schedule of current rates in effect when such rates are not on file and publicly available from KCC. If authorized by state or federal law, the City may at any time fix a reasonable schedule of maximum rates to be charged to the City and its residents.

Section 9. Transfer of Franchise. Upon written approval of the KCC, the Franchisee shall have the right to assign this franchise, and the rights and privileges herein granted, to any Person, and any such assignee, by accepting such assignment, shall be bound by the terms and provisions hereof. This Franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made.

Section 10. Other Service Providers. Franchisee shall not interfere with any agreement between the City and another service provider. Additionally, if and when the City requires or negotiates to have another service provider cease to use such service provider's existing poles and to relocate its services underground, all other service providers using the same poles, including Franchisee when applicable, shall also relocate their facilities underground at that time; provided, however, that such placement is economically reasonable. Notice of any intent to enter into such an agreement will be timely provided to Franchisee.

Section 11. Notification Procedure. Any required or permitted notice under this Franchise Ordinance shall be in writing. Notice to the City shall be delivered to the City Clerk by first class United States mail or by personal delivery. Notice to the Franchisee shall be delivered by first class United States mail or by personal delivery to

Westar Energy, Inc.
Director of Operations
2720 2nd Avenue
Leavenworth, KS 66048

Any notice concerning a change in the above shall be in writing delivered by first class United States mail or by personal delivery to the City.

Section 12. Indemnification. Upon notice by the City, Franchisee shall fully indemnify, defend and hold harmless the City, its officers, employees, agents and authorized contractors from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other Persons for damages, losses, costs, and expenses, including attorney fees or otherwise, to the extent caused by Franchisee's actions or operations rendered or offered in accordance with this ordinance. The City agrees to immediately notify Franchisee of any such claim, demand, suit, proceeding, and/or action, by providing written notice via certified mail to Franchisee. Nothing herein shall be deemed to prevent the City or any Person from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve Franchisee from its duty to defend against liability or its duty to pay any judgment entered against the City or its officers, employee, agents and authorized contractors.

Section 13. Liability Insurance Requirement. Franchisee is self-insured and will provide the City proof reasonably acceptable to the City regarding its ability to self-insure.

Section 14. Performance Bond Requirement. Franchisee shall at all times maintain in full force and effect a corporate surety bond in a form approved by the City Attorney, in an amount of fifty thousand dollars (\$50,000), for a term consistent with the term of this Franchise Ordinance plus one additional year, conditioned

upon Franchisee's faithful performance of the provisions, terms and conditions conferred herein. An annual bond automatically renewed yearly during this period or evidence of self insurance as required by Section 13, hereof shall satisfy this requirement.

Section 15. Reservation of Rights. In addition to any rights specifically reserved to the City by this Franchise Ordinance, the City reserves to itself every right and power available to it under the constitutions of the United States and the State, and any other right or power, including, but not limited to all police powers and authority to regulate and legislate to protect and promote the public health, safety and welfare. Nothing in this Franchise Ordinance shall limit or govern the right of the City to exercise its municipal authority to the fullest extent allowed by law. The City shall have the right to waive any provision of the franchise, except those required by federal or State law, if the City determines: (a) that it is in the public interest to do so, and (b) that the enforcement of such provision will not impose undue hardship on Franchisee or its subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by duly authorized representative of the City. The waiver of any provision in any one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of this Franchise Ordinance unless the statement so recites. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

Section 16. Forfeiture of Franchise. In case of a material failure of Franchisee to comply with any of the provisions of this Franchise Ordinance, or if Franchisee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise Ordinance, Franchisee shall forfeit all rights and privileges granted by this Franchise and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings:

- (a) For violations concerning the use of the right-of-way and/or Utility Easements as described in Section 3 of this Franchise Ordinance and deemed by the City to be a public nuisance and/or emergency, the following procedure shall apply. The City shall provide written notice by certified mail to Franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee shall have fourteen (14) days subsequent to receipt of such notice to inform the City in writing of the action Franchisee is taking to correct the violation. Such corrective action shall be completed within thirty (30) days subsequent to receipt of notice unless otherwise agreed to by the City. If at the end of such period the City deems that the conditions of such franchise have not been complied with by Franchisee and that such franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which such franchise is to be cancelled and terminated. If Franchisee fails to take corrective action within the 30-day period set forth above, nothing herein shall preclude the City from maintaining an action against Franchisee to recover damages as a result of such failure to take corrective action, including, but not limited to, reasonable attorney fees and the costs of corrective action incurred by the City.
- (b) For all other violations of the Franchise Ordinance, the following procedure shall apply. The City shall provide written notice by certified mail to Franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee shall have ninety (90) days after the mailing of such notice in which to comply with the conditions of this franchise. If at the end of such period the City deems that the conditions of such franchise have not been complied with by Franchisee and that such franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the ground upon which such franchise is to be cancelled and terminated.
- (c) If within thirty (30) days after the effective date of an ordinance to terminate the franchise in accordance with Section 16(a) or 16(b) herein, the Franchisee shall not have instituted an action in the District Court of Leavenworth County, Kansas to determine whether or not the Franchisee has violated the terms of such franchise and that the Franchise is subject to cancellation by reason thereof, such franchise shall be cancelled and terminated at the end of such 30-day period. If within such thirty (30) day period the Franchisee does institute an action, as above provided, and prosecutes such action to final judgment

with due diligence, then, if the court finds that such franchise is subject to cancellation by reason of the violation of its terms, such franchise shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

In addition to any other remedy available herein or and at law or equity, the City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of such franchise ordinance and/or to abate nuisances maintained in violation thereof.

Section 17. Revocation of Franchise. In addition to all other revocation rights and powers herein or otherwise enjoyed by the City, the City shall have the additional and separate right to revoke this franchise and all rights and privileges of the Franchisee as a result of and in response to any of the following events or reasons:

- (a) Any provision of this Franchise Ordinance is adjudged by a Court of competent jurisdiction to be invalid or unenforceable and said judicial act and declaration is deemed by the Governing Body to constitute such a material consideration for the granting of this franchise as to cause the same to become null and void; or
- (b) Franchisee commits an act of fraud or deceit against the City in obtaining the grant of this franchise herein conferred, or after or upon being granted, Franchisee commits such an act against the City.

To revoke this franchise in accordance with the provisions of this Section regarding Revocation of Franchise, the following procedure shall apply. The City shall enact an ordinance setting out the grounds upon which such franchise is to be cancelled and terminated. Prior to the enactment of such ordinance, Franchisee shall be provided with timely written notice by certified mail, and Franchisee shall be allowed to address the Governing Body before final consideration of such ordinance. If within thirty (30) days after the effective date of such ordinance to terminate such franchise, the Franchisee shall not have instituted an action in the District Court of Leavenworth County, Kansas to determine whether or not the Franchise was appropriately terminated in accordance to the provisions of this Section and is subject to cancellation by reason thereof, such franchise shall be cancelled and terminated at the end of such thirty-day period. If within such thirty (30) day period the Franchisee does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that such franchise is subject to cancellation by the reason addressed by this Section, such franchise shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

Section 18. Miscellaneous Provisions.

- (a) Nonexclusive Clause. The privilege to construct, erect, operate and maintain Facilities and to provide service within the City is nonexclusive. The City expressly reserves the right to grant other franchises to other Persons. However, no such additional franchise shall in any way affect the right or obligations of Franchisee.
- (b) Exclusive Benefit of Franchise Right by Franchisee. The rights granted to Franchisee by this Franchise Ordinance shall be for the sole use of Franchisee to provide Facilities as authorized herein. The rights are for the exclusive benefit of Franchisee, except where otherwise provided herein, or when authorized by the City.
- (c) Franchisee is Without Remedy Against the City. Franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from the enactment of the provisions or requirements of this Franchise Ordinance, or for the failure of the City to have the authority to grant, all, or any part, of the Franchise Ordinance granted. In the event Franchisee accepts the provisions of this ordinance in writing, the Franchisee: (i) expressly acknowledges that it accepted the Franchise Ordinance granted in reliance on its independent and personal investigation and understanding of the power and authority of the City to grant the Franchise conferred upon Franchisee,

- (ii) expressly acknowledges by its acceptance of this Franchise Ordinance that it has not been induced to enter into this franchise upon an understanding, or promise, whether given verbally or in writing by or on behalf of the City, or by any other person concerning any term or condition of this Franchise Ordinance not expressed herein, and (iii) expressly acknowledges by the acceptance of this franchise that it has carefully read the provisions, terms, and conditions of this Franchise Ordinance and is willing to, and does accept, all of the risk directly or indirectly attendant to its provisions, terms, and conditions.
- (d) Federal, State and City Jurisdiction. This Franchise Ordinance shall be construed in a manner consistent with all applicable federal, State, and local laws. Notwithstanding any other provisions of this Franchise Ordinance to the contrary, the construction, operation and maintenance of the Facilities by Franchisee or its agents shall be in accordance with all laws and regulations of the United States, the State and any political subdivision thereof, or any administrative agency thereof, having jurisdiction and in effect on April 1, 2003. In addition, Franchisee shall meet or exceed the most stringent technical standards set by regulatory bodies, including, but not limited to the City, now or hereafter having jurisdiction. Franchisee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Franchisee shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power. Unless authorized in writing by the KCC and the City, Franchisee shall not adopt or utilize a rate structure for City parking lot and area lighting that differs from the rate structure adopted or utilized for the City's street lighting. Finally, Franchisee acknowledges that its failure to comply with any law or regulation governing the operation of the Facilities could result in a forfeiture of the Franchise in accordance with the provisions of this Franchise Ordinance.
- (e) Special Lighting Agreements. Franchisee shall promptly, upon written notice from the City, negotiate the establishment of special lighting districts within the City's boundaries which may require, among other things, painted light or power poles, special and/or additional power receptacles and lighting fixtures for special occasions. All such agreements shall provide for the reasonably agreed upon Franchisee's additional expense, if any, to be incorporated in and paid for by the City by a modification in the City's street lighting rate structure unless forbidden by ruling from the KCC.
- (f) Attachment to Poles. Nothing in this Franchise Ordinance shall be construed to require or permit any telephone, television cable, electric light or power wire attachments by either the City or Franchisee on the poles of the other. If such attachments are desired by either party, then a separate non-contingent agreement shall be prerequisite to such attachments. However, notwithstanding any provision in this franchise and subject to Franchisee approval that the proposed City activity does not violate the National Electric Code, the National Electrical Safety Code, or such substantive equivalents as may hereafter be adopted or promulgated, Franchisee authorizes the City to affix, at the City's cost, but with no charge assessed by the Company to the City, signs, flags, bunting, cables and all necessary paraphernalia on Franchisee's light or power poles which give notice to or are, in the City's sole opinion, appropriate for City sponsored or authorized events. In the event the City utilizes the authority granted herein, it will give Franchisee seven (7) days notice of its intent to do so, describing the paraphernalia in general terms along with its locations and within seven (7) days after the termination of the event, the City will remove the paraphernalia at no cost to the Franchisee, leaving the light or power poles in their original condition, less ordinary wear and tear.
- (g) Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this franchise shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.
- (h) Force Majeure. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Franchisee's or the City's control.

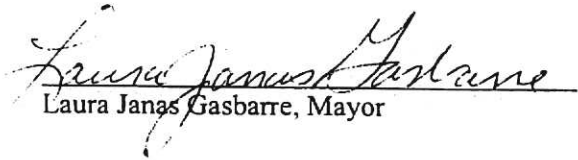
(i) **Severability.** Any section, subsection, sentence, clause, phrase, or portion of this Franchise Ordinance is for any reason held invalid or unconstitutional by any court or administrative agency or competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 19. Repeal of Other Ordinances. All other ordinances, agreements and resolutions or parts thereof inconsistent or in conflict with the terms hereof shall be cancelled, annulled, repealed, and set aside; provided, that this Franchise Ordinance shall not take effect or become in force until the requirements for adopting a Franchise Ordinance under Kansas Statutes have occurred.

Section 20. Effectiveness. This Franchise Ordinance shall take effect upon its final passage by the City Commission and its publication in the official City newspaper.

Section 21. Acceptance. In the event the franchise granted by this Franchise Ordinance becomes effective as provided in Section 20 herein, and the Franchisee accepts its terms in writing within sixty (60) days after its effective date, this franchise shall become a contract between the City and the Franchisee. In the event this franchise is not timely accepted in writing by the Franchisee, the Franchisee shall be bound by its requirements for as long (during its Term) as the Franchisee provides its Services to the residents of the City.

Passed and approved by the City Commission the 26th day of August, 2003.


Laura Janas Gasbarre, Mayor

ATTEST:


Carol Sadler, City Clerk

Adopted: 08-26-03

Published: 08-29-03