



Welcome To Your City Commission Meeting - Please turn off or silence all cell phones during the commission meeting.
Meetings are televised everyday on Channel 2 at 7 p.m. and midnight and available for viewing on YouTube

Call to Order – Pledge of Allegiance Followed by Silent Meditation

PRESENTATIONS & PROCLAMATIONS:

Mayor’s Award

1. Proclamations (pg. 2)
 - a. National American Indian Heritage Month
 - b. Shop Small – Small Business Saturday November 30 2019

OLD BUSINESS:

Consideration of Previous Meeting Minutes:

2. Minutes from October 22, 2019 Regular Meeting **Action:** Motion (pg. 4)

Second Consideration Ordinances:

3. Second Consideration Ordinance 8116 Approving Redevelopment Plan **Action:** Roll Call (pg. 12)
4. Second Consideration Ordinance 8117 Approving Community Improvement District **Action:** Roll Call (pg. 36)
5. Second Consideration Ordinance 8118 Vacating an Alley in Block 97 Day & Macaulay’s Subdivision **Action:** Roll Call (pg. 43)

NEW BUSINESS:

Citizen Participation: (i.e. Items not listed on the agenda or receipt of petitions- *Please state your name and address*)

Resolutions:

6. Resolution B-2239 Non-Profit Organization Event “Alive After Five” 2020 **Action:** Motion (pg. 48)

Bids, Contracts and Agreements

7. Consider Development Agreement with Fort Gate Properties LLC **Action:** Motion (pg. 50)
8. Consider Bids for Airport Flood Repair Project **Action:** Motion (pg. 96)
9. Consider Sole Source Bid with Douglas Pumps for Bar Screen at Water Pollution Control **Action:** Motion (pg. 106)

Consent Agenda:

Claims for October 19, 2019 through November 8, 2019, in the amount of \$1,594,638.97; Net amount for Payroll #22 effective October 25, 2019, in the amount of \$338,217.94; (Includes Police & Fire Pension in the amount of \$11,572.36) and Payroll # 23 effective November 8, 2019 in the amount of \$337,350.37 (No Police & Fire Pension). **Action:** Motion

Other:

10. Executive Session-Personnel Matters of Non-Elected Personnel **Action:** Motion (pg. 112)

Adjournment

Action: Motion

City of Leavenworth, Kansas



Proclamation

- WHEREAS,** *the history and culture of our great nation have been significantly influenced by American Indians and indigenous peoples; and*
- WHEREAS,** *the contributions of American Indians have enhanced the freedom, prosperity, and greatness of America today; and*
- WHEREAS,** *their customs and traditions are respected and celebrated as part of a rich legacy throughout the United States; and*
- WHEREAS,** *Native American Awareness Week began in 1976 and recognition was expanded by Congress and approved by President George Bush in August 1990, designating the month of November as National American Indian Heritage Month; and*
- WHEREAS,** *in honor of National American Indian Heritage Month, community celebrations as well as numerous cultural, artistic, educational and historical activities have been planned*
- NOW, THEREFORE,** *I, Jermaine Wilson, Mayor of the City of Leavenworth, Kansas hereby proclaim November 2019 as:*

National American Indian Heritage Month

and I urge all our citizens to observe this month with appropriate programs, ceremonies and activities.

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

Jermaine Wilson, Mayor

ATTEST:

Carla K. Williamson, CMC, City Clerk

City of Leavenworth, Kansas



Proclamation

- WHEREAS,** *Small Business Saturday is a shop local campaign held on the Saturday following Thanksgiving to encourage reinvestment in small business across the country; and*
- WHEREAS,** *small businesses employ over 55 percent of America's workers either owning or working for a small business; and*
- WHEREAS,** *87 percent of consumers in the United States agree that small businesses are critical to the overall economic health of the United States; and*
- WHEREAS,** *according to research firm Civic Economics, for every \$100 spent at a local store, \$68 stays within the community while on-line shopping generates little or no benefit for the local economy; and*
- WHEREAS,** *advocacy groups as well as public and private organizations across the country have endorsed the Saturday after Thanksgiving as Small Business Saturday; and*
- WHEREAS,** *the City of Leavenworth wishes to recognize the contributions that small businesses make to our community and local economy; and*

NOW, THEREFORE, *I, Jermaine Wilson, Mayor of the City of Leavenworth, Kansas hereby proclaim November 30, 2019 as:*

Small Business Saturday

in the City of Leavenworth, and hereby urge all citizens to shop at and support our local businesses, as we celebrate the accomplishments of our small businesses and encourage the development of new small businesses.

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

Jermaine Wilson, Mayor

ATTEST:

Carla K. Williamson, CMC, City Clerk



CALL TO ORDER - The Governing Body met in regular session and the following commission members were present: Mayor Jermaine Wilson, Mayor Pro-Tem Myron J. (Mike) Griswold, Commissioners Nancy Bauder, Larry Dedeke and Mark Preisinger.

Others present: City Manager Paul Kramer, Public Works Director Mike McDonald, Deputy Public Works Director Mike Hooper, Chief Building Inspector Harold D. Burdette, Planning and Community Development Director Julie Hurley, Finance Director Ruby Maline, Public Information Officer Melissa Bower, City Attorney David E. Waters and City Clerk Carla K. Williamson.

Mayor Jermaine Wilson called the meeting to order and opened the meeting with the pledge of allegiance followed by silent meditation

PROCLAMATION:

Proclamations:

Military Retiree Appreciation Day – Norm Greczyn was present to accept the proclamation.

100th Anniversary Veterans Day Parade – Ed Gunnels, Charley Shoemaker were present to accept the proclamation.

OLD BUSINESS:

Consideration of Previous Meeting Minutes:

Commissioner Griswold moved to approve the minutes from the October 8, 2019 regular meeting as presented. Commissioner Bauder seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Second Consideration Ordinances:

Second Consideration Ordinance 8113 to Adopt and Enact a New Code of Ordinances – City Clerk Carla Williamson stated there have been no changes to the ordinance since it was first introduced on October 8, 2019. Ordinance No. 8113 was presented for second consideration and a roll call vote.

Mayor Wilson called the roll and Ordinance No. 8113 was unanimously approved 5-0.

Second Consideration Ordinance 8114 Amending Chapter 38 Solid Waste; Sec. 38-32 Service Fees – City Manager Paul Kramer presented Ordinance No. 8114 for second consideration.

Mayor Wilson called the roll and Ordinance No. 8114 was unanimously approved 5-0.

Second Consideration Ordinance 8115 Amending Chapter 46 Utilities; Sec. 46-113 Levy – City Manager Paul Kramer presented Ordinance No. 8115 for second consideration.

Mayor Wilson called the roll and Ordinance No. 8115 was unanimously approved 5-0.

NEW BUSINESS:

Citizen Participation:

David Jaster-932 Dakota Street and Sam Sanford-620 Muncie Road

Members of Rock of Ages Church 1017 Randolph:

- Referenced Ord 8077
- Property has history of flash flooding
- Four bad flash floods on property and neighboring properties; last was in 2015
- Has contacted the City and worked with City Engineering
- Waiting on Black and Vetch study
- Has had FEMA Flood insurance since 2011
- Was not aware of the budget hearing earlier this year or would have attended
- Petition and pictures submitted with signatures of church members and neighbors requesting the City to remedy the flash-flooding situation

Mayor Wilson stated that the study is still ongoing with Black & Vetch and will have more answers after it is complete.

General Items:

Approve City Fee Schedule – City Clerk Carla Williamson presented for approval the City Fee Schedule. With the adoption of the new city code, the fee schedule is no longer an appendix but rather a stand-alone document that requires approval by the Commission. Proposed changes include increase in surrender fee per animal from \$20.00 to \$50.00; decrease in Vehicle for Hire Owner License from \$100.00 to \$50.00 per vehicle and the Driver’s License fee reduction from \$35.00 to \$25.00; adding in Parks & Recreation fees and Sewer and Refuse fees to the fee schedule.

Commissioner Bauder moved to approve the city fee schedule as presented. Commissioner Griswold seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Review Unsafe and Dangerous Structures Given Extensions – Planning and Community Development Director Julie Hurley reviewed the properties on the demolition list that were given extensions by the Commission at the August 13, 2019 meeting, to allow for the completion of needed work.

905 Washington – Single family house: Owner previously stated he would demolish property on his own-no change

Consensus by Commission to move forward with demolition

1605 Terry – Single-family house: All repairs complete

Consensus to remove from demolition list

514 Linn – Single-family house: All repairs complete
Consensus to remove from demolition list

1021 S 2nd Street – Single-family house: Under new ownership. Roof permit issued and roof installed, plumbing permit issued. Owner indicated new windows will be installed within the next couple of weeks. Some exterior painting complete.
Consensus to give a 30-day extension

305 N 2nd Street – Single-family house: No visible change. Permits issued for interior renovations and siding.
Consensus to give a 30-day extension

326 Osage – Single-family house: Work ongoing. Active permit for electrical work and interior renovations. Windows have been replaced.
Consensus to give a 30-day extension

400 N 5th – Two-story residential structure; Active permit for siding, roof and windows. No visible work done.

Mark Swope and Dakota Toon were present to represent owner

- Some work on stairs
- Has some of the materials to repair
- Has two new windows to be installed
- Still needs roofing materials
- Paint was purchased but was stolen from the property
- Very time consuming working on a ladder
- Working on a budget
- Owner will be back at end of the month and should be able to help
- Could absolutely make a difference in 30 days and could have everything except paint done in 60 days

Commissioner Preisinger stated that they are not the property owners and at the last meeting they stated all would be done in 60 days. There was a 40 foot hole in the structure and it's only been half-way repaired since it was last reviewed.

Consensus to give a 30-day extension

787 Shawnee Street – Single-family house: All repairs complete.
Consensus to remove from demolition list

Commissioner Preisinger moved to proceed with the consensus of the Commission on each property as discussed. Commissioner Griswold seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Public Hearings:

Public Hearing for Unsafe or Dangerous Structure – Fire Damaged Structure at 228-230 Ottawa Street

Open Public Hearing:

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

Staff and Public Comments:

- Public Works Director Mike McDonald provided the following information:
 - On June 25, 2019 the structure was damaged by fire
 - On July 22, 2019 property owners James and Frances Patterson were issued a building permit to commence repairs
 - The City received a check in the amount of \$11,250.00 (15% of the insurance proceeds as required by city ordinance)
 - Staff recommends the owner be given 90 days to complete the repairs
- Public Comments:

Larry Patterson owner resides at 1205 S 15th Street

 - Is a builder and obtained the permits to complete the repairs
 - Has met all inspections to date
 - Waiting on Electrical and then sheet rock

Close Public Hearing:

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

Consider Resolution B-2238

- Commissioner Bauder moved to approve Resolution B-2238 giving the owner 90 days to complete the repairs. Commissioner Griswold seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

7:51 -- City Manager Kramer asked for a five minute recess to set up some video for the next items.

7:56 -- The Mayor called the meeting was back to order following the recess

Public Hearing to Consider the Adoption of a Redevelopment Project Plan North Gateway Redevelopment District; Project Area 3

Open Public Hearing:

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

Staff and Public Comments:

- City Manager Paul Kramer provided the following information:
 - Explained the Tax Incremental Finance (TIF) district that was put in place in 2011
 - On projects numbers 1 and 2 the City issued debt and used the income generated from the new businesses to pay the debt
 - One of the primary goals in the project was to add the Commanders Inn property to the project due to several issues to include criminal activities on the property
 - We do not know what properties are going into this property tonight

- For the developers to secure financing they need the project plan to be signed off on by the City
- The primary purpose for creating the redevelopment district was to initiate the process upon which the City may proceed in establishing redevelopment projects within the district in order to generate incremental taxes (tax incremental revenues) for the funding of permissible infrastructure and property acquisition within the established redevelopment district. Tax incremental means the amount of real property taxes collected from real property located within the redevelopment district that is in excess of the amount of real property taxes which is collected from the base year assessed valuation.
- September 9, 2019 the Leavenworth Planning Commission reviewed the plan and found it to be consistent with the Comprehensive Plan
- The submitted plan includes the requirements of the state statutes
- A Preliminary Site Plan is included in the plan
- The Development Agreement is currently be worked on by the Developer and will be presented at the November 12, 2019 Commission Meeting for review and approval
- Other Comments:
- Developers
 - Kevin Lee: with Polsinelli Law Firm representing the Developers
 - Have closed on all properties on the site as a commitment to the project
 - Property is in the hands of Cadence (the developer)
 - Is following all the statutory requirements
 - Working on the Development Agreement
 - Will bring back to the Commission with a rendition of the property
- Commission Comments
 - Commissioner Bauder stated she would like to see a grocery store in the area
 - Commissioner Preisinger thanked the developers for taking on the project, removal of the Commanders Inn and the investment they are taking on
- Scott Cunningham 211 Arch Street
 - Recommend or endorse the project with a condition that the city does not issue a blank check without a guarantee
 - Appearance should take in to account the historic area and Gateway areas
 - Supports the project but make sure these key areas are addressed
- City Manager Kramer
 - Development Regulations address landscaping requirements
 - We do not have any existing overlay districts
 - Development Regulations will govern allowed uses and appearance
- John Karrasch 2404 S. 15th Street (Member of the City Planning Commission)
 - During the Planning Commission meeting, the developer provided the information
 - Did not think the site plan would be the final site plan but now looks like it will be
 - Opposed on how it is being arranged on the site and the Comprehensive Plan
 - Does not represent what we want for a Gateway area and a welcome to the community
 - Does not think an ATM and gas station is the look we want
 - The bank required an ATM on the corner as part of the agreement

- Not the image that the city wants for international visitors at the Fort
- Using creativity could group and redesign the area to create more social spaces rather than cash and gas
- Ask the Commission not to lose site of the vision of the City
- Commissioner Griswold:
 - Were told that the planning commission agreed 6-0 in favor and asked Mr. Karrasch if he voted for it
 - Mr. Karrasch said he did but thinks it would be more thought out
- Kevin Lee:
 - What is present is a likely potential for this development
 - Still needs to come back to planning and development to meet code requirements
 - The visual appearance will be drastically improved on what is currently there
- Danielle Wells – 606 Pawnee Street
 - Lives in the area and would appreciate that property owners in the area are notified
 - High criminal activity in the apartments in the area
 - Does not want her house torn down
- Tripp Ross – Cadaence Leasing and Management
 - Was at the planning commission
 - Plan will continue to change and evolve as users commit
 - Quality of the project needs to be high to entice users
 - Will make the area as attractive as possible so users will want to be in the area and stay there
 - Cannot dictate to national users on what their buildings will look like
 - Needs a mixture of uses that will best bring people to the site
- City Attorney David Waters:
 - The plan before the commission is very general in the types of uses and business in the area
 - Beyond that the development regulations will govern
- Justin Kaufman (Fort Gate Properties)
 - The plan is consistent with what will be on the property
 - Will be putting over a million dollars into the project just to move dirt before beginning the development
 - Anticipates starting demolition work on the site in the spring
- **Citizen 813 N 8th Street**
 - Sees Cars coming off post and heading off post going across the bridge
 - Makes her angry that they will still spend their money else were
 - Do not need a day care
 - Does not enhance the neighborhood
 - Concerns about the amount of traffic
 - Problem keeping restaurants in that area

- On FaceBook people are talking about the need for a family sit-down restaurant, small businesses and grocery store in the area

Close Public Hearing:

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

Consider and Place Ordinance on First Consideration:

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

Public Hearing to Consider Creation of Community Improvement District (CID)

Open Public Hearing:

- Commissioner Bauder move to open the public hearing. Commissioner Dedeke seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Staff and Public Comments:

- City Manager Paul Kramer provided the following information:
 - The issue before the Commission is a public hearing for the creation of a Community Improvement District (CID) in the area generally located at the southwest and southeast corners of North 6th Street and Metropolitan Avenue in the City of Leavenworth. The estimated cost of the project is \$7,099,864.00 plus interest accrued and borrowed money.
 - The petition requests that the City levy a CID sales tax within the Improvement District. The petitioner is requesting a 1.25% sales tax CID for 22 years.
- Public Comments: None

Close Public Hearing:

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

Consider and Place Ordinance on First Consideration:

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

Public Hearing to Consider Petition to Vacate a Portion of an Alley in Block 97 of Day & Macaulay's Subdivision

Open Public Hearing:

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

Staff and Public Comments:

- Public Works Director Mike McDonald provided the following information:
 - On September 24, 2019 a petition from Justin Kaufman, Manager of Fort Gate Properties LLC to vacate the alley in Block 97 Day and Macaulay Subdivision was received by the City Clerk
 - All utility companies were notified. Utility companies are permitted to use the public alleys for their infrastructure and several utility lines exist on this property and must be addressed
 - Evergy and ATT both had issues with lines in the area

- The property owner is responsible for facilitating relocation and or easements
- City Attorney David Waters:
 - Brought to the attention Section 2 of the proposed ordinance which is blank
 - Will be worked out or reserve back to the utility rights of the utilities when brought back for second consideration
- Kevin Lee:
 - Does not have an issue with the language of utility rights reserved
- Public Comments: None

Close Public Hearing:

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

Consider and Place Ordinance on First Consideration:

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

CONSENT AGENDA:

Commissioner Bauder moved to approve claims for October 5, 2019 through October 18, 2019, in the amount of \$1,715,787.27; Net amount for Payroll #21 effective October 11, 2019, in the amount of \$331,482.94; (No Police & Fire Pension). Commissioner Dedeke seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Other:

Mayor Wilson:

- Invited everyone to Bob Dougherty Park on Saturday for the ribbon cutting of the new basketball court

Commissioner Griswold:

- Appreciates all the community comment on the redevelopment plan

Commissioner Preisinger:

- Veterans Day parade November 11th
- Last meeting before the election; urge everyone to vote
- Commission Dedeke not running again; has served on the Commission with him for 11 years
- Commissioner Dedeke does what he feels is correct for the community and integrity never to be questioned

City Manager Kramer:

- Meeting on November 12th is not officially canceled; if anything comes up we will hold a study session

Adjourn:

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

Time Meeting Adjourned 9:11 p.m.

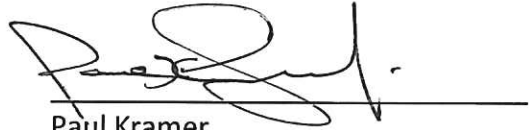
Minutes taken by City Clerk Carla K. Williamson, CMC

**POLICY REPORT
SECOND CONSIDERATION ORDINANCE 8116
TO ADOPT A REDEVELOPMENT PROJECT PLAN FOR A
REDEVELOPMENT PROJECT AREA WITHIN AN ESTABLISHED
REDEVELOPMENT DISTRICT**

NOVEMBER 12, 2019



Carla K. Williamson, CMC
City Clerk



Paul Kramer
City Manager

BACKGROUND:

At the October 22, 2019 City Commission meeting the City Commission reviewed and placed on first consideration:

**AN ORDINANCE OF THE CITY OF LEAVENWORTH, KANSAS ADOPTING A
REDEVELOPMENT PROJECT PLAN FOR A REDEVELOPMENT PROJECT AREA
WITHIN AN ESTABLISHED REDEVELOPMENT DISTRICT IN THE CITY.**

There have been no changes since first consideration.

Ordinance No. 8116 is now presented for second consideration and requires a roll call vote with no less than two-thirds of the members-elect to pass the ordinance.

ATTACHMENTS:

- Ordinance No. 8116

(Published in *The Leavenworth Times* on November 15, 2019)

ORDINANCE NO. 8116

**AN ORDINANCE OF THE CITY OF LEAVENWORTH, KANSAS
ADOPTING A REDEVELOPMENT PROJECT PLAN FOR A
REDEVELOPMENT PROJECT AREA WITHIN AN ESTABLISHED
REDEVELOPMENT DISTRICT IN THE CITY.**

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

WHEREAS, on January 25, 2011, the governing body of the City (the “City Commission”) adopted Ordinance No. 7863, which established the North Gateway Redevelopment District (the “District”) within the City, all in accordance with K.S.A. 12-1770 *et seq.*, as amended (the “Act”); and

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

WHEREAS, in consultation with the Planning Commission of the City of Leavenworth, Kansas (the “Planning Commission”), in accordance with the Act, the City has prepared a redevelopment project plan (the “Project Plan”) for redevelopment project area 3 (“Project Area 3”) within the District, a copy of which is attached hereto as *Exhibit A*; and

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

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

WHEREAS, the City adopted Resolution No. B-2232 on September 10, 2019 calling for a public hearing considering the adoption of the Project Plan to be held by the City Commission on October 22, 2019; and

WHEREAS, the public hearing was held and closed on October 22, 2019, with presentation of the Project Plan and an opportunity for all interested persons to be heard regarding the proposed Project Plan.

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

Section 1. Approval of Project Plan. The City Commission hereby adopts the Project Plan pursuant to the Act, subject to the condition that the developer of the project proposed for the Project Area, Fort Gate Properties, LLC, and the City will enter into a Development Agreement by no later than November 15, 2019, on terms which are mutually satisfactory to City and such developer.

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

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

Section 4. Effective Date. This Ordinance shall be effective from and after final passage by the City Commission, approval by the Mayor and publication in the official newspaper of Leavenworth, Kansas. Provided, that this Ordinance shall not be published unless and until the above condition regarding the development agreement has been satisfied. If the above condition has not been satisfied by November 15, 2019, this Ordinance shall not be effective, and shall be deemed revoked without further action on the part of the City Commission.

PASSED by no less than two-thirds of the members-elect of the City Commission of the City of Leavenworth, Kansas on November 12, 2019.

CITY OF LEAVENWORTH, KANSAS

By: _____
Jermaine Wilson, Mayor

[SEAL]

Attest:

Carla Williamson, City Clerk

EXHIBIT A

(Project Plan – Attached)

Submitted August 23, 2019

TAX INCREMENT FINANCING REDEVELOPMENT PROJECT PLAN

PROJECT AREA 3



NORTH GATEWAY REDEVELOPMENT DISTRICT

Submitted to the Governing Body of the City of Leavenworth, Kansas (the "City"), and prepared in consultation with the City's Planning Commission, all in accordance with K.S.A. § 12-1770 *et seq.*

City of Leavenworth
City Clerk's Office

AUG 30 2019

Received by *Williamson*

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- A) Legal Description of Project Area
- B) Map of Project Area
- C) Preliminary Site Plan
- D) Estimated Budget
- E) TIF Revenue Projections
- F) TIF District Projections
- G) Legal Description of Project Area 1
- H) Legal Description of Project Area 2
- I) Meeting Minutes

I. INTRODUCTION

A) Redevelopment District

Pursuant to the Kansas Tax Increment Financing Act, K.S.A. 12-1770, *et. seq.*, as amended (“**TIF Act**”), Kansas municipalities are authorized to establish redevelopment districts and tax increment financing (“**TIF**”) redevelopment project plans for property within their jurisdiction. Redevelopment districts may be created based upon certain findings by the municipality, including that the property in such district constitutes a “blighted area” as defined in the TIF Act.

On January 25, 2011, the City of Leavenworth, Kansas (the “**City**”), after conducting a duly noticed public hearing in accordance with the TIF Act, found and determined that certain real property, generally described as an area bounded by North 7th Street to the west, Metropolitan Avenue to the north, North 4th Street to the east and Pawnee Street to the south, all in the City of Leavenworth, Leavenworth County, Kansas (the “**Property**”), is located within a “blighted area” and, in turn, constitutes an “eligible area” (as defined in the TIF Act). Based, in part, upon such finding, through the adoption of Ordinance No. 7863, the City established a redevelopment district known as the North Gateway Redevelopment District that encompasses the Property (the “**District**”), and approved the District Plan (as defined below) for redevelopment of the District, all in accordance with the TIF Act.

The approved district plan for the District (the “**District Plan**”) is generally described in the Downtown/North Leavenworth Redevelopment Master Plan under the character area identified as “North Gateway Business and Innovation Campus,” which proposes a campus themed commercial center in a 20 square block area which includes the District, and which proposes facilities to include a high-quality hotel, office, retail and mixed-use facilities, and all related public infrastructure improvements. The Redevelopment Project (as defined herein) is consistent with such District Plan for redevelopment of the District.

B) Existing Redevelopment Project Areas

That certain North Gateway Redevelopment District [First] Hotel Project Plan, dated January 12, 2012 (the “**First Project Plan**”), was approved by the City on April 24, 2012 through the adoption of Ordinance No. 7895. The First Project Plan has been implemented by the construction and opening of a Fairfield Inn & Suites by Marriott within the First Hotel Project Plan Area, as more particularly described on Exhibit G attached hereto (“**Project Area 1**”).

That certain North Gateway Redevelopment District Second Hotel Project Plan, dated March 3, 2016 (the “**Second Project Plan**”), was approved by the City on May 10, 2016 through the adoption of Ordinance No. 7991. The Second Project Plan has been implemented by the construction and opening of a TownePlace Suites by Marriott within the Second Hotel Project Plan Area, as more particularly described on Exhibit H attached hereto (“**Project Area 2**”).

C) **Redevelopment Project**

For Gate Properties, LLC (or assigns, the “**Developer**”), is pleased to present this Tax Increment Financing Redevelopment Project Plan for Project Area 3 of the District (this “**Project Plan**”) to the City for its consideration and approval in accordance with the TIF Act.¹

In order to promote, stimulate and develop the general and economic welfare of the City, this Project Plan provides for the acquisition of approximately 3.5+/- acres at the southwest and southeast corners of N 6th Street and Metropolitan Avenue in the City, as legally described on Exhibit A and generally depicted on Exhibit B attached hereto (the “**Project Area**” or “**Project Area 3**”), and the development and redevelopment thereof to consist of one or more of the following uses, without limitation (the “**Redevelopment Project**”): commercial uses, retail, restaurant and/or office uses, hotel and hospitality uses, residential uses, public space, open space and/or similar, related or appurtenant uses, other structures and uses (including, but not limited to, commercial, mixed-use, residential, non-profit, governmental and/or community uses), and all associated site work, infrastructure, utilities, storm water control, access, street improvements, landscaping, lighting, parking facilities, and any other items allowable under the TIF Act. As initially proposed, the Redevelopment Project contemplates redevelopment of the Project Area into a Class A commercial development, as generally depicted (for illustrative purposes only) on the preliminary site plan attached hereto as Exhibit C.²

This Project Plan is premised on the need for a combination of public and private financing to reach the mutual goals of the City and the Developer in developing the Redevelopment Project.

As shown herein, this Project Plan proposes to finance Reimbursable Project Costs (as defined below in Section III.D.2) by capturing through TIF the following (collectively, the “**TIF Revenues**”): (i) 100% of the allowable ad valorem “tax increment” (as defined in the TIF Act) (“**Tax Increment**”) generated within the Project Area for the duration of the twenty (20) year TIF term; (ii) 50% of the City’s sales tax generated within the Project Area, based on the City’s general sales tax rate of two percent (2.0%), for the duration of the twenty (20) year TIF term; and (iii) as soon as the existing TIF bonds are retired, 100% of the Tax Increment generated from the real property and improvements within Project Area 1 and Project Area 2 (the “**Existing TIF Increment**”), estimated to be approximately \$250,000 annually, through the expiration of the respective twenty (20) year TIF terms.

Based on projected property values and sales within the Project Area over the term of this Project Plan, coupled with projections for the Existing TIF Increment, it is estimated that the TIF will generate present value TIF Revenues of \$2,771,719 (present value at 5.50%), plus financing and interest expenses, to reimburse the Developer for Reimbursable Project Costs.

¹ In accordance with the TIF Act, this Project Plan was prepared in consultation with the Planning Commission of the City, including a finding by the Planning Commission, on September 9, 2019, that this Project Plan is consistent with the intent of the comprehensive plan for the development of the City.

² Notwithstanding the foregoing or anything in this Project Plan (including, without limitation, the Exhibits attached hereto) to the contrary: (i) this Project plan is not intended to be inflexible, (ii) the descriptions of uses and buildings, and all sizing, design, cost (including Reimbursable Project Cost) and revenue figures, and any and all other descriptions and projections set forth herein, are estimates only and subject to change in the Developer’s discretion, including as actual costs are incurred and revenues received, and (iii) nothing herein shall be construed as a cap (or caps) on the amount of TIF being requested or the amount of TIF that is available to help pay Reimbursable Project Costs of the Redevelopment Project.

In addition to the TIF financing described in this Project Plan, community improvement district (“CID”) financing is also contemplated to help finance costs of the Redevelopment Project, which CID financing is assumed in the feasibility study summarized below in Section II.D. Specifically, in accordance with K.S.A. 12-6a26 *et seq.*, as amended (the “CID Act”), a one and one-quarter percent (1.25%) add-on CID sales tax is contemplated, with all revenues generated therefrom to be available to reimburse certain CID eligible expenses, to the extent they constitute a “cost” of a “project” (as defined in the CID Act), which will be in addition to the TIF Revenues available for payment of Reimbursable Project Costs.

II. REDEVELOPMENT PROJECT PLAN

A) Description and Map of Project Area

The redevelopment project area to be redeveloped pursuant to this Project Plan consists of the Project Area. A legal description and general map depiction of the Project Area are attached hereto as Exhibit A and Exhibit B, respectively, both of which are incorporated herein by this reference.

B) Reference to District Plan

The Project Area is within the District established by the City’s Governing Body on January 25, 2011 pursuant to Ordinance No. 7863, a copy of which is attached hereto as Exhibit E. This Project Plan is consistent with the approved District Plan as described therein.

C) Description of Buildings and Facilities

This Project Plan provides for the acquisition of certain real property within the Project Area, the demolition of certain existing structures thereon, and the development and redevelopment thereof to consist of some or all of the following uses and improvements, without limitation: commercial uses, retail, restaurant and/or office uses, hotel and hospitality uses, residential uses, public space, open space and/or similar, related or appurtenant uses, other structures and uses (including, but not limited to, commercial, mixed-use, residential, non-profit, governmental and/or community uses), and all associated site work, infrastructure, utilities, storm water control, access, street improvements, landscaping, lighting, parking facilities, and any other items allowable under the TIF Act. As initially proposed, the Redevelopment Project contemplates redevelopment of the Project Area into a Class A commercial development, as generally depicted (for illustrative purposes only) on the preliminary site plan attached hereto as Exhibit C.

The foregoing description of uses, and the buildings and other structures Developer plans to construct for such uses within the Project Area, is not intended to be inflexible. This Project Plan contemplates reasonable variations from the descriptions of the Redevelopment Project as described above.

D) Feasibility Study

A study was performed to determine whether the Redevelopment Project’s estimated benefits, TIF Revenues and other revenues are expected to exceed the cost, and that the income therefrom will be sufficient to pay the costs of the Redevelopment Project. This effort involved using consultants with experience and expertise in the actual design, development, financing, management, leasing and operation of projects of similar scope and nature. Outside

resources were also consulted to compare and verify the cost and revenue projections including outside industry sources and actual taxing jurisdiction data where available. The results of this study are as follows:

1. Project Costs

The total estimated cost to complete the Redevelopment Project, including land acquisition, and hard and soft costs, is \$7,099,864. A detailed budget is attached hereto as Exhibit D.

2. Eligible Costs

Only “redevelopment project costs” (as defined in the TIF Act) (referred to herein as “**Reimbursable Project Costs**”) are eligible for TIF financing and reimbursement. Of the total costs listed above, \$4,433,057, plus interest and financing costs, are estimated to qualify under the TIF Act as Reimbursable Project Costs, meaning that only those costs may be financed using TIF Revenues. The estimated Reimbursable Project Costs are set forth by type and amount on Exhibit D attached hereto.

The Developer is requesting reimbursement with TIF Revenues as provided in the TIF Act on a pay-as-you-go-basis; provided, however, that the Developer may request, and the City shall reasonably consider (subject to approval by the City’s governing body in its sole and absolute discretion), the issuance of special obligation TIF bonds, notes or other obligations to pay for (or reimburse) Reimbursable Project Costs.

3. Project Revenues

Based on projected property values and sales volumes within the Project Area over the term of this Project Plan, coupled with estimates for the Existing TIF Increment, it is anticipated that the TIF will generate present value TIF Revenues of \$2,771,719 (present value at 5.50%), plus financing and interest expenses, to reimburse the Developer for Reimbursable Project Costs. TIF Revenue projections are set forth in Exhibit E attached hereto. Pursuant to the TIF Act, TIF Revenues can be generated from at least three (3) sources:

- a) *Ad Valorem Tax Increment Revenues* – The amount of real property taxes collected from real property located within the District that is in excess of the amount of real property taxes which is collected from the base year assessed valuation (excluding any *ad valorem* taxes not allowed to be captured under the TIF Act);
- b) *Local Sales Tax Revenues* - The retail sales dollar amount generated within the Project Area multiplied by the City’s portion of the total retail sales tax rate, as described above; and
- c) *Transient Guest Tax Revenues* – The hotel sales dollar amount generating transient guest tax revenues within the Project Area multiplied by the applicable transient guest tax rate.

Ad Valorem Tax Increment Captured

According to the Leavenworth County Appraiser's Office, the 2011 assessed value for the Project Area was \$306,192. This serves as the base value against which future Redevelopment Project values can be compared in order to determine the amount of ad valorem Tax Increment revenues that will be generated by the Project Area. This Project Plan proposes to finance Reimbursable Project Costs by capturing 100% of the allowable ad valorem Tax Increment generated within the Project Area for the duration of the twenty (20) year TIF term. Upon completion of the Redevelopment Project, the Project Area is estimated to have an assessed value of approximately \$799,000. The difference between the base year assessed value and the assessed value at full build-out, when multiplied by the applicable mill levy rate subject to TIF, is estimated to create annual Tax Increment of approximately \$53,320 available for capture, which is assumed to grow annually with inflation thereafter.

Local Sales Tax Revenues Captured

This Project Plan also proposes to finance Reimbursable Project Costs by capturing 50% of the City's sales tax generated within the Project Area, based on the City's general sales tax rate of two percent (2.0%), for the duration of the twenty (20) year TIF term. It is estimated that sales within the Project Area will be approximately \$4,100,000 at stabilization. Based on the 1.0% undedicated portion of the City's 2.0% general sales tax rate, TIF Revenues derived from the City sales tax at full build-out are anticipated to be approximately \$41,000, which are assumed to grow annually with inflation thereafter.

Existing Tax Increment Captured

As soon as the existing TIF bonds are retired, this Project Plan also proposes to finance Reimbursable Project Costs by capturing 100% of the Existing TIF Increment generated within Project Area 1 and Project Area 2 of the District. The Existing TIF Increment is estimated to be approximately \$250,000 annually.

4. Tax Increment Revenues

Based on the Project Area's projected ad valorem Tax Increment, City sales tax revenues and Existing TIF Increment, as heretofore described, it is estimated that present value TIF Revenues of \$2,771,719 (present value at 5.50%), plus interest accrued on borrowed money, will be available to the Developer to help finance Reimbursable Project Costs associated with the Redevelopment Project.

5. Significant Contribution to Economic Development of the City

The development contemplated in this Project Plan will provide significant economic development for the City, including by, among other things, providing increased tax revenues to the City, redeveloping the Project Area into a much higher and better use and remedying blight, and increasing employment opportunities and general commerce for area residents. The feasibility study shows that the Redevelopment Projects benefits and tax increment revenue and other available revenues will be sufficient to pay for the Redevelopment Project costs.

6. Sufficiency of Tax Increment Revenues Compared to Projects Costs

The total of the Reimbursable Project Costs that can be financed under the TIF Act is limited by the amount of TIF Revenues generated within the Project Area. Thus, by operation, the TIF Revenues will always equal or exceed the amount of the Reimbursable Project Costs. Based on this Project Plan's (1) Reimbursable Project Costs and (2) present value of TIF Revenues, the revenues are expected to pay for the Reimbursable Project Costs as contemplated under the TIF Act when supplemented by the CID sales tax revenues, as heretofore described, and private debt and equity.

•	Redevelopment Project Costs:	\$	\$7,099,864
•	TIF Revenues (present value of 5.50%)	\$	2,771,719
•	Other Sources:	\$	4,328,145

7. Effect on Outstanding Special Obligation Bonds

It is anticipated that the TIF Revenues will be disbursed on a pay-as-you-go basis, and that the Existing TIF Increment will not be available to pay for Reimbursable Project Costs until after the existing TIF bonds are retired. Thus, the Redevelopment Project costs are not anticipated to have any effect on any outstanding special obligation bonds payable from the revenues described in K.S.A. 12-1774(a)(1)(D), and amendments thereto.

E) Relocation Plans

The Developer owns all of the property within the Project Area (excluding only adjacent public-right-of-way), and as such, it is not anticipated that the acquisition of real property by the City in carrying out the provisions of the TIF Act will result in the relocation or displacement of any persons, families or businesses. However, in the event that the City does acquire any real property within the District in carrying out the provisions of the TIF Act, and, as a result, any persons, families and businesses move from real property located in the District, or move personal property from real property located in the District, the Developer shall make a \$500 payment to such persons, families and businesses. No persons or families residing in the District shall be displaced unless and until there is a suitable housing unit available and ready for occupancy by such displaced person or family at rents within their ability to pay. Such housing units shall be suitable to the needs of such displaced persons or families and must be decent, safe, sanitary and otherwise standard dwelling. Developer shall provide for payment of any damages sustained by a retailer, as defined in K.S.A. 79-3702, by reason of liquidation of inventories necessitated by relocation from the District.

F) Meetings and Minutes

Following approval of this Project Plan, the clerk of the City shall attach, as Exhibit I hereto, a copy of the minutes of all City meetings where the Redevelopment Project and/or this Project Plan was discussed.

III. CONCLUSION

Based on the foregoing, this Project Plan proposes to utilize the TIF Revenues from the District to finance Reimbursable Project Costs, plus interest accrued on borrowed money. The Developer hereby submits this Project Plan for public hearing and due consideration in accordance with the TIF Act.

[Remainder of Page Intentionally Left Blank]

EXHIBIT A

Legal Description of Project Area

All of Lots 1 through 32, inclusive, and all of the vacated alley, all in Block 97, DAY AND MACAULAY'S SUBDIVISION, together with part of vacated Sioux Street, all in the City of Leavenworth, Leavenworth County, Kansas, together being more particularly described as follows:

Beginning at the Southwest corner of said Block 97, said point being on the East right-of-way line of 7th Street, as it now exists;

thence North 11°05'01" West, along said East right-of-way line, a distance of 304.57 feet, to a point of intersection with the South right-of-way line of Metropolitan Avenue, as it now exists;

thence North 85°02'02" East, along said South right-of-way line, a distance of 385.57 feet, to a point of intersection with the West right-of-way line of 6th Street, as it now exists;

thence South 11°13'47" East, along said West right-of-way line, a distance of 262.51 feet, to a point of intersection with the North right-of-way line of Cheyenne Street, as it now exists;

thence South 78°46'13" West, along said North right-of-way line, a distance of 384.05 feet to the Point of Beginning,

containing 108,791 square feet, or 2.497 acres, more or less;

AND

All that part of the North Fractional portion of Block G, together with all of Lots 11 through 16 inclusive, Block G, LEAVENWORTH; all in the City of Leavenworth, Leavenworth County, Kansas more particularly described as follows:

Beginning at Southwest corner of said Block G said point being on the east right-of-way line of 6th Street, as it now exists;

thence North 11°13'47" West, along said East right-of-way line a distance of 255.92 feet, to a point of intersection with the South right-of-way line Metropolitan Avenue, as it now exists;

thence North 85°02'02" East, along said South right-of-way line, a distance of 122.75 feet, to the Northwest corner of Lot 1, METRO SUBDIVISION, a subdivision in said City of Leavenworth;

thence South 12°48'14" East, along the West line of said Lot 1, a distance of 117.99 feet;

thence North 78°26'27" East, continuing along said West line, a distance of 19.03 feet;

thence South $11^{\circ}05'57''$ East, continuing along the West line of said Lot 1 and the West line of Lot 2, said METRO SUBDIVISION, a distance of 124.69 feet, to the Southwest corner of said Lot 2 said point being on the North right-of-way line of Cheyenne Street, as it now exists;

thence South $78^{\circ}46'13''$ West, along said North right-of-way line, a distance of 144.00 feet to the Point of Beginning,

containing 33,358 square feet, or 0.766 acres, more or less.

EXHIBIT B

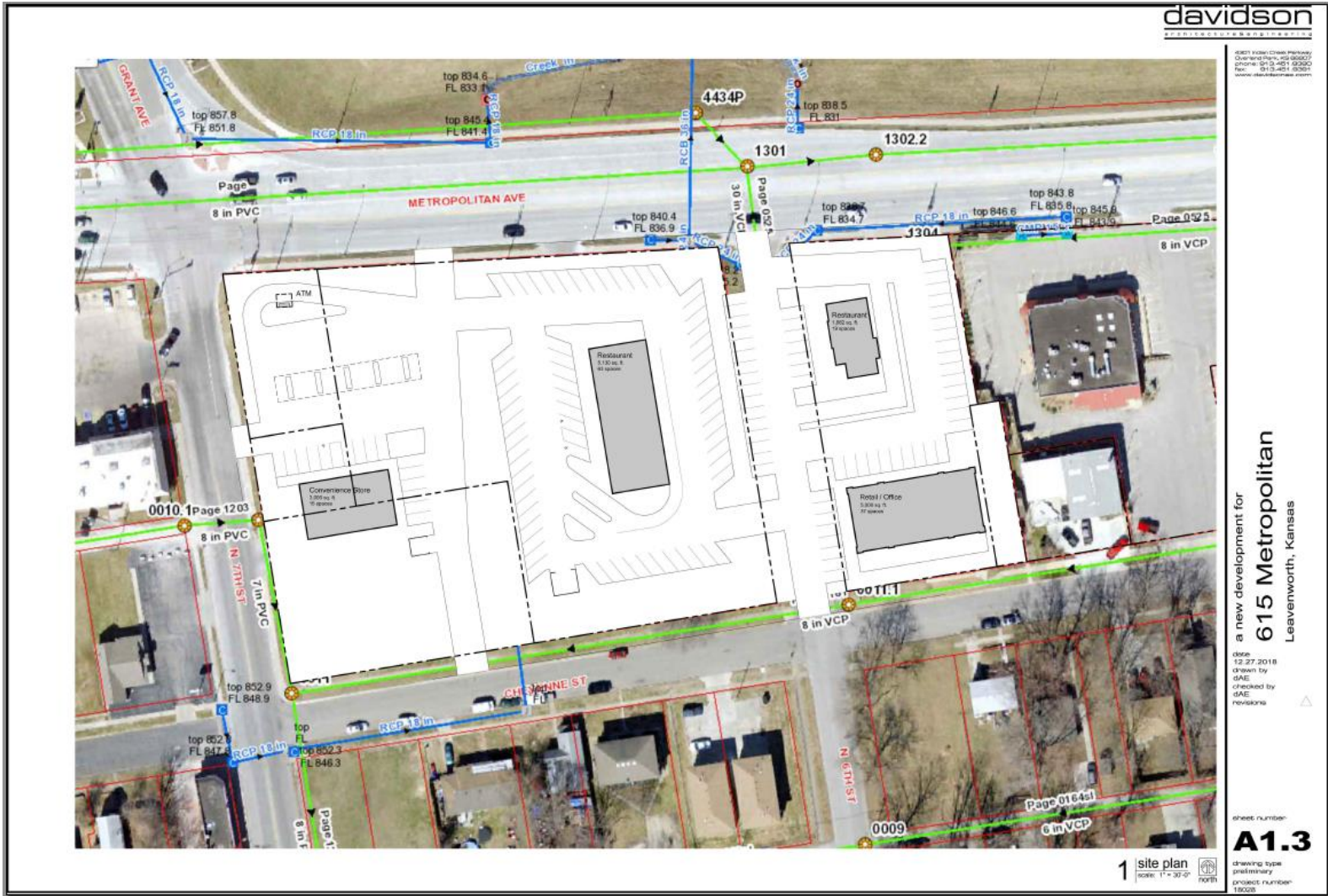
Map of Project Area

(Project Area 3)



EXHIBIT C

Preliminary Site Plan



a new development for
615 Metropolitan
 Leavenworth, Kansas

date: 12.27.2018
 drawn by: GAE
 checked by: GAE
 revisions:

sheet number:
A1.3

EXHIBIT D

Estimated Budget

Line Item	Redevelopment Project Costs	Reimbursable Project Costs
Site Acquisition	\$2,507,500	\$2,507,500
Hard Costs	\$3,333,555	\$1,543,555
Soft Costs	\$1,258,810	\$382,002
Totals	\$7,099,865	\$4,433,057

EXHIBIT E

TIF Revenue Projections

TIF Year	Base Assessed Value	Projected Assessed Value	Base Sales	Projected Sales	Projected Sales	TIF Increment	City Sales Tax	Existing TIF Increment	Total TIF
1	\$ 306,192	\$ 306,192	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2	\$ 306,192	\$ 306,192	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
3	\$ 306,192	\$ 799,000	\$ -	\$ 4,100,000	\$ 4,100,000	\$ 53,320	\$ 41,000	\$ -	\$ 94,320
4	\$ 306,192	\$ 806,990	\$ -	\$ 4,141,000	\$ 4,141,000	\$ 54,185	\$ 41,410	\$ 250,000	\$ 345,595
5	\$ 306,192	\$ 815,060	\$ -	\$ 4,182,410	\$ 4,182,410	\$ 55,058	\$ 41,824	\$ 250,000	\$ 346,882
6	\$ 306,192	\$ 823,210	\$ -	\$ 4,224,234	\$ 4,224,234	\$ 55,940	\$ 42,242	\$ 250,000	\$ 348,182
7	\$ 306,192	\$ 831,443	\$ -	\$ 4,266,476	\$ 4,266,476	\$ 56,831	\$ 42,665	\$ 250,000	\$ 349,495
8	\$ 306,192	\$ 839,757	\$ -	\$ 4,309,141	\$ 4,309,141	\$ 57,730	\$ 43,091	\$ 250,000	\$ 350,822
9	\$ 306,192	\$ 848,155	\$ -	\$ 4,352,233	\$ 4,352,233	\$ 58,639	\$ 43,522	\$ 250,000	\$ 352,161
10	\$ 306,192	\$ 856,636	\$ -	\$ 4,395,755	\$ 4,395,755	\$ 59,556	\$ 43,958	\$ 250,000	\$ 353,514
11	\$ 306,192	\$ 865,203	\$ -	\$ 4,439,712	\$ 4,439,712	\$ 60,483	\$ 44,397	\$ 250,000	\$ 354,880
12	\$ 306,192	\$ 873,855	\$ -	\$ 4,484,110	\$ 4,484,110	\$ 61,419	\$ 44,841	\$ 250,000	\$ 356,260
13	\$ 306,192	\$ 882,593	\$ -	\$ 4,528,951	\$ 4,528,951	\$ 62,365	\$ 45,290	\$ 250,000	\$ 357,654
14	\$ 306,192	\$ 891,419	\$ -	\$ 4,574,240	\$ 4,574,240	\$ 63,320	\$ 45,742	\$ 250,000	\$ 359,062
15	\$ 306,192	\$ 900,333	\$ -	\$ 4,619,983	\$ 4,619,983	\$ 64,284	\$ 46,200	\$ -	\$ 110,484
16	\$ 306,192	\$ 909,337	\$ -	\$ 4,666,182	\$ 4,666,182	\$ 65,258	\$ 46,662	\$ -	\$ 111,920
17	\$ 306,192	\$ 918,430	\$ -	\$ 4,712,844	\$ 4,712,844	\$ 66,242	\$ 47,128	\$ -	\$ 113,371
18	\$ 306,192	\$ 927,614	\$ -	\$ 4,759,973	\$ 4,759,973	\$ 67,236	\$ 47,600	\$ -	\$ 114,836
19	\$ 306,192	\$ 936,890	\$ -	\$ 4,807,572	\$ 4,807,572	\$ 68,240	\$ 48,076	\$ -	\$ 116,315
20	\$ 306,192	\$ 946,259	\$ -	\$ 4,855,648	\$ 4,855,648	\$ 69,253	\$ 48,556	\$ -	\$ 117,810
21					\$ 4,904,205				
22					\$ 4,953,247				
Total / Gross Revenues						\$ 1,099,360	\$ 804,205	\$ 2,750,000	\$ 4,653,565
Net Present Value @ 5.50%						\$ 603,714	\$ 445,076	\$ 1,722,929	\$ 2,771,719

EXHIBIT F

TIF District Ordinance

[ATTACHED]

EXHIBIT G

Legal Description of Project Area 1

Block F Description:

Block "F", Leavenworth City Proper, City of Leavenworth, Leavenworth County, Kansas, more fully described as follows: Beginning at the Southwest Corner of said Block "F"; thence North 11 degrees 26'10" West for a distance of 208.24 feet along the Easterly right of way line of Fifth Street to the Southerly right of way line of Metropolitan Avenue; thence North 84 degrees 58'21" East for a distance of 340.63 feet along said Southerly right of way to the Westerly right of way of Fourth Street (U.S. Highway 73); thence South 39 degrees 21'37" East for a distance of 53.06 feet along said Westerly right of way; thence South 11 degrees 26'01" East for a distance of 125.00 feet along said Westerly right of way to the Northerly right of way of Cheyenne Street; thence South 78 degrees 49'34" West for a distance of 363.35 feet along said Northerly right of way to the point of beginning.

Together with and subject to covenants, easements and restrictions of record.

Said property contains 68003 Square Feet, 1.56 Acres, more or less.

Lots 17-31, Block 59 Description

Lots 17 thru 31, Block 59, Leavenworth City Proper, Leavenworth County, Kansas, more fully described as follows: Beginning at the Northwest corner of said Block 59; thence North 78 degrees 49'34" East for a distance of 363.35 along the Southerly right of way of Cheyenne Street to the Westerly right of way of Fourth Street (U.S. Highway 73); thence South 11 degrees 26'01" East for a distance of 127.52 feet along said Westerly right of way to the Southeast corner of said

Lot 31; thence South 78 degrees 53'10" West for a distance of 363.34 feet along the Southerly line of Lots 17 thru 31 to the Easterly line of Fifth Street; thence North 11 degrees 26'10" West for a distance of 127.14 feet to the point of beginning. Together with and subject to covenants, easements and restrictions of record.

Said property contains 46263.6 Square Feet, 1.06 Acres, more or less.

Cheyenne Street

All that part of Cheyenne Street between Fourth and Fifth Street lying South of Block F and North of Block 59, Leavenworth City Proper, City of Leavenworth, Leavenworth County, Kansas, more fully described as follows: Beginning at the Northwest corner of said Block 59; thence North 11 degrees 26'10" West for a distance of 60.00 feet along the Easterly right of way of Fifth Street and to the Southwest corner of said Block F; thence North 78 degrees 49'34" East for a distance of 363.35 feet along the Southerly line of said Block F to the Westerly right of way of Fourth Street (U.S. Highway 73); thence South 11 degrees 26'01" East for a distance of 60.00 feet along said Westerly right of way to the Northeast corner of said Block 59; thence South 78 degrees 49'34" West for a distance of 363.35 feet along the Northerly line of said Block 59 to the point of beginning.

Together with and subject to covenants, easements and restrictions of record.

Said property contains 21800.7 Square Feet, 0.5 Acres, more or less.

Total Property

Block F, Lots 17 thru 31 Block 59, Leavenworth City Proper, and that part of Cheyenne Street between Fourth and Fifth Street lying South of Block F and North of Block 59, Leavenworth City Proper, City of Leavenworth, Leavenworth County, Kansas, more fully described as follows: Beginning at the Southwest corner of Lot 17 of said Block 59; thence North 11 degrees 26'10" West for a distance of 395.38 feet along the Easterly right of way of Fifth Street and to Southerly right of way line of Metropolitan Avenue; thence North 84 degrees 58'21" East for a distance of 340.63 feet along said Southerly right of way to the Westerly right of way of Fourth Street (U.S. Highway 73); thence South 39 degrees 21'37" East for a distance of 53.06 feet along said Westerly right of way; thence South 11 degrees 26'01" East for a distance of 312.52 feet along said Westerly right of way to the Southeast corner of said Lot 31; thence South 78 degrees 53'10" West for a distance of 363.34 feet along the Southerly line of Lots 17 thru 31 to the Easterly line of Fifth Street; thence North 11 degrees 26'10" West for a distance of 127.14 feet to the point of beginning.

Together with and subject to covenants, easements and restrictions of record.

Said property contains 136067.8 Square Feet, 3.12 Acres, more or less.

EXHIBIT H

Legal Description of Project Area 2

Redevelopment Description:

Lots 3 thru 16, Block 59, and that part of the platted 14 foot alley lying North of said Lots, Leavenworth City Proper, City of Leavenworth, Leavenworth County, Kansas, more fully described as follows: Beginning at the Southwest corner of said Block 59; thence North 11 degrees 27'13" West for a distance of 139.06 feet along the West line of said Block 59 to the North line of said alley; thence North 78 degrees 53'10" East for a distance of 338.35 feet along the North line of said alley, said line also being the South line of First City Hotel Subdivision; thence South 11 degrees 26'01" East for a distance of 140.20 feet along the East line of said Lot 3 to the South line of said Block 59; thence South 79 degrees 04'48" West for a distance of 338.31 feet along said South line to the point of beginning. Together with and subject to covenants, easements, and restrictions of record.

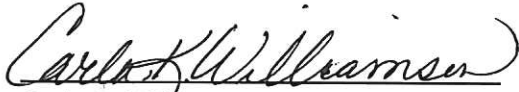
EXHIBIT I

Meeting Minutes

[CITY CLERK TO ATTACH]

**POLICY REPORT
SECOND CONSIDERATION ORDINANCE 8117
CREATING A COMMUNITY IMPROVEMENT DISTRICT
PETITIONED BY FORT GATE PROPERTIES LLC**

NOVEMBER 12, 2019



Carla K. Williamson, CMC
City Clerk



Paul Kramer
City Manager

BACKGROUND:

At the October 22, 2019 City Commission meeting the City Commission reviewed and placed on first consideration:

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

There have been no changes since first consideration.

Ordinance No. 8117 is now presented for second consideration and requires a roll call vote.

ATTACHMENTS:

- Ordinance No. 8117

(Published in *The Leavenworth Times* on November 15, 2019)

ORDINANCE NO. 8117

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

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

WHEREAS, on August 30, 2019, a petition (the "Petition") signed by Fort Gate Properties, LLC (or assigns, the "Petitioner"), was filed with the City Clerk of the City of Leavenworth, Kansas (the "City") in accordance with the Act, which Petition proposed the creation of a community improvement district (the "District") under the Act and the imposition of a one and one-quarter percent (1.25%) community improvement district (CID) sales tax therein (the "CID Sales Tax"), in order to assist in financing costs of the Project (defined below); and

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

WHEREAS, the City Commission of the City of Leavenworth, Kansas (the "City Commission") intends to create the District and to levy the CID Sales Tax as requested in the Petition; and

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

WHEREAS, the City Commission adopted Resolution No. B-2233 on September 10, 2019 directing that a public hearing on the proposed District within the City be held on October 22, 2019, declaring its intent to impose the CID Sales Tax, and requiring that the Clerk for the City of Leavenworth, Kansas provide for notice of such public hearing as set forth in the Act; and

WHEREAS, notice of the public hearing containing the following information: (a) the time and place of the hearing, (b) the general nature of the Project, (c) the estimated cost of the Project, (d) the proposed method of financing the Project, (e) the proposed amount of the CID Sales Tax, (f) a map of the proposed District, and (g) a legal description of the proposed District, was mailed to all property owners within the proposed District on October 3, 2019, and published once each week for two (2) consecutive weeks in *The Leavenworth Times*, the official City newspaper, on October 3, 2019 and October 10, 2019; and

WHEREAS, on October 22, 2019, the City Commission conducted a public hearing on the proposed District, the proposed Project, and estimated costs thereof and the method of financing the same, all in accordance with the Act; and

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

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

Section 1. Creation of District. The City Commission hereby finds and determines that it is advisable to create, in accordance with the provisions of the Act, the District within the City. Provided, that the City Commission's approval and creation of the District is conditioned and contingent upon the proposed developer of the Project, Fort Gate Properties, LLC, and the City of Leavenworth, Kansas, entering into a Development Agreement by no later than November 15, 2019, on terms which are mutually satisfactory to City and such developer. A map generally outlining the boundaries of the District is attached hereto as *Exhibit A* and incorporated herein by reference. The legal description of the District is set forth on *Exhibit B*, attached hereto and incorporated herein by reference.

Section 2. Authorization of Project. The general nature of the project to be funded by the proposed community improvement district (the "**Project**") is to acquire, redevelop and improve certain real property generally located at the southwest and southeast corners of North 6th Street and Metropolitan Avenue in the City of Leavenworth, Kansas. The Project may be described in a general manner as consisting of some or all of the following uses, without limitation: commercial uses, retail, restaurant and/or office uses, hotel and hospitality uses, residential uses, public space, open space and/or similar, related or appurtenant uses, other structures and uses (including, but not limited to, commercial, mixed-use, residential, non-profit, governmental and/or community uses), and all associated site work, infrastructure, utilities, storm water control, access, street improvements, landscaping, lighting, parking facilities, and any other items allowable under K.S.A. 12-6a26 *et seq.*, which Project is hereby authorized.

Section 3. Approval of Estimated Cost of the Project. The estimated or probable cost of the Project is approximately \$7,099,864, plus interest accrued on borrowed money, which is hereby approved.

Section 4. Method of Financing. It is proposed that the Project be financed through a combination of private equity, private debt, tax increment financing and CID pay-as-you-go

financing (as defined in the Act); provided, however, that the developer of the Project may request, and the City shall reasonably consider (subject to approval by the City Commission in its sole and absolute discretion) the issuance of special obligation CID bonds, notes or other obligations to pay for (or reimburse) costs of the Project. This method of financing is hereby approved.

Section 5. Imposition of CID Sales Tax. In order to provide for the payment of the Project, the City Commission hereby levies the CID Sales Tax within the District in an amount of 1.25% for a period of 22 years, as authorized under the Act.

Section 6. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the City Commission and publication once in the official City newspaper. Provided, that this Ordinance shall not be published unless and until the above condition regarding the development agreement has been satisfied. If the above condition has not been satisfied by November 15, 2019, this Ordinance shall not be effective, and shall be deemed revoked without further action on the part of the City Commission

**ADOPTED BY THE CITY COMMISSION OF THE CITY OF LEAVENWORTH,
KANSAS ON NOVEMBER 12, 2019.**

Jermaine Wilson, Mayor

[SEAL]

ATTEST:

Carla Williamson, City Clerk

EXHIBIT A

Map of District



EXHIBIT B

Legal Description of District

All of Lots 1 through 32, inclusive, and all of the vacated alley, all in Block 97, DAY AND MACAULAY'S SUBDIVISION, together with part of vacated Sioux Street, all in the City of Leavenworth, Leavenworth County, Kansas, together being more particularly described as follows:

Beginning at the Southwest corner of said Block 97, said point being on the East right-of-way line of 7th Street, as it now exists;

thence North 11°05'01" West, along said East right-of-way line, a distance of 304.57 feet, to a point of intersection with the South right-of-way line of Metropolitan Avenue, as it now exists;

thence North 85°02'02" East, along said South right-of-way line, a distance of 385.57 feet, to a point of intersection with the West right-of-way line of 6th Street, as it now exists;

thence South 11°13'47" East, along said West right-of-way line, a distance of 262.51 feet, to a point of intersection with the North right-of-way line of Cheyenne Street, as it now exists;

thence South 78°46'13" West, along said North right-of-way line, a distance of 384.05 feet to the Point of Beginning,

containing 108,791 square feet, or 2.497 acres, more or less;

AND

All that part of the North Fractional portion of Block G, together with all of Lots 11 through 16 inclusive, Block G, LEAVENWORTH; all in the City of Leavenworth, Leavenworth County, Kansas more particularly described as follows:

Beginning at Southwest corner of said Block G said point being on the east right-of-way line of 6th Street, as it now exists;

thence North 11°13'47" West, along said East right-of-way line a distance of 255.92 feet, to a point of intersection with the South right-of-way line Metropolitan Avenue, as it now exists;

thence North 85°02'02" East, along said South right-of-way line, a distance of 122.75 feet, to the Northwest corner of Lot 1, METRO SUBDIVISION, a subdivision in said City of Leavenworth;

thence South 12°48'14" East, along the West line of said Lot 1, a distance of 117.99 feet;

thence North 78°26'27" East, continuing along said West line, a distance of 19.03 feet;

thence South 11°05'57" East, continuing along the West line of said Lot 1 and the West line of Lot 2, said METRO SUBDIVISION, a distance of 124.69 feet, to the Southwest corner of said Lot 2 said point being on the North right-of-way line of Cheyenne Street, as it now exists;

thence South 78°46'13" West, along said North right-of-way line, a distance of 144.00 feet to the Point of Beginning,

containing 33,358 square feet, or 0.766 acres, more or less.

[Remainder of page intentionally blank.]

**POLICY REPORT
SECOND CONSIDERATION ORDINANCE 8118
VACATING AN ALLEY IN BLOCK 97 DAY AND MCAULAY'S SUBDIVISION**

NOVEMBER 12, 2019



Carla K. Williamson, CMC
City Clerk



Paul Kramer
City Manager

BACKGROUND:

At the October 22, 2019 City Commission meeting the City Commission reviewed and placed on first consideration:

**AN ORDINANCE VACATING ALL THAT PART OF THE EAST-WEST ALLEY
IN BLOCK 97, DAY AND MACAULAY'S SUBDIVISION, A SUBDIVISION IN
THE CITY OF LEAVENWORTH, LEAVENWORTH COUNTY, KANSAS,
AMENDING APPENDIX B, ARTICLE II, ALLEY VACATIONS OF THE CITY OF
LEAVENWORTH CODE OF ORDINANCES.**

Language in Section 2 related to public utilities has been added to the final ordinance as discussed on October 22, 2019 meeting.

Ordinance No. 8118 is now presented for second consideration and requires a roll call vote.

ATTACHMENTS:

- Ordinance No. 8118

(Summary Published in the Leavenworth Times on November 15, 2019)

ORDINANCE NO. 8118

AN ORDINANCE VACATING ALL THAT PART OF THE EAST-WEST ALLEY IN BLOCK 97, DAY AND MACAULAY'S SUBDIVISION, A SUBDIVISION IN THE CITY OF LEAVENWORTH, LEAVENWORTH COUNTY, KANSAS, AMENDING APPENDIX B, ARTICLE II, ALLEY VACATIONS OF THE CITY OF LEAVENWORTH CODE OF ORDINANCES.

WHEREAS, a Petition for a vacation of all that part of the east-west alley in block 97, Day and Macaulay's Subdivision, a subdivision in the City of Leavenworth, Leavenworth County, Kansas; and

WHEREAS, the City Clerk of the City of Leavenworth, Kansas gave public notice of the same by publication in the official City newspaper on September 27, 2019 stating that a petition has been filed in the office of the City Clerk praying for such vacation, describing the property fully and setting October 22, 2019 as the hearing date on which the petition shall be presented to the Governing Body of the City for hearing and that at such time and place all persons interested can appear and be heard under the petition; and

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

WHEREAS, all utility companies were notified and agreed to such vacation with the stipulations noted in Section 2; and

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

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

Section 1. Vacation of an alley, previously platted, and being more fully described as:

All that part of the east-west alley in Block 97, DAY AND MACAULAY'S SUBDIVISION, in the City of Leavenworth, Leavenworth County, Kansas, together being more particularly described as follows:

Commencing at the Southwest corner of said Block 97, said point being on the East right-of-way line of 7th Street, as it now exists; thence North 11°05'01" West, along said East right-of-way line, a distance of 125.00 feet to the Northwest corner of Lot 16, said Block 97, to the POINT OF BEGINNING;

thence North 11°05'01" West, continuing along said East right-of-way line, a distance of 14.00 feet to the Southwest corner of Lot 17, said Block 97;

thence North 78°46'13" East, departing said East right-of-way line and along the South line of Lots 17, 18, and 19, inclusive, said Block 97, a distance of 71.69 feet, to the Southeast corner of said Lot 19, said point being the Southwest corner of Lot 20, said Block 97 and on the West line of the alley vacation as described in Ordinance No. 6551 recorded in Book 546, Page 1750;

thence South 11°13'47" East, departing said South line and along said West line of vacated alley, a distance of 14.00 feet, to the Northeast corner of Lot 14, said Block 97;

thence South 78°46'13" West, departing said West line of vacated alley and along the North line of Lots 14, 15, and 16, inclusive, said Block 97, a distance of 71.73 feet to the Point of Beginning, containing 1,004 square feet, or 0.023 acres, more or less.

(See attached Exhibits A & B).

Section 2: The city reserves to the city and to public utility companies all existing easements on any of the property described above including but not limited to those facilities belonging to Westar Energy (Evergy) and AT&T, if any, located upon such real property as of the date of this ordinance.

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

PASSED and APPROVED by the Governing Body on this 12th day of November 2019.

{Seal}

Jermaine Wilson, Mayor

ATTEST:

Carla K. Williamson, CMC, City Clerk

EXHIBIT A
Legal Description of Property to be Vacated

Alley in Block 97
Description

All that part of the east-west alley in Block 97, DAY AND MACAULAY'S SUBDIVISION, in the City of Leavenworth, Leavenworth County, Kansas, together being more particularly described as follows:

Commencing at the Southwest corner of said Block 97, said point being on the East right-of-way line of 7th Street, as it now exists; thence North 11°05'01" West, along said East right-of-way line, a distance of 125.00 feet to the Northwest corner of Lot 16, said Block 97, to the POINT OF BEGINNING;

thence North 11°05'01" West, continuing along said East right-of-way line, a distance of 14.00 feet to the Southwest corner of Lot 17, said Block 97;

thence North 78°46'13" East, departing said East right-of-way line and along the South line of Lots 17, 18, and 19, inclusive, said Block 97, a distance of 71.69 feet, to the Southeast corner of said Lot 19, said point being the Southwest corner of Lot 20, said Block 97 and on the West line of the alley vacation as described in Ordinance No. 6551 recorded in Book 546, Page 1750;

thence South 11°13'47" East, departing said South line and along said West line of vacated alley, a distance of 14.00 feet, to the Northeast corner of Lot 14, said Block 97;

thence South 78°46'13" West, departing said West line of vacated alley and along the North line of Lots 14, 15, and 16, inclusive, said Block 97, a distance of 71.73 feet to the Point of Beginning, containing 1,004 square feet, or 0.023 acres, more or less.



**POLICY REPORT
RESOLUTION B-2239
TO AUTHORIZE SERVING COMPLIMENTARY (FREE) ALCOHOLIC LIQUOR
LEAVENWORTH MAIN STREET PROGRAM ALIVE AFTER FIVE EVENTS**

NOVEMBER 12, 2019

Prepared by:


Carla K. Williamson, CMC

City Clerk

Approved by:


Paul Kramer

City Manager

ISSUE:

To consider a resolution to authorize serving complimentary (free) alcoholic liquor or cereal malt beverages to members of the general public during the "Alive After Five Events" to be held at various businesses as sponsored by Leavenworth Main Street Program from January 1, 2020 through December 31, 2020.

BACKGROUND:

State statute K.S.A. 41-104 allows authorization to serve complimentary (free) alcoholic liquor or cereal malt beverages to members of the general public on the unlicensed premises of businesses by the business owner or owner's agent. Leavenworth Main Street Program which is a non-profit 501©3 organization is sponsoring the "Alive After Five Events" to be held on the first Thursday of each month between the hours of 4:00 p.m. to 10:00 p.m. commencing on January 1, 2020 through December 31, 2020.

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

ACTION:

Approve Resolution B-2239 as presented.

ATTACHMENT:

- Resolution B-2239

RESOLUTION B-2239

WHEREAS, the City of Leavenworth, Kansas authorizes serving complimentary (free) alcoholic liquor or cereal malt beverages to members of the general public during the “Alive After Five Events” to be held at various businesses as sponsored by Leavenworth Main Street Program from January 1, 2020 through December 31, 2020.

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

Section 1. Pursuant to K.S.A. 41-104, authorization is hereby given to serve complimentary (free) alcoholic liquor or cereal malt beverages to members of the general public on the unlicensed premises of businesses by the business owner or owner's agent at the “Alive After Five Events” sponsored by Leavenworth Main Street Program which is a non-profit 501©3 organization, to be held on the first Thursday of each month between the hours of 4:00 p.m. to 10:00 p.m. commencing on January 1, 2020 through December 31, 2020.

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

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

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

PASSED AND APPROVED by the Governing Body this 12th day of November 2019.

CITY OF LEAVENWORTH, KANSAS

Jermaine Wilson, Mayor

{SEAL}

ATTEST:

Carla K. Williamson, CMC, City Clerk

Policy Report
Fort Gate Properties, LLC Development Agreement
November 12, 2019

Prepared by:



Paul Kramer
City Manager

Background:

In 2011, the City of Leavenworth created a Tax Increment Financing (TIF) district in the northeast corner of the City to spur development and remove blight from this important entry point into the City. The district, which spans Fourth Street west to Seventh Street and Metropolitan south to Pawnee Street was not generating interest from the private market, and the incentive tool – TIF – was necessary to spur activity. To this date, the move has been a success. The first two projects brought more than \$17 million in investment to the City and removed extreme blight. The remainder of the district had seen limited commercial interest, however, and provided multiple challenges in comparison to the first two projects. Among the challenges were large existing commercial structures, a block (Fifth Street to Sixth Street and Metropolitan to Cheyenne) with multiple property owners, considerable demolition and grading challenges, and other site challenges due to utilities. Since the creation of the district, staff met with approximately six different established developers to discuss projects of various sizes in the area west of the two existing hotels. Developers, working with their own data and City provided information, have contacted dozens of national brand restaurants, fast food and retail outlets in their due diligence on proposals.

In 2018, City staff began meeting with representatives from Cadence Commercial Real Estate, who were interested in pursuing a project in the area. Cadence is a seasoned development firm and understood both the challenges and the opportunities of the area. Cadence was the only development team to request and receive a full tour and briefing related to Fort Leavenworth. They did so because they knew the standard data used to gauge development – roof tops, income, traffic counts, etc. – did not warrant the investment required to buy, raze and develop the property, but if they could include the story/impact of the Fort, they might be able to entice entities to take a chance on the area.

The City and Cadence have worked on different project footprints over the past two years, before settling on the project presented in the TIF Project Plan. The final footprint represents a commitment by the developer to create a high-quality impact on the area and the importance the City placed on removal of the Commanders Inn, which had become a public safety concern and blighting influence on the surrounding community.

Subject:

With the project and footprint finalized this summer, and with approval by the Planning Commission related to no conflicts with the Comprehensive Plan, City staff began working with representatives of Cadence Commercial Real Estate/Fort Gate Properties LLC in negotiating a development agreement for the construction of a project on 1.5 blocks of land from 7th Street east to the mid-block of 5th and 6th streets immediately south of Metropolitan Avenue.

The parties have proceeded through draft documents for this project and we have reached a point where both sides are in agreement with all sections and aspects of the development agreement.

The project plan related to the TIF district portion of this project is also on the Nov. 12 Commission Agenda, as is the Community Improvement District portion. The development agreement does not include any City-issued debt, and all incentives are based on a pay-as-you-go reimbursement for eligible development costs. In addition, the development agreement includes numerous incentive caps, as well as development benchmarks.

Along with the full development agreement included herein, the City Manager will present a summary of the project and incentives at the meeting.

Action:

To approve or deny the included development agreement between the City and Fort Gate Properties LLC.

ATTACHMENTS:

Development Agreement

DEVELOPMENT AGREEMENT
between the
CITY OF LEAVENWORTH, KANSAS
and
FORT GATE PROPERTIES, LLC
DATED AS OF NOVEMBER 12, 2019

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into this 12th day of November, 2019 (the "**Effective Date**"), by and between the **CITY OF LEAVENWORTH, KANSAS**, a municipal corporation organized according to Kansas law (the "**City**") and **FORT GATE PROPERTIES, LLC**, a limited liability company organized and existing according to Kansas law (the "**Developer**"). The City and the Developer are hereinafter collectively referred to as the "**Parties**" and each a "**Party**."

RECITALS

A. The Developer owns or will own certain real property in the City of Leavenworth, Kansas generally located at or in the vicinity of the southeast and southwest corners of North 6th Street and Metropolitan Avenue, as legally described in Exhibit A and depicted on Exhibit B (the "**Property**").

B. The Developer seeks to construct or improve upon the Property a phased development of buildings, facilities and improvements generally consisting of one or more of the following uses, without limitation: commercial uses, retail, restaurant and/or office uses, hotel and hospitality uses, residential uses, public space, open space and/or similar, related or appurtenant uses, other structures and uses (including, but not limited to, commercial, mixed-use, residential, non-profit, governmental and/or community uses), and all associated site work, infrastructure, utilities, storm water control, access, street improvements, landscaping, lighting, parking facilities, and any other items allowable under the TIF Act or the CID Act (as those terms are defined below) (collectively, the "**Project**"). As initially proposed, the Project contemplates redevelopment of the Property into a Class A commercial development, as generally depicted (for illustrative purposes only) on the preliminary site plan attached hereto as Exhibit C.

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

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

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

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

G. On January 25, 2011, pursuant to the TIF Act and through the adoption of Ordinance No. 7863, the City formed the North Gateway Redevelopment District (the "**Redevelopment District**"), which is generally described as an area bounded by North 7th Street to the west, Metropolitan Avenue to the north, North 4th Street to the east and Pawnee Street to the south and includes all of the Property.

H. On April 24, 2012, pursuant to the TIF Act and through the adoption of Ordinance No. 7895, the City approved that certain North Gateway Redevelopment District [First] Hotel Project Plan, dated January 12, 2012 (the "**First Project Plan**"), which has now been implemented by the construction and opening of a Fairfield Inn & Suites by Marriott within the First Hotel Project Plan Area, as more particularly described on **Exhibit H** attached hereto ("**Project Area 1**").

I. On May 10, 2016, pursuant to the TIF Act and through the adoption of Ordinance No. 7895, the City approved that certain North Gateway Redevelopment District Second Hotel Project Plan, dated March 3, 2016 (the "**Second Project Plan**"), which has now been implemented by the construction and opening of a TownePlace Suites by Marriott within the Second Hotel Project Plan Area, as more particularly described on **Exhibit I** attached hereto ("**Project Area 2**")

J. The Developer presented information necessary for, and assisted in the preparation of, the Tax Increment Financing Redevelopment Project Plan for "**Project Area 3**" of the North Gateway Redevelopment District (the "**Project Plan**"). The City and Developer presented the Project Plan to the Planning Commission of the City of Leavenworth, Kansas (the "**Planning Commission**") and, on September 9, 2019, the Planning Commission determined that the Project Plan is consistent with the intent of the comprehensive plan for development of the City. A copy of the Project Plan is attached hereto as **Exhibit F**. The terms Property and Project Area 3 may be used interchangeably herein.

K. On or about August 30, 2019, the Developer submitted a petition (the "**CID Petition**") to the City requesting the formation of a community improvement district ("**CID**"), which includes the Property and is coterminous with the boundaries of Project Area 3, as legally described in the CID Petition (the "**CID District**"). A copy of the CID Petition is attached hereto as **Exhibit G**. A map of the CID District is attached as "Exhibit B" to the CID Petition and a legal description of the CID District is attached as "Exhibit C" to the CID Petition.

L. On September 10, 2019 the City adopted Resolution No. B-2233, giving notice of a public hearing on October 22, 2019 regarding the advisability of creating the CID District.

M. On September 10, 2019, the governing body of the City adopted Resolution No. B-2232, setting October 22, 2019 for a public hearing to consider the adoption of the Project Plan.

N. On November 12, 2019, the City approved the creation of the CID District through the adoption of Ordinance No. [] (the "**CID Ordinance**"), which CID Ordinance approved certain public and private improvements related to the Project and within the CID District to be financed with Pay-As-You-Go Reimbursement (as defined herein) from the imposition of an additional one and one-quarter percent (1.25%) sales tax on all taxable sales within the CID District (the "**CID Sales Tax**"), to commence on January 1, 2021 or such other date mutually agreed to by the Parties.

O. On November 12, 2019, the governing body of the City approved the Project Plan through the adoption of Ordinance No. [], which provides for Pay-As-You-Go Reimbursement of Project Costs from the capture of: (i) 100% of the allowable Incremental Real Property Taxes (defined below) generated from the real property and improvements within Project Area 3 for the duration of the twenty (20) year TIF term; (ii) 50% of the Incremental Sales Taxes generated within Project Area 3 for the duration of the twenty (20) year TIF term; and (iii) as soon as the existing TIF bonds as to the First Project Plan are retired, 100% of the Incremental Real Property Taxes generated from the real property and improvements within Project Area 1 and, as soon as the existing TIF bonds as to the Second Project Plan are retired, 100% of the Incremental Property Taxes generated from the real property and improvements within Project Area 2, through the duration of the remainder of the respective twenty (20) year TIF terms applicable to the First Project Plan and the Second Project Plan (collectively, the "**Additional Property Tax Increment**"), all subject to the Public Assistance Cap, the Sales Tax Increment Cap, and the Additional Property Tax Increment Cap.

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

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

ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1 Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement.

- A. The terms defined in this Article include the plural as well as the singular.
- B. All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with general accounting principles, consistently applied.
- C. All references in this Agreement to designated "Articles," "Section" and other subdivisions are to be the designated Articles, Sections and other subdivisions of this instrument as originally executed.
- D. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.
- E. The Article and Section headings herein are for convenience only and shall not affect the construction of this Agreement.
- F. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section. The resolutions and ordinances of the City introduced or adopted by the City Commission which approve the Project Plan and the creation of the CID District, and the provisions of the CID Act and TIF Act (as defined herein and as amended), are hereby incorporated herein by reference and made a part of this Agreement, subject in every case to the specific terms hereof.

Section 1.2 Definitions of Words and Terms. Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement and the following meanings:

"Additional Property Tax Increment" shall have the meaning set forth in Recital O.

"Affiliate" means any subsidiary or affiliate which is owned or controlled by the Developer or one or more of its principals (such principal or principals having at least a 51% ownership interest in the Developer entity), or any entity which is owned or controlled by the Developer or one or more of its principals (such principal or principals having at least a 51% ownership interest in the Developer entity).

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

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

"Base Year Assessed Valuation" means the assessed valuation of the Property for the calendar year 2011; provided, that (i) if and when Developer should be entitled to any portion of the Additional Property Tax Increment hereunder attributable to Project Area 1, the term "Base Year Assessed Valuation" shall also include the assessed valuation of Project Area 1 for the

calendar year 2011; and (ii) if and when Developer shall be entitled to any portion of the Additional Property Tax Increment hereunder attributable to Project Area 2, the term "Base Year Assessed Valuation" shall also include the assessed valuation of Project Area 2 for the calendar year 2011.

"Base Year Sales Taxes" means the amount of Sales Taxes received by the City from the City's imposition of its general sales tax within the Property for the calendar year 2011.

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

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

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

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

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

"City" means the City of Leavenworth, Kansas.

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

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

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

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

"Developer" means Fort Gate Properties, LLC, a limited liability company organized and existing under the laws of the State of Kansas, and its permitted successors and assigns.

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

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

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

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

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

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

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

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

"Incremental Real Property Taxes" means that amount of Real Property Taxes collected from the Property that is in excess of the amount of Real Property Taxes collected from the Base Year Assessed Valuation; provided, that if and when Developer should be entitled to any portion of the Additional Property Tax Increment hereunder, the term "Incremental Real Property Taxes" shall also include that amount of Real Property Taxes collected from Project Area 1 and Project Area 2 that is in excess of the amount of Real Property Taxes collected from the Base Year Assessed Valuation.

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

"Pay-As-You-Go Reimbursement" means the reimbursement of Project Costs with TIF Revenue and CID Revenue from the City to the Developer, from time to time as such expenses

are documented and funds are available in the TIF Revenue Fund and the CID Sales Tax Fund, respectively and as further provided in this Agreement.

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

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

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

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

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

"Project Plan" means the Tax Increment Financing Redevelopment Project Plan for Project Area 3 of the North Gateway Redevelopment District, attached as **Exhibit F** hereto, prepared pursuant to the TIF Act and approved by Ordinance No. [] adopted by the City on November 5, 2019 after public hearing on October 22, 2019.

"Public Assistance Cap" means the maximum amount of TIF Revenue, CID Revenue, and Additional Property Tax Increment available for Project Costs, which, in the aggregate, shall not exceed Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00) plus Financing Costs; provided, that the Incremental Sales Tax portion of the TIF Revenue available for Project Costs shall itself be capped at \$1,000,000.00 (the **"Incremental Sales Tax Cap"**); and further provided, that the Additional Property Tax Increment portion of the TIF Revenue available for Project Costs shall itself be capped at \$2,750,000.00, subject to the terms of Section 3.7 below (the **"Additional Property Tax Increment Cap"**).

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

"Real Property Taxes" means all taxes levied on an ad valorem basis upon land and improvements within Project Area 3, excluding property taxes exempt or excluded from capture under the TIF Act or other applicable law; provided, that if and when Developer should be entitled to any portion of the Additional Property Tax Increment hereunder, the term "Real Property Taxes" shall also include all taxes levied on an ad valorem basis upon land and

improvements within Project Area 1 and Project Area 2, , excluding property taxes exempt or excluded from capture under the TIF Act or other applicable law.

"**Sales Taxes**" means revenue received by the City from the City's imposition of its general sales tax (currently at the rate of two percent (2.0%)) which are collected from taxpayers doing business within Project Area 3.

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

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

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

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

ARTICLE II PURPOSE OF AGREEMENT REPRESENTATIONS AND ACQUISITION OF PROJECT SITE

Section 2.1 Purpose of Agreement. The City hereby acknowledges that the completion of the Project is of significant importance to the City's economic development goals and further acknowledges that the City has authorized cooperation with Developer in the development of the Project.

Section 2.2 Representations of City. The City makes the following representations and warranties which to the best of the City's actual knowledge, are true and correct on the date hereof:

A. *Due Authority*. The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, subject to the limitations expressed herein or otherwise imposed by law, and this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions.

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

C. *No Litigation*. To the best of the City's knowledge, there is no litigation, proceeding or investigation pending or, to the knowledge of the City, threatened against the City with respect to the Project or this Agreement. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the City, threatened

against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of the terms and provisions of this Agreement.

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

Section 2.3 Representations of the Developer. The Developer makes the following representations and warranties, which to the best of the Developer's actual knowledge, are true and correct on the date hereof:

A. *Due Authority.* The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings.

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

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

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

**ARTICLE III
CONSTRUCTION AND FINANCING
REIMBURSEMENT OF PROJECT COSTS**

Section 3.1 Developer Work. Subject to the terms and conditions of this Agreement, the Developer shall use reasonable efforts to construct, or cause to be constructed the Project (collectively, the "**Developer Work**" for purposes of this Agreement). The Developer may make requests to the City for the reimbursement to the Developer for Project Costs in accordance with Section 3.8 of this Agreement. The Developer agrees that any and all Developer Work will be performed and completed according to Applicable Law and Requirements and as provided in this Agreement.

Section 3.2 Project Budget. Attached as **Exhibit D** is the Project Budget setting forth in detail the total estimated cost of the Project and designating by category Project Costs and costs to be wholly or partially financed by Developer.

Section 3.3 Reimbursement of City Expenses. The City shall be reimbursed from Project Funds for third-party professional fees and expenses, including legal and audit, incurred by the City in connection with the creation of the CID and approval of the Project Plan, and this Agreement, and also including consultants engaged by the City, to implement, administer and enforce this Agreement (the "**City Expenses**"). City Expenses shall include any documented and applicable portion of fees or increased fees from City's auditors in connection with the implementation and administration of this agreement and the funds established hereunder. The City shall use reasonable efforts to provide written notice to the Developer of the intent to incur City Expenses at least fifteen (15) days prior to incurring such expenses, with a general description of expected costs, but failure of the City to provide such notice shall in no event be deemed a City Event of Default under this Agreement. The City shall submit to the Developer an itemized statement of actual reimbursements received for City Expenses on a regular periodic basis, but no more often than quarterly.

Section 3.4 City Administrative Fee. The City shall collect the City Administrative Fee on all the net CID Sales Tax and TIF Revenue received by the City. The City Administrative Fee shall be used to cover the administration and other City costs incurred for the duration of this Agreement and shall be in addition to the costs identified in Section 3.3.

Section 3.5 Term; Creation of Project Funds.

A. *TIF Project Plan*. The term of the Project Plan shall commence upon publication of Ordinance No. [] and expire on the earlier of (i) the date this Agreement is otherwise terminated under its terms, (ii) the date that the Public Assistance Cap is met, or (iii) a date occurring twenty (20) years after publication of Ordinance No. [] (the "**TIF Term**"). During the TIF Term, the City shall establish and maintain the TIF Revenue Fund. All TIF Revenue received by the City shall be deposited into the TIF Revenue Fund for the purpose of reimbursing *first*, the City for Public Costs, and *second*, the Developer for other Project Costs as provided in the TIF Act and this Agreement. The City shall have sole control of disbursements from the TIF Revenue Fund, subject to the City's obligations under this Agreement. The TIF Revenue Fund shall contain three

separate segregated accounts: (i) 100% of Incremental Real Property Taxes shall be deposited into the Real Property Taxes Account within the TIF Revenue Fund; (ii) 50% of the Incremental Sales Taxes shall be deposited into the Sales Tax Account within the TIF Revenue Fund; and (iii) to the extent of Developer eligibility, 100% of the Additional Property Tax Increment shall be deposited into the Additional Property Tax Account. Incremental Real Property Taxes, Incremental Sales Taxes, and the Additional Property Tax Increment, if any, so deposited and any interest earned on such deposits will be used for the payment or reimbursement of Project Costs, in the manner set forth in this Agreement, subject always to the Public Assistance Cap, the Incremental Sales Tax Cap, and the Additional Property Tax Increment Cap.

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

Section 3.6 Pay-As-You-Go Funding of Project Costs. The City agrees to reimburse the Developer for Project Costs from the TIF Revenue Fund and the CID Sales Tax Fund on a Pay-As-You-Go Reimbursement basis in accordance with this Agreement. During the TIF Term, the City shall collect Incremental Real Property Taxes and Incremental Sales Taxes as set forth below, unless this Agreement shall be earlier terminated:

A. *Real Property Taxes.* Subject to Developer's obligation to pay Real Property Taxes as provided in this Agreement, the parties hereby understand and agree that one hundred percent (100%) of the Incremental Real Property Taxes shall be available to Developer for Project Costs, subject to the Public Assistance Cap.

B. *Sales Taxes.* In addition to the Real Property Taxes described herein, and pursuant to K.S.A. 12-1774(a), as amended, Sales Taxes shall be allocated to, and paid by, the collecting officer to the City Treasurer or other designated financial officer of the City. Sales Taxes shall be determined in accordance with the following procedures, subject to the TIF Act. An amount equal to fifty percent (50%) of the City's portion of the Incremental Sales Tax generated within Project Area 3 shall be available to Developer for Project Costs, subject to the Incremental Sales Tax Cap and the Public Assistance Cap.

C. *Additional Property Tax Increment.* As soon as the existing TIF bonds as to the First Project Plan are retired, an amount equal to 100% of the Additional Property Tax Increment attributable to the First Project Plan shall be available to Developer for

Project Costs and, as soon as the existing TIF bonds as to the Second Project Plan are retired, an amount equal to 100% of the Additional Property Tax Increment attributable to the Second Project Plan shall be available to Developer for Project Costs, all subject to the Additional Property Tax Increment Cap and the Public Assistance Cap, and subject to Developer's obligations and limitations under Section 3.7 below.

Section 3.7 Project.

A. *Incremental Real Property Taxes and Incremental Sales Taxes.*

The Developer acknowledges and agrees that Developer's right to reimbursement for Project Costs is contingent upon, and does not arise prior to, Developer incurring at least \$250,000.00 in third-party eligible Project Costs (excluding any real property acquisition costs) in pursuit of the Project; provided, however, that all TIF Revenue and CID Revenue collected prior to such time shall be deposited into the TIF Revenue Fund and CID Sales Tax Fund, respectively, and (subject to Section 3.7(B) below) made available to reimburse the Developer for Project Costs at such time as Developer has incurred at least \$250,000.00 in third-party eligible Project Costs (excluding any real property acquisition costs) in pursuit of the Project.

B. *Additional Property Tax Increment.* Upon satisfaction of the contingencies set forth in Section 3.6.C and Section 3.7.A above, an amount equal to One Million Dollars (\$1,000,000.00) of the Additional Property Tax Increment shall be available to Developer for Project Costs. The remaining Additional Property Tax Increment shall be available to Developer for Project Costs as follows:

- i. Upon full demolition of the former Commander's Inn building, pursuant to a validly-issued demolition permit, an additional \$500,000.00 of the Additional Property Tax Increment shall be available to Developer for Project Costs.
- ii. Upon the issuance of a building permit for one (1) commercial building for the Project of no less than 1,200 square feet, an additional \$250,000.00 of the Additional Property Tax Increment shall be available to Developer for Project Costs.
- iii. Upon the issuance of a second building permit for a second commercial building for the Project of no less than 1,200 square feet, an additional \$250,000.00 of the Additional Property Tax Increment shall be available to Developer for Project Costs.
- iv. Upon the issuance of a third building permit for a third commercial building for the Project of no less than 1,200 square feet, an additional \$250,000.00 of the Additional

Property Tax Increment shall be available to Developer for Project Costs.

- v. Furthermore, if any one of the individual building permits issued for the Project is issued for one (1) commercial building of no less than 4,000 square feet, then an additional \$250,000.00 of the Additional Property Tax Increment shall be available to Developer for Project Costs. Developer shall not be permitted to aggregate buildings or square footages of the buildings described in subsections B.ii through B.iv above as qualifying for the additional \$250,000.00 described in this subsection B.v.
- vi. Furthermore, if the initial tenant or operator of any one of the individual buildings constructed as a part of the Project (a) is a business or establishment that does not, at the time a full occupancy permit for such building is issued, then conduct business with a physical location within the city limits of the City of Leavenworth, Kansas, or the City of Lansing, and (b) occupies and operates from at least 50% of the rentable square footage of such building, then an additional \$250,000.00 of the Additional Property Tax Increment shall be available to Developer for Project Costs. Provided, that this provision shall not apply nor extend to any business of Developer or any of its Affiliates, nor to any new agent or franchisee that may operate an independent agency or franchise, or operate under a similar arrangement, of an existing business within the cities of Leavenworth and Lansing.

Section 3.8 Reimbursement of Project Costs from the Project Funds.

A. All requests for reimbursement or payment of Project Costs from the Project Funds shall be made in a Certificate of Project Costs in substantially the form attached hereto as Exhibit E, which Certificate shall be signed by the Developer Representative. The Developer shall provide itemized invoices, receipts, any lien waivers from vendors, contractors or subcontractors, and evidence of completion of Developer Work, or other information reasonably requested by the City to confirm that such costs were incurred, and are eligible for reimbursement under this Agreement. The Developer may submit electronic documentation, provided that, if requested by the City, original documents will also be delivered to the City by mail or hand delivery or by reputable national overnight mail services (e.g., Federal Express or UPS). Certificates of Project Costs may be submitted not more frequently than once every calendar quarter and payment of approved Project Costs shall occur once per calendar quarter.

B. The City reserves the right to have its engineer or other agents or employees inspect all work in respect of which a Certificate of Project Costs is submitted, to examine the supporting documentation and other records relating to all expenses

related to the invoices to be paid to determine that (1) the request constitutes reimbursement for Project Costs reimbursable from the appropriate Project Funds under this Agreement; (2) the expense was incurred; (3) no Developer Event of Default is outstanding, and no fact or circumstance exists which upon notice and the passage of time, would ripen into a Developer Event of Default; and (4) there is no fraud on the part of the Developer. The City may request and obtain from the Developer and other parties such other information as is reasonably necessary for the City to evaluate compliance with the terms of this Agreement.

C. The City shall have thirty (30) days after receipt of a Certificate of Project Costs and accompanying documentation referred to in subsections A and B above to review and respond by written notice to the Developer indicating acceptance of the Certificate, disapproving the Certificate, or documenting any deficiency in such Certificate. If the submitted Certificate and supporting documentation are acceptable, the City shall approve the Certificate and make, or cause to be made, direct reimbursement of Project Costs paid by Developer from the appropriate Project Funds, if sufficient funds are available in the appropriate Project Fund, and in the event the Project Fund or Project Funds are at that time insufficient to reimburse the Developer for such approved Project Costs, the City shall promptly reimburse the Developer on the first (1st) day of each calendar quarter as funds become available. If the City notifies the Developer of any deficiency or of its disapproval of, or requests additional documentation not originally requested as provided in subsection A above relating to, a Certificate of Project Costs, the Developer shall have the opportunity to provide such additional documentation, cure any deficiency or demonstrate that no deficiency exists and respond in writing to the City. City shall notify Developer within ten (10) business days of the receipt of Developer's response of its acceptance of the response or of any remaining deficiency. If an outstanding deficiency remains, the City shall reimburse the Developer for any approved Project Costs described in such Certificate, minus the disputed amount and the balance of the disputed amount shall carry forward until the deficiency is cured or otherwise resolved.

Section 3.9 Limitation on City's Payment Obligations. The City's obligations to reimburse Project Costs under this Agreement shall be limited by the amounts received by the City and properly deposited in the TIF Revenue Fund and the CID Sales Tax Fund as provided in the TIF Act and the CID Act, respectively, and this Agreement. City's obligations under this Agreement shall be subject to any requirements or limitations imposed by or provided under the Kansas Cash Basis Law (K.S.A. 10-1101, *et seq.*) or the Kansas Budget Law (K.S.A. 79-1935), both as amended.

Section 3.10 Right to Inspect and Audit. The Developer agrees that, up to two (2) years after a Certificate of Project Costs is submitted to the City for reimbursement, with reasonable advance notice and during normal business hours, the City shall have the right and authority to review, audit, and copy, from time to time, all the Developer's books and records relating to such costs (including, but not limited to, general contractor's sworn statements, general contracts, subcontracts, material purchase orders, waivers of lien, and paid receipts and invoices, which relate to such cost).

Section 3.11 Sales Tax Information.

A. Developer agrees that it will use commercially reasonable efforts to provide, and that it will use commercially reasonable efforts to, by appropriate agreement, require all parties holding or operated by, through, or under it, or otherwise operating from Project Area 3, to provide to the City: (i) documentation of sales tax receipts for each such business in Project Area 3, indicating the type and amount of the Sales Taxes paid by such business; and (ii) true and correct copies of all sales tax, use tax, and transient guest tax returns filed with the State with respect to sales in, on, or from Project Area 3, the same to be provided simultaneously with, or within ten (10) days after such filing.

B. For any and all portions of Project Area 3 which are leased and operated by operators or other third parties who are not Affiliates of Developer, Developer shall use good faith attempts to negotiate lease, covenants or other applicable agreements requiring that such businesses operating within Project Area 3 provide within a reasonable period of time (but in no event more than ten (10) days after filing), the City with true and correct copies of all sales tax, use tax and transient guest tax returns filed with the State with respect to sales in, on or from Project Area 3 for each business in Project Area 3. Developer will not be responsible for enforcement of such provision nor subject to any remedy hereunder for non-compliance with these provisions. If applicable and upon request, Developer shall, to the extent allowed by Applicable Laws and Requirements, provide to the Kansas Department of Revenue the names of all vendors operating in, on or from Project Area 3, their Kansas sales tax identification number, and their dates of operation.

**ARTICLE IV
GENERAL COVENANTS**

Section 4.1 CID District Use Restriction. At all times while this Agreement is in effect, consistent with the Project Plan and the CID Petition, the Project will operate as retail, restaurant, office and/or other commercial use(s), hotel and hospitality uses, residential uses, public space, open space and/or similar, related or appurtenant uses, or other uses (including, but not limited to, commercial, mixed-use, residential, non-profit, governmental and/or community use(s)). If Developer fails to use the portion of the Project in the CID District for one or more of the uses permitted hereunder, then the City may, in its sole and absolute discretion, (i) amend this Agreement to permit the changed use, but only after the Project Plan has been amended in accordance with the TIF Act, and (ii) without such amendment, exercise any remedy set forth in Section 6.2 hereof.

Section 4.2 Operation of Project. The Project shall be constructed and operated in compliance with all Applicable Laws and Requirements; provided, however, that, notwithstanding the foregoing or anything in this Agreement to the contrary, nothing herein shall be construed as imposing any continuous operation requirements. The Developer shall secure or cause to be secured any and all permits which may be required by the City and any other governmental agency having jurisdiction for the construction and operation of the Developer

Work, including but not limited to, obtaining all necessary rental licenses and paying any necessary fees to obtain required permits and licenses.

Section 4.3 Taxes, Assessments, Encumbrances and Liens. For that portion of the Project owned by the Developer or any Affiliate, the Developer shall pay or cause to be paid when due all real estate taxes and assessments within the Project. The Developer shall be permitted to contest the validity or amounts of any tax, assessment, encumbrance or lien as permitted by laws of the state of Kansas. The Developer shall promptly notify the City in writing of a protest of real estate taxes or valuation of the Developer's property within the Project Area and/or the CID District. Subject to the Developer's right to contest in good faith any mechanics' liens, as discussed below, the Developer agrees that no mechanics' or other liens shall remain against the Property, for labor or materials furnished in connection with any acquisition, construction, additions, modifications, improvements, repairs, renewals or replacements so made. The Developer shall not be in default under this Agreement if mechanics' or other liens are filed or established and the Developer contests in good faith such mechanics' liens, and in such event, Developer may permit the items contested to remain undischarged and unsatisfied during the period of contest and appeal from determination of such contest. The Developer agrees to indemnify and hold harmless the City in the event any liens are filed against the Property as a result of acts of the Developer, its agents or independent contractors, unless such liens are filed as a result of willful misconduct or negligence by the City or its officers, employees or agents.

Section 4.4 Covenant for Non-Discrimination. The Developer agrees, with respect to this Agreement and the Project, that it will observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex, national origin, ancestry or age and further covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, familial status, marital status, age, handicap, national origin, sexual orientation, gender identity, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property. The covenant established in this Section shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns and any successor in interest to the Property or any part thereof. The covenants contained in this Section shall remain for so long as this Agreement is in effect.

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

with the management, design, development, redevelopment and construction of the Project. This Section 4.5 shall survive the expiration or termination of this Agreement.

Section 4.6 Insurance. Developer agrees to maintain reasonable insurance in connection with the Project for an entity of Developer's size and financial capacity, including, but not limited to, commercial general liability insurance covering the Property and Developer's use thereof with a combined single limit for property damage and bodily injury of not less than \$1,000,000.

Section 4.7 Non-liability of Officials, Employees and Agents of the City. No recourse shall be had for the payment or reimbursement of any Project Costs or for any claim based thereon or upon any representation, obligation, covenant or agreement contained in this Agreement against any past, present or future official, officer, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officials, officers, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

Section 4.8 Construction of the Project. The Developer shall have the sole responsibility to contract for the design and construction of the Developer Work, subject to Applicable Laws and Requirements.

Section 4.9 Evidence of Completion.

A. Upon substantial completion of a definable portion of the Developer Work, the Developer shall deliver or cause to be delivered to the City Representative an engineer's certificate certifying that the same has been completed substantially in conformance with this Agreement (including the Project Plan incorporated by reference herein) and the plans approved by the City, if evidence of such substantial completion thereof has not been previously provided to the City. A temporary certificate of occupancy issued for such improvements may serve as same.

B. For purposes of this Section, "substantial completion" means the point at which the Project, or a definable portion of the Project, is sufficiently complete, in accord with the construction contract documents, so that the owner may have beneficial use or may occupy the Project or such definable portion thereof for the use for which it is designed and intended, without regard to occupancy permits that may be issuable under applicable law.

Section 4.10 Modifications. The construction of the Project may be modified or revised by written consent of the City and Developer to provide for other improvements generally consistent with the Project Plan and CID Petition. Substantial changes as defined by the TIF Act may require amendment of the Project Plan as provided by the TIF Act.

Section 4.11 Public Bidding Not Required. Notwithstanding the fact that certain of the improvements herein, including portions of the Developer Work, will be financed or reimbursed in whole or in part with public funding sources and will be deemed public improvements, public

bidding for the Project, and any component thereof, will not be required; however, all plans for public improvements shall require approval of City staff and comply with City inspection and testing requirements.

ARTICLE V ASSIGNMENT; TRANSFER

Section 5.1 Transfer and Assignments.

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

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

C. *Transfer of Obligations.* With the exception of Permitted Transfers, which do not require the prior written approval of the City, any proposed assignee of one or more obligations under this Agreement shall, by instrument in writing, for itself and its

successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer being assigned, and the Developer shall not be relieved from any obligations set forth herein or any liabilities arising hereunder unless and until the City specifically agrees to release the Developer from its obligations under this Agreement. The Developer agrees to record all such assignments in the office of the Register of Deeds of Leavenworth County, Kansas, in a timely manner following the execution of such assignments.

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

ARTICLE VI DEFAULTS AND REMEDIES

Section 6.1 Event of Default.

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

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

Section 6.2 Remedies Upon a Developer Event of Default.

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

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

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

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

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

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

Section 6.3 Remedies Upon a City Event of Default.

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

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

2. The Developer may pursue any available remedy at law or in equity by suit; action, mandamus, injunction or other proceeding to enforce and compel the performance of the duties and obligations of the City as set forth in this Agreement; to enforce or preserve any other rights or interests of the Developer under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the Developer resulting from such City Event of Default. Such remedies shall be cumulative. Notwithstanding anything in this Agreement to the contrary, the City shall not be liable for any special, punitive, remote or consequential damages, including (without limitation) lost profits.

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

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

Section 6.4 Excusable Delays; Extension of Times of Performance. Neither the City nor the Developer shall be deemed to be in default of this Agreement because of an Excusable Delay and all performance and other dates specified in this Agreement shall be extended, where the Party seeking the extension has acted diligently and delays and defaults are due to Excusable Delays. Any Party affected by an Excusable Delay shall use diligent effort to remove the cause or condition of the Excusable Delay and shall notify the other Party as soon as it discovers the cause or condition of Excusable Delay. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and the Developer, to which each Party shall reasonably agree at the request of another Party.

Section 6.5 Legal Actions. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Leavenworth County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.

ARTICLE VII INTENTIONALLY OMITTED

**ARTICLE VIII
GENERAL PROVISIONS**

Section 8.1 Development of Project.

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

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

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

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

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

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

Section 8.2 Mutual Assistance. The City and the Developer agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement.

Section 8.3 No Partnership. Nothing contained herein shall be construed as creating a partnership between the Developer and the City.

Section 8.4 Time of Essence. Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 8.5 Amendments. This Agreement may be amended only by the mutual consent of the Parties, by the adoption of a resolution or ordinance of the City approving said amendment, as provided by law, and by the execution of said amendment by the Parties or their successors in interest.

Section 8.6 Agreement Controls. The Parties agree that the Project will be implemented as agreed in this Agreement. This Agreement specifies the rights, duties and obligations of the City and Developer with respect to constructing the Project, the payment of Project Costs and all other methods of implementing the Project. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and are a full integration of the agreement of the Parties.

Section 8.7 Conflicts of Interest.

A. No member of the City's governing body or of any branch of the City's government that has any power of review or approval of any of the Developer's undertakings shall participate in any decisions relating thereto which affect such person's personal interest or the interests of any corporation or partnership in which such person is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict disclose, in writing, to the City the nature of such interest and seek a determination with respect to such interest by the City and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

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

Section 8.8 Term. Unless earlier terminated as provided herein, this Agreement shall remain in full force and effect until the later of expiration of: (i) the TIF Term, and (ii) the CID Term. In the event this Agreement is terminated prior to the expiration of the CID Term, the City shall take any and all actions necessary to cease imposition of the CID Sales Tax and terminate the CID District.

Section 8.9 Validity and Severability. It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws

and public policies of the State, and that the unenforceability (or modification to conform to such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 8.10 Required Disclosures. The Developer shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developer in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

Section 8.11 Tax Implications. The Developer acknowledges and represents that (i) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (ii) the Developer is relying solely upon its own tax advisors in this regard.

Section 8.12 Authorized Parties. Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval, notice or consent of the City or the Developer is required, or the City or the Developer is required to agree or to take some action at the request of the other Party, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the City Manager and for the Developer by any principal or officer of the Developer so authorized; and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither Party shall have any complaint against the other as a result of any such action taken. The City Manager may seek the advice, consent or approval of the City Commission before providing any supplemental agreement, request, demand, approval, notice or consent for the City pursuant to this Section.

Section 8.13 Notice. All notices and requests required pursuant to this Agreement shall be sent as follows:

To the City:

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

With a copy to:

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

To the Developer:

Fort Gate Properties, LLC
Attn: Justin Kaufmann & Trip Ross
7939 Floyd Street
Overland Park, KS 66204
justin@cadencekc.com & trip@cadencekc.com

With a copy to:

Polsinelli, PC
Attn: Korb W. Maxwell
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112
kmaxwell@polsinelli.com

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

Section 8.14 Kansas Law. This Agreement shall be governed by and contained in accordance with the laws of the State of Kansas.

Section 8.15 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement. Hand signatures transmitted by electronic mail in portable document format (PDF) or similar format are also permitted as binding signatures to this Agreement.

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

CITY:

CITY OF LEAVENWORTH, KANSAS
a Kansas municipal corporation

[seal]

By _____
Jermaine Wilson, Mayor

ATTEST:

By: _____
Carla Williamson, CMC, City Clerk

APPROVED AS TO FORM:

David E. Waters, City Attorney

ACKNOWLEDGEMENT

STATE OF KANSAS)
) ss.
COUNTY OF LEAVENWORTH)

Now on this _____ day of _____, 2019, before me, a notary public in and for said county and state, came Jermaine Wilson and Carla Williamson, Mayor and City Clerk, respectively, of the City of Leavenworth, Kansas, a Kansas municipal corporation duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Kansas, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

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

Notary Public

My Commission Expires:

EXHIBITS

Exhibit A	Legal Description of Property
Exhibit B	Depiction of Property
Exhibit C	Preliminary Site Plan
Exhibit D	Project Budget
Exhibit E	Form Certificate of Project Costs
Exhibit F	Project Plan
Exhibit G	CID Petition
Exhibit H	Description of Project Area 1
Exhibit I	Description of Project Area 2

Exhibit A

Legal Description of Property

All of Lots 1 through 32, inclusive, and all of the vacated alley, all in Block 97, DAY AND MACAULAY'S SUBDIVISION, together with part of vacated Sioux Street, all in the City of Leavenworth, Leavenworth County, Kansas, together being more particularly described as follows:

Beginning at the Southwest corner of said Block 97, said point being on the East right-of-way line of 7th Street, as it now exists;

thence North 11°05'01" West, along said East right-of-way line, a distance of 304.57 feet, to a point of intersection with the South right-of-way line of Metropolitan Avenue, as it now exists;

thence North 85°02'02" East, along said South right-of-way line, a distance of 385.57 feet, to a point of intersection with the West right-of-way line of 6th Street, as it now exists;

thence South 11°13'47" East, along said West right-of-way line, a distance of 262.51 feet, to a point of intersection with the North right-of-way line of Cheyenne Street, as it now exists;

thence South 78°46'13" West, along said North right-of-way line, a distance of 384.05 feet to the Point of Beginning,

containing 108,791 square feet, or 2.497 acres, more or less;

AND

All that part of the North Fractional portion of Block G, together with all of Lots 11 through 16 inclusive, Block G, LEAVENWORTH; all in the City of Leavenworth, Leavenworth County, Kansas more particularly described as follows:

Beginning at Southwest corner of said Block G said point being on the east right-of-way line of 6th Street, as it now exists;

thence North 11°13'47" West, along said East right-of-way line a distance of 255.92 feet, to a point of intersection with the South right-of-way line Metropolitan Avenue, as it now exists;

thence North 85°02'02" East, along said South right-of-way line, a distance of 122.75 feet, to the Northwest corner of Lot 1, METRO SUBDIVISION, a subdivision in said City of Leavenworth;

thence South 12°48'14" East, along the West line of said Lot 1, a distance of 117.99 feet;

thence North 78°26'27" East, continuing along said West line, a distance of 19.03 feet;

thence South $11^{\circ}05'57''$ East, continuing along the West line of said Lot 1 and the West line of Lot 2, said METRO SUBDIVISION, a distance of 124.69 feet, to the Southwest corner of said Lot 2 said point being on the North right-of-way line of Cheyenne Street, as it now exists;

thence South $78^{\circ}46'13''$ West, along said North right-of-way line, a distance of 144.00 feet to the Point of Beginning,

containing 33,358 square feet, or 0.766 acres, more or less.

Exhibit B

Depiction of Property



Exhibit E

Form Certificate of Project Costs

CERTIFICATE OF PROJECT COSTS

To: City Manager
Leavenworth, Kansas

RE: Development Agreement for Project Area 3 of the North Gateway Redevelopment District and Coterminous Community Improvement District

Terms used in this Certificate and not otherwise defined here shall have the meanings given them in the Development Agreement dated as of _____, 2019 ("Agreement") between the City of Leavenworth, Kansas and Fort Gate Properties, LLC.

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

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

9. All of the Developer's representations set forth in the Agreement remain true and correct as of the date hereof.

Dated this ____ day of _____, _____.

FORT GATE PROPERTIES, LLC
By: Developer Representative

By _____
Name (Printed) _____
Title _____

Approved for payment this ____ day of _____, _____.

By _____

Schedule I of Certificate of Project Costs

List of Project Costs

Exhibit F

Project Plan

(To be Attached)

Exhibit G

CID Petition

(To Be Attached)

Exhibit H

Description of Project Area 1

Block F Description:

Block "F", Leavenworth City Proper, City of Leavenworth, Leavenworth County, Kansas, more fully described as follows: Beginning at the Southwest Corner of said Block "F"; thence North 11 degrees 26'10" West for a distance of 208.24 feet along the Easterly right of way line of Fifth Street to the Southerly right of way line of Metropolitan Avenue; thence North 84 degrees 58'21" East for a distance of 340.63 feet along said Southerly right of way to the Westerly right of way of Fourth Street (U.S. Highway 73); thence South 39 degrees 21'37" East for a distance of 53.06 feet along said Westerly right of way; thence South 11 degrees 26'01" East for a distance of 125.00 feet along said Westerly right of way to the Northerly right of way of Cheyenne Street; thence South 78 degrees 49'34" West for a distance of 363.35 feet along said Northerly right of way to the point of beginning.

Together with and subject to covenants, easements and restrictions of record.
Said property contains 68003 Square Feet, 1.56 Acres, more or less.

Lots 17-31, Block 59 Description

Lots 17 thru 31, Block 59, Leavenworth City Proper, Leavenworth County, Kansas, more fully described as follows: Beginning at the Northwest corner of said Block 59; thence North 78 degrees 49'34" East for a distance of 363.35 along the Southerly right of way of Cheyenne Street to the Westerly right of way of Fourth Street (U.S. Highway 73); thence South 11 degrees 26'01" East for a distance of 127.52 feet along said Westerly right of way to the Southeast corner of said

Lot 31; thence South 78 degrees 53'10" West for a distance of 363.34 feet along the Southerly line of Lots 17 thru 31 to the Easterly line of Fifth Street; thence North 11 degrees 26'10" West for a distance of 127.14 feet to the point of beginning.' Together with and subject to covenants, easements and restrictions of record.

Said property contains 46263.6 Square Feet, 1.06 Acres, more or less.

Cheyenne Street

All that part of Cheyenne Street between Fourth and Fifth Street lying South of Block F and North of Block 59, Leavenworth City Proper, City of Leavenworth, Leavenworth County, Kansas, more fully described as follows: Beginning at the Northwest corner of said Block 59; thence North 11 degrees 26'10" West for a distance of 60.00 feet along the Easterly right of way of Fifth Street and to the Southwest corner of said Block F; thence North 78 degrees 49'34" East for a distance of 363.35 feet along the Southerly line of said Block F to the Westerly right of way of Fourth Street (U.S. Highway 73); thence South 11 degrees 26'01" East for a distance of 60.00 feet along said Westerly right of way to the Northeast corner of said Block 59; thence South 78 degrees 49'34" West for a distance of 363.35 feet along the Northerly line of said Block 59 to the point of beginning.

Together with and subject to covenants, easements and restrictions of record.

Said property contains 21800.7 Square Feet, 0.5 Acres, more or less.

Total Property

Block F, Lots 17 thru 31 Block 59, Leavenworth City Proper, and that part of Cheyenne Street between Fourth and Fifth Street lying South of Block F and North of Block 59, Leavenworth City Proper, City of Leavenworth, Leavenworth County, Kansas, more fully described as follows: Beginning at the Southwest corner of Lot 17 of said Block 59; thence North 11 degrees 26'10" West for a distance of 395.38 feet along the Easterly right of way of Fifth Street and to Southerly right of way line of Metropolitan Avenue; thence North 84 degrees 58'21" East for a distance of 340.63 feet along said Southerly right of way to the Westerly right of way of Fourth Street (U.S. Highway 73); thence South 39 degrees 21'37" East for a distance of 53.06 feet along said Westerly right of way; thence South 11 degrees 26'01" East for a distance of 312.52 feet along said Westerly right of way to the Southeast corner of said Lot 31; thence South 78 degrees 53'10" West for a distance of 363.34 feet along the Southerly line of Lots 17 thru 31 to the Easterly line of Fifth Street; thence North 11 degrees 26'10" West for a distance of 127.14 feet to the point of beginning.

Together with and subject to covenants, easements and restrictions of record.

Said property contains 136067.8 Square Feet, 3.12 Acres, more or less.

Exhibit I

Description of Project Area 2

Redevelopment Description:

Lots 3 thru 16, Block 59, and that part of the platted 14 foot alley lying North of said Lots, Leavenworth City Proper, City of Leavenworth, Leavenworth County, Kansas, more fully described as follows: Beginning at the Southwest corner of said Block 59; thence North 11 degrees 27'13" West for a distance of 139.06 feet along the West line of said Block 59 to the North line of said alley; thence North 78 degrees 53'10" East for a distance of 338.35 feet along the North line of said alley, said line also being the South line of First City Hotel Subdivision; thence South 11 degrees 26'01" East for a distance of 140.20 feet along the East line of said Lot 3 to the South line of said Block 59; thence South 79 degrees 04'48" West for a distance of 338.31 feet along said South line to the point of beginning. Together with and subject to covenants, easements, and restrictions of record.

POLICY REPORT PWD NO. 19-54

CONSIDER BIDS FOR 2019 LEAVENWORTH AIRPORT OFFICE/HANGAR
FLOOD REPAIR PROJECT – BUILDING, PLUMBING, ELECTRICAL AND HVAC

City Project No. 2019-910

November 12, 2019

Prepared by:



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

Reviewed by:



Paul Kramer,
City Manager

ISSUE:

The Public Works Department is requesting the City Commission authorize a contract with Baker Construction for \$94,315.32 to repair/restore the Sherman Aircraft Office and Hangar Building.

BACKGROUND:

The flooding throughout 2019 inundated the City-owned buildings at Sherman Army Airport for several weeks. Due to the lead-time associated with the 2019 flood event, all moveable contents of the building were removed. This project is to clean, treat for mildew, and repair the damage caused by the seven feet of water that entered the airport office and hangar structures.

The City has flood insurance on the office building and attached hangar. The damage was inspected after both 2019 floods and a settlement check received by the City.

The basic building and site clean-up has been completed by Leavenworth Aviation Service LLC (LAS, LLC), and basic electrical service has been restored. Fort Leavenworth has reopened the runway to light aircraft. LAS, LLC has resumed limited operations in a portion of their building (owned by them). This has allowed aircraft to return the T-hangars and limited operations to occur. The fuel tank has been reinstalled, but the pump, credit card reader and dispensing system have not. Fueling operations are being done by temporary systems. Repairs are also expected to be required for the taxiway lights to be operational.

The contract for the repairs was prepared by engineering staff using the information provided by the insurance adjuster as well as experience from earlier floods. The project was distributed to area plan rooms, Drexel Technologies and advertised in *The Leavenworth Times*. A mandatory pre-bid meeting was held on October 23, 2019 and bids were opened on October 30, 2019.

The results of the bidding are shown below and in the attached bid tabulation. Baker Construction was the only bidder and met all bidding requirements.

Bid results for the project are listed below:

Company	City	Total Bid
Baker Construction	Leavenworth, KS	\$134,415.32
KAAZ Construction	Leavenworth, KS	No Bid
Engineer's Base Bid Estimate:		\$130,000.00

The project will start in mid-November and will take 60 days to complete. Inspection work will be performed with City forces.

The FEMA Flood Insurance Adjuster has inspected the damage, and the adjusted claim (after depreciation & deductible) is \$165,605.41 against the City's Flood Insurance Policy.

City is reviewing options for repair or replacement of the fuel system and repairs to the taxiway lighting system. Options include possible grant from KDOT, purchase new equipment or use refurbished equipment. Currently no funds are available for this additional work.

Flood Insurance Reimbursement	\$ 165,605.41
Reimbursement to LAS, LLC for clean-up	\$ 30,975.00
A+ Insulation	\$ 7,800.00
Bids for Repair of Buildings	\$ 134,415.32
Estimated City Cost of Repairs	\$ 173,726.32

Bids received for the hangar repairs exceed the insurance funds received for the repairs by over \$8,000. Staff has contacted Baker Construction and requested that they submit a revised total reflecting the deletion of the hangar door replacement. This is a deduction of \$40,100, and a revised total of \$94,315.32.

Deletion of the hangar door from the project does create some limitations to operations as the current door and tracks have been damaged, but can operate. The door can be added back to this project or constructed at a later date if funds become available.

RECOMMENDATION:

Staff recommends that the City Commission approve the bid received from Baker Construction revised to reflect deletion of the hangar door in an amount not to exceed \$94,315.32 for the 2019 Leavenworth Airport Office/Hangar Flood Repair Project.

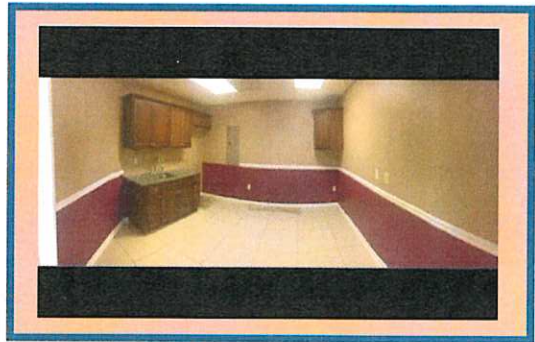
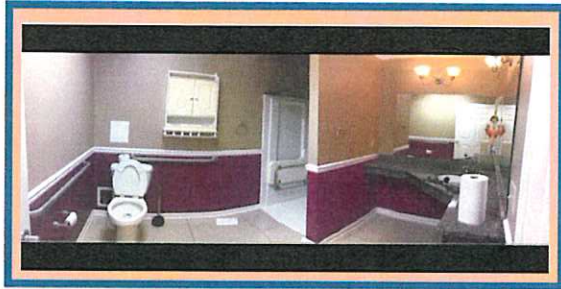
POLICY:

The City Commission can accept the bid as recommended by City Staff, or can ask the staff to re-bid.

ATTACHMENTS:

- Pictures - Before/After Flood
- Bid Tab
- Revised proposal (deletion of hangar door)

2019 Missouri River Flood - Sherman Army Airfield



Restroom at Evacuation - March 2019

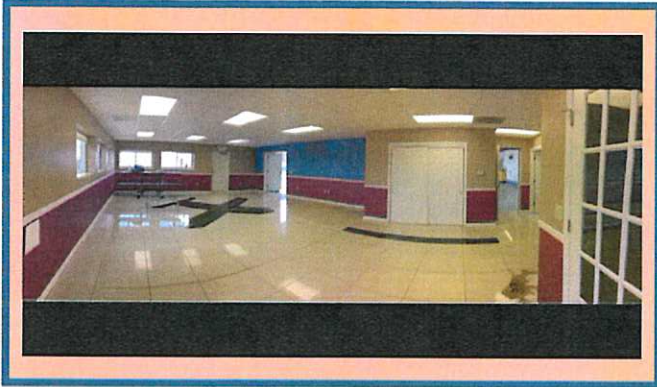


Restroom After Water Receded - March 2019



Restroom with Damaged Infrastructure Removed - April 2019

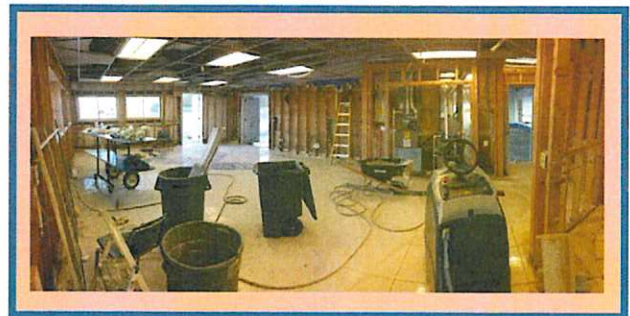
2019 Missouri River Flood - Sherman Army Airfield



Office/Lounge at Evacuation - March 2019



Office/Lounge after Water Receded - March 2019



Office/Lounge with Damaged Infrastructure Removed - April 2019

2019 Missouri River Flood - Sherman Army Airfield



Hangar at Evacuation - March 2019



Hangar after Water Receded - March 2019

PROPOSAL

(Must either be typewritten or in ink; all others will be rejected)

October 30, 2019
Leavenworth, Kansas

To: The Board of Commissioners of the City of Leavenworth, Kansas

The undersigned bidder proposes to accomplish the City of Leavenworth Project No. 2019-910C including any and all work and material that may be necessary to complete the same according to the plans and specifications on file in the City Clerk's office and the rules, ordinances and regulations of the City and statutes of Kansas governing contracts with cities for public work and under the direction and to the satisfaction of the Board of Commissioners and City Engineer, at the following rates, to-wit:

**Airport Office/Hangar Flood Repair Project
Building, Plumbing, Electrical, & HVAC
Project 2019-910**

**Building
SUMMARY OF QUANTITIES**

ITEM DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL
Exterior				
Remove/Replace Corrugated Wall/Roof Panel	SF	306	15	4590
Modify Hangar opening for 12' x 53' Bi-Fold Hangar Door	LS	1	5100	5100
Interior				
Office				
Apply anti-microbial agent – Walls	SF	867	1	867
Clean Floor	SF	3,875	1	3875
Install 5/8" Drywall – hung, taped, ready for paint	SF	867	3.48	3017.16
Seal Walls w/latex based stain blocker – one coat	SF	867	.80	693.60
Paint Walls (2 coats)	SF	867	1.25	1083.75
Install Vinyl/Rubber Base – color selected by owner	LF	105	1	105
Remove/Replace 3' Steel Door, Frame, Lockset, and Closer	Each	1	1600	1600
Paint 3' Door (2 coats)	Each	1	50	50
Remove/Replace Vinyl Window – Horizontal sliding	Each	5	500	2500
Remove/Replace Suspended Ceiling Grid and Tile – 2' x 4'	SF	778	3.74	2909.72
Install Fiberglass Batt Insulation above ceiling – unfaced – 12"	SF	778	1.49	1159.22
Furnace Room				
Apply anti-microbial agent – Walls	SF	434	1	434
Clean Floor	SF	37	1	37
Install 5/8" Drywall – hung, taped, ready for paint	SF	434	3.48	1510.32
Install Dbl. Door – 6' – Frame, Knobs,	Each	1	400	400
Paint 6' Door, Jamb, Trim (2 coats)	Each	1	50	50
Company Name: Baker Construction, Inc.				

Break Room				
Apply anti-microbial agent - Walls	SF	397	1	397
Clean Floor	SF	158	1	158
Install 5/8" Drywall - hung, taped, ready for paint	SF	397	3.48	1381.56
Seal Walls w/latex based stain blocker - one coat	SF	397	.80	317.60
Paint Walls (2 coats)	SF	397	1.25	496.25
Install Vinyl/Rubber Base - color selected by owner	LF	44	1	44
Install Cased Opening - 6' - Paint Jamb, Trim	Each	1	200	200
Install Base Cabinet - prefinished, formica countertop,	LF	5	150	750
Install Upper Wall Cabinet - prefinished	LF	7	107	749
Remove/Replace Suspended Ceiling Grid and Tile - 2' x 4'	SF	158	3.74	590.92
Install Fiberglass Batt Insulation above ceiling - unfaced - 12"	SF	158	1.49	235.42
Restroom				
Apply anti-microbial agent - Walls	SF	350	1	350
Clean Floor	SF	83	1	83
Remove Fiberglass Shower, Frame Door Opening & Install Pre-hung Door Unit (Limited Wall Finish - Sheetrock & Tape - No Paint)	Each	1	500	500
Install 5/8" Drywall - hung, taped, ready for paint	SF	350	3.48	1218
Seal Walls w/latex based stain blocker - one coat	SF	450	.80	360
Paint Walls (2 coats)	SF	450	1.25	562.50
Vinyl/Rubber Base - color selected by owner	LF	75	1	75
Install 1/2" Plate Glass Mirror	SF	27	20	540
Install 3' Interior Door Unit, Knob,	Each	1	100	100
Paint 3' Door, Jamb, Trim (2 coats)	Each	2	50	100
Remove and Reinstall Granite/Marble Countertop and Backsplash	Each	1	250	250
11/2" x 42" Stainless Steel Grab Bar	Each	1	100	100
11/2" x 36" Stainless Steel Grab Bar	Each	1	100	100
Towel Ring	Each	1	75	75
Toilet Paper Holder	Each	1	50	50
Remove/Replace Suspended Ceiling Grid and Tile - 2' x 4'	SF	110	3.74	411.40
Install Fiberglass Batt Insulation above ceiling - unfaced - 12"	SF	110	1.49	163.90
Hangar				
Clean Interior Liner Panel Walls	SF	3020	1	3020
Close Existing Return Air Opening in Wall (36" x 36")	Each	1	50	50
Clean Floor	SF	2820	1	2820
Remove/Replace 3' Exterior Metal Door, Frame, Lockset/Deadbolt, Closer	Each	2	1600	3200
Paint 3' Door, Frame, (2 coats)	Each	2	50	100
Remove/Replace 6' Exterior Metal Door, Frame, Lockset/Deadbolt, Closer	Each	1	1600	1600
Paint 3' Door, Frame, (2 coats)	Each	1	100	100
Remove 3 Overhead Door System/Replace with 15' x 53' Bi-Fold Door	Each	1	35000	35000
Remove/Replace Vinyl Insulated Window - Horizontal Slide	Each	5	500	2500
Remove & Replace Epoxy Finish (1 coat)	SF	2820	4	11280
Company Name: Baker Construction, Inc.				

**Plumbing Equipment
SUMMARY OF QUANTITIES**

ITEM DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL
Furnish & Install 8 gallon Electric Water Heater and Required Plumbing for Installation in Kitchen Base Cabinet	Each	1	1000	1000
Modify Cold and Hot Water Piping System for Kitchen and Bath	Lump Sum	1	500	500
ADA Compliant Commercial Toilet with Seat	Each	1	500	500
Bathroom Sink Faucet	Each	1	500	500
Furnish & Install Stainless Steel Kitchen Sink and Faucet	Each	1	500	500
Modify Shower Drain to Floor Drain, T&P Discharge on the Water Heater	Each	1	500	500
Furnish & Install Stainless Steel Bathroom Sink and Faucet	Each	1	500	500

**Electrical Equipment
SUMMARY OF QUANTITIES**

ITEM DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL
Exterior				
Remove/Replace 220 v copper wiring (AC line & 220 v exterior outlet)	LF	12	100	1200
Remove/Replace Disconnect Box	Each	2	150	300
Remove/Replace Meter Base – 200 amp	Each	1	150	150
Interior				
Remove/Replace 110 v copper wiring run, box, switch	Each	2	25	50
Remove/Replace 110 v copper wiring run, box, outlet	Each	22	50	1100
Remove/Replace 110 v copper wiring run, box – rough-in only (lighting)	Each	4	50	200
Remove/Replace 110v commercial copper wiring, conduit, box, outlet, switch	Each	25	50	1250
Remove/Replace 220 v commercial copper wiring, conduit, box, outlet, switch (Hangar – 30 amp)	Each	1	50	50
Install Wiring circuit for 8 Gallon Electric Water Heater	Each	1	150	150
Remove/Replace Phone/low voltage wire & outlet – rough-in only	Each	4	150	600
Remove/Replace TV/Speaker wire & outlet	Each	4	100	400
Remove/Replace Exit Sign (LED) (Battery Back-up)	Each	2	200	400
Remove/Replace 200 amp Breaker Panel and all Breakers	Each	1	1500	1500
Remove/Replace LED Closet Light Fixture	Each	2	50	100
Remove Existing Fluorescent Light Fixture/Replace with LED Light Strip - 8' – Hangar (Include all necessary wiring)	Each	6	400	2400
Remove/Replace LED – Grid Light Fixture – 2' x 4'	Each	13	450	5850
Remove/Replace Bathroom Light Bar – 2 light - LED	Each	2	100	200
Remove/Replace Exterior LED Light Pack	Each	3	200	600
Company Name: Baker Construction, Inc.				

**HVAC Equipment
SUMMARY OF QUANTITIES**

ITEM DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL
Exterior				
Remove/Replace Central Air Conditioning System 4 Ton	Each	1	2000	2000
Remove/Replace Central Air Conditioning System 2.5 Ton	Each	1	2000	2000
Interior				
Remove/Replace Forced Air Furnace 100,000 BTU (Office) (Direct Vent)	Each	1	4838	4838
Remove/Replace Forced Air Furnace 60,000 BTU (Hangar) (Direct Vent) (Modify Gas Piping as necessary)	Each	1	3417	3417
Remove Tankless Water Heater (Modify Gas Piping as Necessary)	Each	1	150	150
Remove/Replace Ceiling Difuser - Square 24"	Each	11	80	880
Remove/Replace Heat/Ac Register - Mechanically Attached - Hangar	Each	6	70	420
Remove/Replace Thermostat & Wiring	Each	2	100	200
TOTAL PROJECT COST				\$134,415.32
Company Name: <u>Baker Construction, Inc.</u>				

BIDDER: Baker Construction, Inc BY: Keith Baker
President HEREBY agrees that the City of Leavenworth has a right to reject any and all bids or parts thereof. The undersigned bidder herewith deposits with the City Clerk the sum of \$_____ Dollars (Certified check, cashier's check or acceptable bid

bond) and makes this bid on the condition and agreement that if said bidder shall fail to enter into a contract to do said work and file good and sufficient bonds as required by law on account of the work awarded to said bidder with the City Clerk within ten (10) working days after said work shall have been awarded to said bidder, that said deposit shall therefore be forfeited to the City of Leavenworth as and for liquidated damages by reason of such failure and that said award may be rescinded and contract awarded to the next lowest responsive bidder.

Completion date to be **Sixty (60) calendar days** after the City Engineer has given "Notice to Proceed" or liquidated damages shall be in accordance with Table 1 in Section 58 of the General Conditions of this document for each calendar day until project completion.

Airport Office/Hangar Flood Repair Project
Building & Plumbing
Project 2019-910

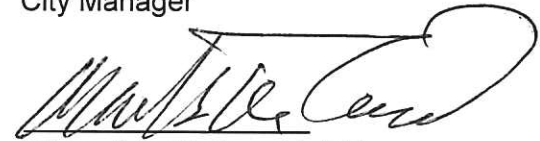
Bidder:	<u>Baker Construction, Inc</u>		
	FEIN:	<u>20-2213008</u>	
Address:	<u>714 Oak St.</u>	City/State	<u>Leavenworth, KS</u>
By:	<u>Keith Baker</u>	Title:	<u>President</u>
Telephone No:	<u>913-682-6302</u>	Fax No:	<u>913-871-1312</u>
Email Address:	<u>office@bakerconst.com</u>		

POLICY REPORT PWD NO. 19-53
CONSIDER APPROVAL OF SOLE SOURCE CONTRACT WITH DOUGLAS PUMP
FOR WATER POLLUTION CONTROL DIVISION
REPAIR BAR SCREEN RAKE & ASSEMBLY

November 12, 2019

Prepared by: 
Tim Guardado
Acting WPC Superintendent

Reviewed by: 
Paul Kramer
City Manager


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

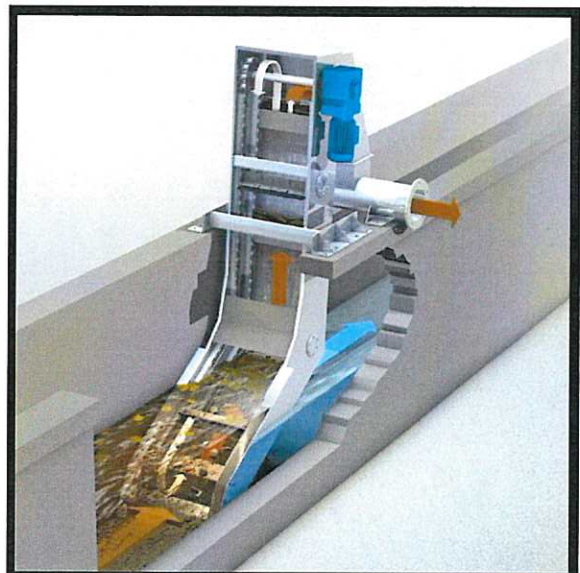
ISSUE:

Bar rake and assembly for the bar screen was damaged due to prolonged high water levels. The high water levels brought in large debris causing the bar screen and its assembly to bend.

BACKGROUND:

All wastewater comes into the “headworks” of the plant. This incoming wastewater carries debris that can damage pumps and other equipment. There are two bar screens at the front end of the treatment plant designed to remove the large debris and rags. This protects the downstream processes from damage to pumps, plugging of lines, and ponding of the Trickling Filters. Failure to remove these items also contributes to high total suspended solids throughout the plant which then adds to UV treatment costs as well.

The bar screens are subject to being flooded, and are designed to minimize risk from inundation, force of the water and impact from large objects. The two original Bar Screens were installed in 1972. They were replaced in a \$460,000 project in 1997. Since that time, the various floods have resulted in substantial repairs to both bar screens. The most recent floods in 2019 resulted in the rake, arm and discharge assembly for one screen being sufficiently damaged from the current and debris, and it is more cost effective to replace it than to repair it.



WPC staff called C&B Equipment (supplier of the original equipment) to get a cost of an exact replacement for the Infilco-Degremont Bar Screen. Quotes were also obtained for a new style Kusters Multi-Rake Bar Screen from JCI. The Kusters equipment is similar in size and installation, but was found not suitable for use with current equipment without completely updating all of the associated parts, significantly raising the cost of repairs.

Douglas Pump through C&B Equipment is the only company that could get the exact replacement parts and provide a quote that included installation for the Infilco-Degremont Bar Screen. It will take from 12 to 16 weeks for parts to arrive and an additional 3-man days for installation. The plant can operate on one bar screen assuming that there are normal flows.

Bid Received for equipment and installation:

Douglas Pump: \$140,788.

OPTIONS/ALTERNATIVES: The City Commission can accept the bid as recommended by City Staff, or can ask the staff to re-bid.

STAFF RECOMMENDATION:

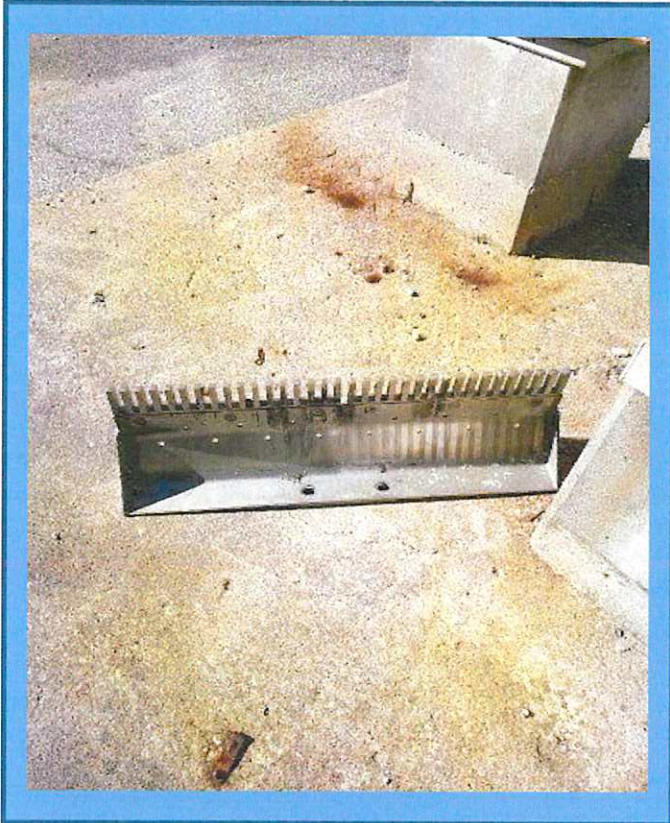
The Staff recommends the City Commission approve the sole source contract with Douglas Pump for the purchase and repair bids of the bar screen rake and assembly in the amount of \$140,788.

ATTACHMENTS:

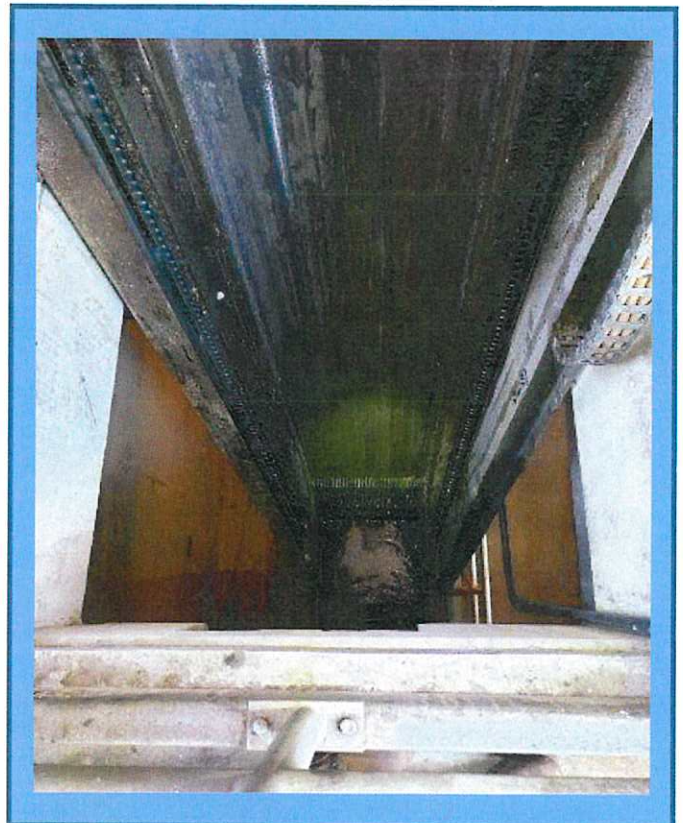
Pictures of Operational Bar Screen Rake & Assembly
Insurance Company Claim Letter (\$25,000)

WATER POLLUTION CONTROL BAR SCREEN RAKE & ASSEMBLY

NOVEMBER 12, 2019

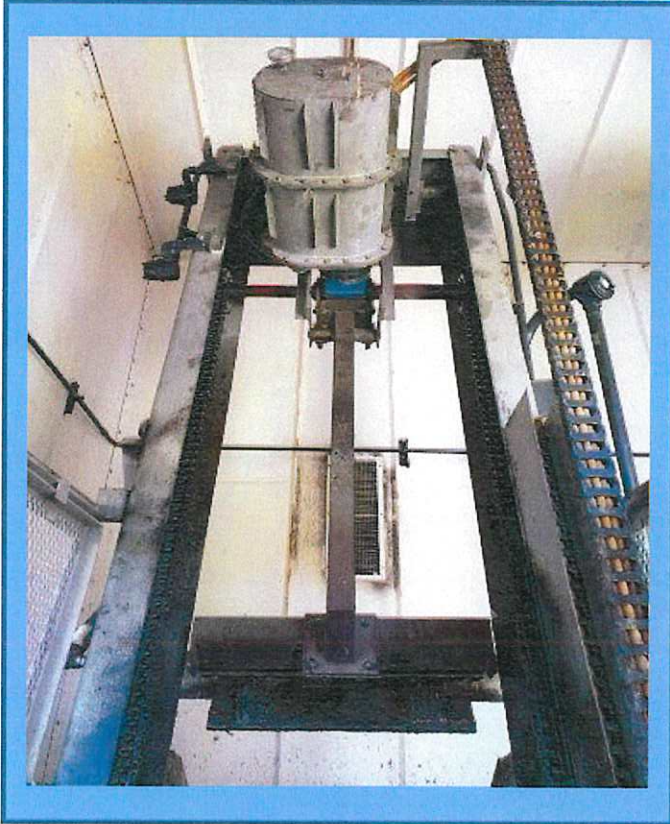


Rake

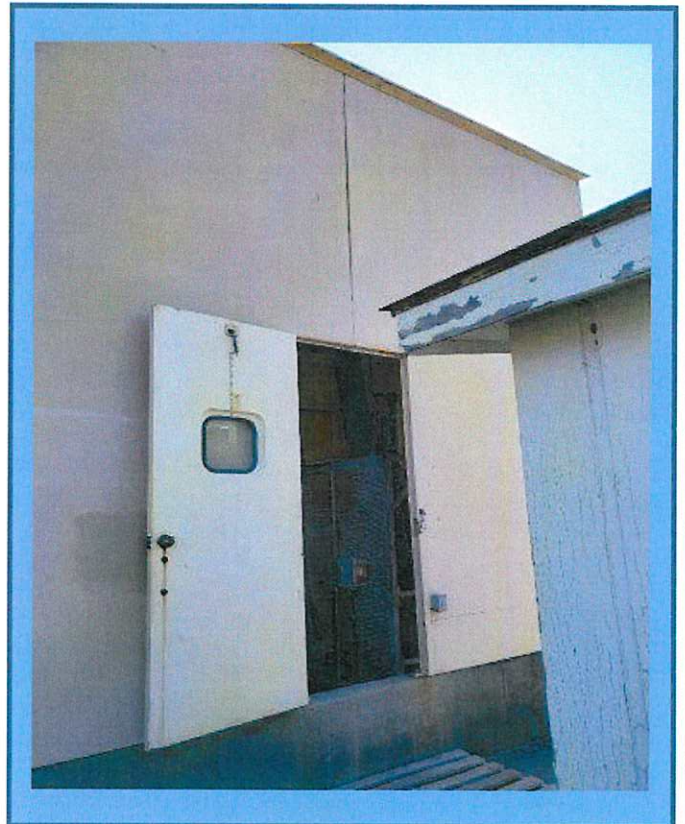


Looking Down at the Screen
of the East Bar Screen

WATER POLLUTION CONTROL BAR SCREEN RAKE & ASSEMBLY
NOVEMBER 12, 2019



Rake System on East Bar Screen



Access Door



July 15, 2019

City of Leavenworth
Attn: Cary Collins
100 N. 5th Street
Leavenworth, Kansas 66048-1970

RE:

Claim Number: 0AB259877
Date of Loss: 03/22/2019
Insured: City of Leavenworth
Policy Number: 791-00-06-23-0006
Underwriting Co.: Atlantic Specialty

Dear Ms. Collins:

This letter is written to advise you that Atlantic Specialty Insurance Company has received a claim on the above matter. Please note Property coverage is provided under policy number 791-00-06-23-0006, effective January 1, 2019 and expiring on January 1, 2020. The policy has blanket building coverage limit of \$65,070,859 and blanket business personal property coverage limit of \$4,849,000 subject to a \$10,000 deductible. The policy coverage form CP 00 10 09 18 Building and Personal Property Coverage Form is applicable along with CP 10 30 09 18 Cause of Loss – Special Form and policy endorsements CP 238 09 18, Water Damage Coverage with a \$25,000 limit and a \$10,000 deductible..

The date of the loss as reported is March 22, 2019 and it involved your location at 1800 South Second Street, Leavenworth, Kansas. We were notified of the loss on June 28, 2019 by your insurance agent, The Reilly Company LLC. Rob Lamer, with Leamon Peterson & Bello was enlisted to investigate this matter. He completed an inspection on July 3, 2019 with Chuck Staples. Based on this investigation it was determined the bar screen/rake mechanism sustained damage to the support beams due to the influx of water. A man hole cover became dislodged from a railroad tie allowing water to enter the sewage treatment system at a high volume. The bar screen/rake system was evaluated by Douglas Pump Services who deemed the unit a total loss and requires replacement. The estimated cost to replace the rake system totals \$140,788.00.

This correspondence has been directed to your attention to advise you that Atlantic Specialty Insurance Company has issued a claim payment of \$25,000 which is the policy limit, based on the limited coverage for water damage.

We refer you to the Water Damage Coverage form CP 238 09 18 of the Policy, which notes in part:

A. Additional Covered Causes Of Loss

The following are added to the Covered Causes of Loss:

1. Surface water;
2. Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment; and
3. Water under the ground surface pressing on, or flowing or seeping through:
 - a. Foundations, walls, floors or paved surfaces;
 - b. Basements, whether paved or not; and
 - c. Doors, windows or other openings; including waterborne material carried or otherwise moved by any

OneBeacon Insurance Group Claims Department 188 Inverness Drive West, Suite 600
Englewood, CO 80112 Phone: 781-332-8688 Fax: (866) 241-6549



of the water referred to in Paragraphs 1., 2., or 3. above.

...

C. Limit Of Insurance

2. If a Water Damage Coverage Limit of Insurance is shown in the SCHEDULE above, the following limit of insurance provisions apply:
- a. The limit of insurance described in Paragraph c. below:
 - (1) Applies to all covered direct and consequential loss or damage (including any coverage for Business Income or Extra Expense) arising out of the causes of loss described in Section A. of this endorsement.
 - (2) Is included in and does not increase the limits of insurance otherwise provided under this Coverage Part.
 - (3) Applies regardless of the items or types of property; number or types of Coverages, Additional Coverages, Coverage Extensions or Optional Coverages; or number of premises or locations involved.
 - b. Amounts payable under this endorsement for any item or type of property or under any Coverage, Additional Coverage, Coverage Extension or Optional Coverage contained in this Coverage Part are subject to the limit of insurance described in Paragraph c. below and will not:
 - (1) Exceed the otherwise applicable property and coverage limits of insurance provided under this Coverage Part; or
 - (2) Increase the applicable limit of insurance described in Paragraph c. below.
 - c. The most we will pay in any one occurrence for coverage provided under this endorsement is the Water Damage Coverage Limit of Insurance shown in the SCHEDULE above. This is not an additional amount of insurance.

Based on the facts as we know them, we have determined the cause of the damage to the bar screen/rake system was due to the volume of water underground resulting in the water damage to the bar screen/rake system at the sewage treatment facility. The above policy language and limitations will apply to this loss therefore we have issued the \$25,000 limit of coverage for the water damage coverage. If there is additional information which you would like us to consider, please provide it for our consideration as soon as possible. I can be reached at (781) 332-8690 or toll free (866) 370-2315 ext. 8690.

Sincerely,

June S. Szatko
Claim Examiner
Atlantic Specialty Insurance Company
(781) 332-8690
(866) 370-2315 ext. 8690

cc: cwilliamson@firstcity.org
susan.putman@reillyinsurance.com

OneBeacon Insurance Group Claims Department 188 Inverness Drive West, Suite 600
Englewood, CO 80112 Phone: 781-332-8688 Fax: (866) 241-6549

**EXECUTIVE SESSION
TO DISCUSS PERSONNEL MATTERS OF NONELECTED PERSONNEL**

NOVEMBER 12, 2019

CITY COMMISSION ACTION:

Motion:

Move to recess into executive session to discuss the annual performance review of the City Manager pursuant to the nonelected personnel matters exception K.S.A. 75-4319 (b) 1. The open meeting to resume in the City Commission Chambers at _____ by the clock in the City Commission Chambers. Human Resources Director Lona Lanter is requested to attend.