



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

CITY COMMISSION REGULAR MEETING
COMMISSION CHAMBERS
TUESDAY, NOVEMBER 28, 2023 6:00 P.M.

Welcome to your City Commission Meeting – Please turn off or silence all cell phones during the meeting
Meetings are televised everyday on Channel 2 at 6 p.m. and midnight and available for viewing on YouTube

CALL TO ORDER – Pledge of Allegiance Followed by Silent Meditation

AWARDS:

1. Fort Leavenworth Partnership Recognition
2. Employee Service Awards (pg. 03)

OLD BUSINESS:

Consideration of Previous Meeting Minutes:

3. Minutes from November 14, 2023 Regular Meeting **Action:** Motion (pg. 05)

Second Consideration Ordinance:

4. Second Consideration Ordinance No. 8227 Amending Chapter 20, Article V of the Leavenworth Code of Ordinances **Action:** Roll Call Vote (pg. 10)

NEW BUSINESS:

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

General Items:

5. Consider Transient Merchant Permit Waiver Request for Military Collectors Show at Riverfront Community Center **Action:** Motion (pg. 16)
6. Cancellation of Outstanding City Checks **Action:** Motion (pg. 18)
7. Consider Updates to City Fee Schedule **Action:** Motion (pg. 20)

Resolutions:

8. Resolution B-2352 Authorize Serving of Complimentary Alcoholic Liquor at Main Street Event “Alive After Five” for 2024 **Action:** Motion (pg. 24)

Bids, Contracts and Agreements:

9. Consider Award of Bid for Copier Lease and Maintenance Agreement **Action:** Motion (pg. 26)

First Consideration Ordinances:

10. First Consideration Ordinance Kansas Gas Franchise Agreement **Action:** Consensus (pg. 37)
11. First Consideration Ordinance for Special Use Permit to Operate Fire Station in R-MF Zoning District **Action:** Consensus (pg. 61)
12. First Consideration Ordinance for Special Use Permit to Allow Assisted Living Facility in R1-9 Zoning District **Action:** Consensus (pg. 70)

Consent Agenda:

Claims for November 10, 2023, through November 17, 2023, in the amount of \$502,617.35; Net amount for Payroll #23 effective November 17, 2023 in the amount of \$386,126.57 (Includes Police & Fire Pension in the amount of \$7,134.65). **Action:** Motion

Presentation to Out Going Commissioner

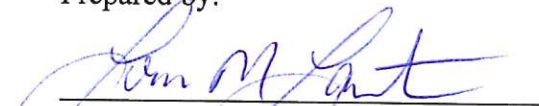
Other:

Adjournment

Action: Motion


POLICY REPORT 23-02
Employee Service Awards
November 28, 2023

Prepared by:



Lona M. Lanter
HR Director

Reviewed by:



Paul Kramer
City Manager

Issue:

In 2023, fourteen (14) employees reached a milestone in their career with the City of Leavenworth. These employees are being recognized for their faithful, dedicated, loyal and continuous service to the City.

In addition to recognizing the 10 and 25 year awards, we are also recognizing those employees who have continued loyal service to the City with 15 and 20 years of service.

Background:

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

The following City of Leavenworth employees are being honored at this time:

10 Year Awards

Nancy Baker, Recreation Supervisor
Gay Birch, Fire Chief
Cole Brummer, Police Officer II
Sean Flynn, Police Sergeant
Kelly Fricke, Telecommunications Specialist
Robert Haney, Telecommunications Specialist
Ryan Hoppe, Police Sergeant
Peridot Lucas, Telecommunications Specialist
Sean Swisshelm, Police Sergeant I

25 Years of Service

Robert Gilbert, Streets Equipment Operator II
Stephen Herring, Police Lieutenant
Brandon Pettis, Fire Captain
Kathy Rodgers, Zoning & Code Administrator
David Sommerla, Parks Superintendent

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

15 Years of Service

Russell Baker, Fire Captain

Leona Nickel, Evidence Custodian/Crime Analyst

Shana Baragary, Telecommunications Specialist

20 Years of Service

Linda Hoppe, Administrative Assistant – PD/Detectives

Jeremy Bennetts, Fire Driver/Operator

James Magee, Firefighter



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

Staff members present: City Manager Paul Kramer, Assistant City Manager Penny Holler, Planning & Community Development Director Julie Hurley, Public Works Director Brian Faust, City Attorney David E. Waters and City Clerk Sarah Bodensteiner.

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

PROCLAMATIONS:

Small Business Saturday – Mayor Wilson read the proclamation proclaiming Saturday, November 25, 2023 as Small Business Saturday. The proclamation was accepted by Debbie Deere of Leavenworth Main Street.

OLD BUSINESS:

Consideration of Previous Meeting Minutes:

Commissioner Hingula moved to accept the minutes from the October 24, 2023 regular meeting. Commissioner Martin seconded the motion and the motion was unanimously approved. Mayor Wilson declared the motion carried 5-0.

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

None.

Resolutions:

Resolution B-2350 Setting the Public Hearing for Unsafe and Dangerous Structure; 407 Maple Street – Planning & Community Development Director Julie Hurley reviewed the resolution to set January 9, 2024 as the public hearing date to review the structure at 407 Maple Street that has been determined to be an unsafe or dangerous structure based on criteria in Chapter 10, Article XI of the Code of Ordinances. The resolution affixes the time and place at which time the owner, the owner’s agent, any lienholder of record, and any occupant of the structure may appear and show cause why such structure should not be condemned as dangerous or hazardous structures and ordered repaired or demolished. At the time of the hearing on January 9, 2024, staff will present an overview of the structure for consideration by the City Commission.

Commissioner Bauder moved to adopt Resolution B-2350 to set a public hearing for unsafe and dangerous structure of 407 Maple Street on January 9, 2024 in the City Commission Chambers. Commissioner Hingula seconded the motion and the motion was unanimously approved. Mayor Wilson declared the motion carried 5-0.

Resolution B-2351 First City Creatives Leavenworth Christmas Market Special Event Street Closure for Possession & Consumption of Alcohol – City Clerk Sarah Bodensteiner presented for consideration a resolution allowing for closure of the 500 block of Delaware Street for the First City Creatives Leavenworth Christmas Market special event to allow for the sale, possession and consumption of alcoholic liquor.

Mr. Kramer:

- The request to have the alcohol in the street came about based on the amount of interest the event was receiving and determining it was not feasible to try to keep the alcohol within the First City Creatives business location only

Commissioner Martin moved to approve Resolution B-2351 for the First City Creatives Leavenworth Christmas Market Special Event as presented. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Pro-Tem Martin declared the motion carried 5-0.

Bids, Contracts and Agreements:

Consider Approval of Contract Change Order No. 1 for the 2nd & Chestnut Stone Arch Replacement Project – Public Works Director Brian Faust presented for consideration approval of the Contract Change Order No. 1 for the 2nd & Chestnut Stone Arch Replacement Project. On July 12, 2022, the City Commission approved a contract with Lexeco Construction, Inc. for the construction of the 2nd & Chestnut Stone Arch Replacement Project. The project was necessary due to multiple failures in the old system that had created sinkholes along the project limits. These failures continued to worsen and were coming closer to an occupied structure. The project included upsizing/replacement of the stormwater conveyance system, with extensive excavations along the project and a substantial amount of street reconstruction, sanitary line and manhole replacement. During the course of the project, it was necessary to have the contractor perform unforeseen extra work and there was also expected work items that came in under the anticipated amount. At the conclusion of the project, the total Final Change Order amount is \$249,670.07. This amount is made up of many individual items, including: removal and replacement of an existing sanitary manhole, existing retaining wall reconstruction, sanitary sewer spot repair, full depth removal at 3rd & Chestnut, unsuitable soil material was removed and replaced with rock, drainage issue discovered post construction, project line item under-runs, and project line item over-runs. The net impact of all the increases and decreases for this project is \$249,670.07, or 7.06% of the original bid cost. Funds budgeted in 2022 for this project were \$3,534,012.80 based on the bids received. The revised project total will be \$3,783,682.87. A video was shown of the completed project areas.

Commissioner Leonhard moved to approve Change Order No. 1 for the 2nd & Chestnut Stone Arch Replacement Project in the amount of \$249,670.07. Commissioner Martin seconded the motion and the motion was unanimously approved. Mayor Wilson declared the motion carried 5-0.

First Consideration Ordinance:

First Consideration Ordinance Amending City Code Fire Insurance Proceeds – City Clerk Sarah Bodensteiner presented for first consideration an ordinance amending Chapter 20, Article V of the City of Leavenworth Code of Ordinances. City Attorney David Waters has reviewed and prepared updated documents regarding the Fire Insurance Proceeds section of the City Code. There are no major changes to

the procedure, the revisions are simply housekeeping items. Updates include, ensuring State Statute(s) are appropriately applied and referenced and revising language for clarity.

City Attorney Waters:

- Beginning of the process of reviewing City Codes regarding nuisances
- Process is driven by statutes, but the statutes were not fully listed into the code
- Wanting to avoid having staff review both Code Book and Statute Book to get full information

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

Staff Report:

Update on Vilas Street 10th to 22nd Project – Public Works Director Brian Faust introduced the consultant, Scott Komarek from Bartlett & West Engineers to provide an update to the City Commission. Updates on the project included the following:

- Sidewalks will be installed between 10th and 15th
- Sections of the existing sidewalks on the north side and south side from 15th to 20th will be replaced if damaged or not meeting current ADA guidelines
- Intersections between 10th and 20th will have ADA ramps meeting ADA Public Right-of-Way Accessibility Guidelines installed
- Improvements between 20th and 22nd include curb and gutter along with enclosed storm sewer
- Sidewalk on the north side between 20th and 22nd
- A marked crosswalk with Rectangular Rapid Flashing Beacon directly in front of Henry Leavenworth Elementary School

Semi-Annual Report from Leavenworth Public Library – Leavenworth Public Library Director Matt Nojonen provided an update to the Commission that included the following:

- New logo rebranding
- Events calendar booklet
- Using the events calendar booklet for marketing services at the library
- Welcome brochure
- Digital content specific brochure
- Website re-design is almost complete; hopeful it will be completed by end of the year
- E-library card for digital content
- Circulation up 66% from last year
- Patron usage is up 27% from last year
- e-Content is up 26% from last year
- Outreach has shared story hours and activities with 753 children
- Patron usage of Library computers is up 40% from last year
- Library program attendance is up 118% from last year
- Use of Library meeting rooms continues to increase each year

Consent Agenda:

Commissioner Leonhard moved to approve claims for October 21, 2023 through November 9, 2023, in the amount of \$1,397,426.51; Net amount for payroll #22 effective November 3, 2023, in the amount of

\$377,228.36 (No Police & Fire Pension). Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Wilson declared the motion carried 5-0.

Other:

City Manager Paul Kramer:

- Stubby Park shelter is complete; grills will be added in the spring
- Breakfast with Santa is December 2nd at the Riverfront Community Center
- Lighted Parade and Christmas Tree Lighting is Friday
- Tomorrow is last day for late registration for basketball; participation numbers are very good
- No Study Session next week

Commissioner Leonhard:

- Thanked her constituents for support, staff for their teamwork and camaraderie, had a great time working for this community on the City Commission
- Wished everyone a Happy Thanksgiving

Commission Hingula:

- A lot of events going on this time of year: Lighted parade, Holiday market, Shop Small Saturday after Thanksgiving
- Come to Leavenworth and partake

Commissioner Martin:

- Wished everyone a Happy Thanksgiving

Commissioner Bauder:

- Kudos to all the organizations involved in the Veterans Day Parade
- Turnout was great

Mayor Wilson:

- Thanked all who served and currently serve in our military
- Thanked the Veterans Day Parade committee
- Congratulated elected candidates and those who ran for office
- Wished everyone a Happy Thanksgiving

Executive Session – Personnel Matters of Non-Elected Personnel – Mayor Wilson moved to recess into executive session for a period of 10 minutes for the purpose of *discussing the annual evaluation of the City Manager, under the justification to discuss personnel matters of nonelected personnel* K.S.A. 75-4319 (b) 1. The City Commission and Human Resources Director will be present. The open meeting will resume in the City Commission Chambers at 7:06 p.m. Commissioner Hingula seconded the motion and the motion was unanimously approved. Mayor Wilson declared the motion carried 5-0.

The Leavenworth City Commission returned to open session at 7:06 p.m. Commissioner Leonhard did not return to open session.

Mayor Wilson moved to approve a 1% merit increase for City Manager Paul Kramer effective with the first check of the 2024 payroll. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Wilson declared the motion carried 4-0.

Adjournment:

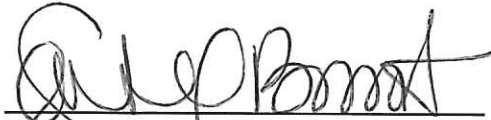
Commissioner Hingula moved to adjourn the meeting. Commissioner Bauder seconded the motion and the motion was unanimously approved and the meeting was adjourned.

Time Meeting Adjourned 7:07 p.m.

Minutes taken by City Clerk Sarah Bodensteiner, CMC

**POLICY REPORT
SECOND CONSIDERATION ORDINANCE 8227
AMENDING CHAPTER 20, ARTICLE V OF THE LEAVENWORTH
CODE OF ORDINANCES**

NOVEMBER 28, 2023



Sarah Bodensteiner, CMC
City Clerk



Paul Kramer
City Manager

BACKGROUND:

At the November 14, 2023 City Commission regular meeting the City Commission reviewed and placed on first consideration:

**AN ORDINANCE REGARDING CASUALTY INSURANCE PROCEEDS, AMENDING
ARTICLE V (FIRE INSURANCE PROCEEDS) OF CHAPTER 20 (FIRE PREVENTION AND
PROTECTION) OF THE LEAVENWORTH CODE OF ORDINANCES, AND
ESTABLISHING NEW AND REPLACEMENT SECTIONS.**

There have been no changes to the ordinance since first introduced. Ordinance No. 8227 is now presented for second consideration and requires a roll call vote.

ATTACHMENTS:

- Ordinance No. 8227

(Summary Published in the Leavenworth Times on December 2, 2023)

ORDINANCE NO. 8227

AN ORDINANCE REGARDING CASUALTY INSURANCE PROCEEDS, AMENDING ARTICLE V (FIRE INSURANCE PROCEEDS) OF CHAPTER 20 (FIRE PREVENTION AND PROTECTION) OF THE LEAVENWORTH CODE OF ORDINANCES, AND ESTABLISHING NEW AND REPLACEMENT SECTIONS.

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

Section 1. Article V of Chapter 20 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

ARTICLE V. CASUALTY INSURANCE PROCEEDS

Sec. 20-116. Scope and application.

The city is authorized to utilize the procedures established by K.S.A. 40-3901 *et seq.*, such that if fire, explosion, windstorm, or other casualty causes damage to a structure that is covered by insurance and the covered claim payment is in excess of seventy-five percent (75%) of the face value of the policy covering the structure, then the insurance provider shall be required to pay to the city an amount not to exceed fifteen percent (15%) of the proceeds of such policy, as set forth in this article.

Sec. 20-117. Lien created.

The city commission of the city creates a lien in favor of the city on the proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure located within the city, where the amount recoverable for all the loss or damage to the building or other structure under all policies is in excess of seventy-five percent (75%) of the face value of the policies covering such building or other insured structure. The lien arises upon any unpaid tax, special ad valorem levy, or any other charge imposed upon real property by or on behalf of the city which is an encumbrance on real property, whether or not evidenced by written instrument, or such tax, levy, assessment, expense or other charge that has remained undischarged for at least one year prior to the filing of a proof of loss.

Sec. 20-118. Encumbrances.

Prior to final settlement on any claim covered by this article, the insurer shall contact the county treasurer to determine whether any such encumbrances are presently in existence. If the same are found to exist, the insurer shall execute and transmit in an amount equal to that owing under the encumbrances a draft payable to the county treasurer.

Sec. 20-119. Procedure.

The following procedure shall apply in the implementation of this article:

- (1) When final settlement on a covered claim has been agreed to or arrived at between the named insured and the insurer, and the final settlement exceeds seventy-five percent (75%) of the face value of the policy covering any building or other insured structure, and when all amounts due the holder of a first real estate mortgage against the building or other structure, pursuant to the terms of the policy and endorsements thereto, shall have been paid, the insurance company shall execute a draft payable to the city treasurer in an amount equal to the sum of fifteen percent (15%) of the covered claim payment, unless the chief building inspector or other designated official of the city has issued a certificate to the insurance company that the insured has removed the damaged building or other structure, as well as all associated debris, or repaired, rebuilt, or otherwise made the premises safe and secure.
- (2) Such transfer of funds shall be on a pro rata basis by all companies insuring the building or other structure. Policy proceeds remaining after the transfer to the city shall be disbursed in accordance with the policy terms.
- (3) Upon the transfer of the funds as required by this article, the insurance company shall provide the city with the name and address of the named insured, the total insurance coverage applicable to the building or other structure, and the amount of the final settlement agreed to or arrived at between the insurance company or companies and the insured, whereupon the chief building inspector shall contact the named insured by certified mail, return receipt requested, notifying them that the insurance proceeds have been received by the city and apprise them of the procedures to be followed under this section.

Sec. 20-120. Fund created; deposit of moneys.

The city treasurer is authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All moneys received by the city treasurer as provided for by this section shall be placed in the fund and deposited in an interest-bearing account.

Sec. 20-121. Building inspector; investigation, removal of structure.

- (a) Upon receipt of moneys as provided for by this article, the city treasurer shall immediately notify the chief building inspector or other designated code official or enforcing officer (as described in Article XI of Chapter 10 of the Leavenworth Code of Ordinances) of the receipt, and transmit all documentation received from the insurance company to such official.
- (b) Within thirty (30) days of the receipt of the moneys, the chief building inspector or other designated code official or enforcing officer shall determine, after prior investigation, whether the city shall instigate proceedings under the provisions of K.S.A. 12-1750 *et seq.*, and/or Article XI of Chapter 10 of the Leavenworth Code of Ordinances, as amended.

- (c) Prior to the expiration of the thirty (30) days established by subsection (b) of this section, the chief building inspector or other designated code official or enforcing officer shall notify the city treasurer whether he or she intends to initiate proceedings under K.S.A. 12-1750 *et seq.*, and/or Article XI of Chapter 10 of the Leavenworth Code of Ordinances, as amended.
- (d) If the chief building inspector or other designated code official or enforcing officer has determined that proceedings under K.S.A. 12-1750 *et seq.*, and/or Article XI of Chapter 10 of the Leavenworth Code of Ordinances, as amended, shall be initiated, he or she will do so immediately but no later than forty-five (45) days after receipt of the moneys by the city treasurer.
- (e) Upon notification to the city treasurer by the chief building inspector or other designated code official or enforcing officer that no proceedings shall be initiated under K.S.A. 12-1750 *et seq.*, and/or Article XI of Chapter 10 of the Leavenworth Code of Ordinances, as amended, the city treasurer shall return all such moneys received, plus accrued interest, to the insured as identified in the communication from the insurance company. Such return shall be accomplished within forty-five (45) days after the receipt of the moneys from the insurance company.

Sec. 20-122. Removal of structure; excess moneys.

If the chief building inspector or other designated code official or enforcing officer has proceeded under the provisions of K.S.A. 12-1750 *et seq.*, and/or Article XI of Chapter 10 of the Leavenworth Code of Ordinances, as amended, all moneys in excess of that which is ultimately necessary to comply with the provisions for the removal of the building or structure, less salvage value, if any, shall be paid to the insured.

Sec. 20-123. Removal of structure; disposition of funds.

If the chief building inspector or other designated code official or enforcing officer, with regard to a building or other structure damaged, determines that it is necessary to act under K.S.A. 12-1750 *et seq.*, and/or Article XI of Chapter 10 of the Leavenworth Code of Ordinances, as amended, any proceeds received by the city treasurer under the authority of this article relating to that building or other structure shall be used to reimburse the city for any expenses incurred by the city in proceeding under K.S.A. 12-1750 *et seq.*, and/or Article XI of Chapter 10 of the Leavenworth Code of Ordinances, as amended. Upon reimbursement from the insurance proceeds, the chief building inspector or other designated code official or enforcing officer shall immediately effect the release of the lien resulting therefrom. Should the expenses incurred by the city exceed the insurance proceeds paid over to the city treasurer under this article, the chief building inspector or other designated code official or enforcing officer shall publish a new lien as authorized by K.S.A. 12-1750 *et seq.*, and/or Article XI of Chapter 10 of the Leavenworth Code of Ordinances, as amended, in an amount equal to such excess expenses incurred.

Sec. 20-124. Effect upon insurance policies.

This article shall not make the city a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.

Sec. 20-125. Insurers; liability.

Insurers complying with this section or attempting in good faith to comply with this section shall be immune from civil and criminal liability and such action shall not be deemed in violation of K.S.A. 40-2404 and any amendments thereto, including withholding payment of any insurance proceeds pursuant to this section, or releasing or disclosing any information pursuant to this section.

Sec. 20-126. Insurance proceeds; proof of repairing or rebuilding.

In lieu of the payment of insurance proceeds, the insured may present satisfactory proof to the chief building inspector or other designated code official or enforcing officer that the insured has or will remove debris and repair, rebuild or otherwise make the premises safe and secure. Upon presentation of such sufficient evidence, the chief building inspector or other designated code official or enforcing officer, along with the city clerk, shall certify that adequate proof of repairing or rebuilding has been given and that the payment of insurance proceeds to the city shall not be paid, subject to any lien created by the city should the insured fail to rebuild, repair, or secure the property as presented. The insured shall be responsible for presenting such certificate to the insurer. The insured, in seeking such certificate, shall present a timetable showing when repairs or rebuilding will be completed; render architectural or engineering plans, subject to approval by the building official, showing the method, manner and materials to be used in repairing or rebuilding; and any other evidence deemed necessary by the building official to demonstrate that the repairs or rebuilding will be completed in a timely and lawful manner. Failure of the insured to comply with the certificate shall result in the institution of continuation of proceedings for abatement.

Sec. 20-127. Failure to pay insurance proceeds or to obtain a certificate in lieu of payment proceeds.

It is unlawful for any person to fail to provide the payment of insurance proceeds as required by this article unless a certificate in lieu of payment of proceeds has been obtained through the city.

Section 2. The city clerk shall notify the Commissioner of Insurance for the State of Kansas within fourteen (14) days after the adoption of this ordinance. Such notification shall state that the city has enacted an ordinance, pursuant to the authority of K.S.A 40-3901 *et seq.*, concerning payment of insurance proceeds to the city arising out of claims due to fire, explosion, windstorms, or other casualty. A copy of the notice shall be maintained by the city clerk.

Section 3. Article V of Chapter 20 of the Leavenworth Code of Ordinances, including Sections 20-116 through 20-126, inclusive, in existence as of and prior to the adoption of this ordinance, are hereby repealed.

Section 4. This ordinance shall take effect and be in force from and after its publication in the official city newspaper as provided by law.

PASSED and APPROVED by the Governing Body on the 28th day of November, 2023.

Jermaine Wilson, Mayor

{SEAL}

ATTEST:

Sarah Bodensteiner, CMC, City Clerk

**POLICY REPORT
REQUEST A WAIVER FOR A TRANSIENT MERCHANT PERMIT
MILITARY COLLECTORS SHOW
RIVERFRONT COMMUNITY CENTER**

NOVEMBER 28, 2023

Prepared by:



Sarah Bodenstener, CMC
City Clerk

Reviewed by:



Paul Kramer
City Manager

ISSUE:

Consider a waiver of a Transient Merchant Permit for the purpose of a Military Collectors Show at the Riverfront Community Center.

BACKGROUND:

Edward Trevor Brown submitted an application that was received in the Office of the City Clerk for the February 17, 2024 Military Collectors Show at the Riverfront Community Center. This Collectors Show has been held at the Riverfront Community Center for several years. The show typically has 40-50 vendors from the local area and as far away as Omaha and St. Louis. Admission is by donation and vendors do sell their items.

All vendors have a Kansas Retail Tax number or the event coordinator will provide the vendors with a tax form to complete and return to the Kansas Department of Revenue. The City reports all events to the Kansas Department of Revenue so they can verify that taxes on admissions, booth fees and any other applicable sales are submitted as required.

The City of Leavenworth Code of Ordinances Chapter 34, Peddlers, Solicitors and Transient Merchants Sec. 34-62 States:

- A transient merchant permit shall not be issued for use in or on a city-owned property including rights-of-way, parks or open spaces or the community center, provided that the city commission may grant in specific cases a waiver of this general prohibition.
- Application and request for waiver shall be on a form provided by the city clerk and submitted to the city clerk at least 30 days prior to the date of the activity to be placed on the agenda of the next regular meeting of the city commission.

The City of Leavenworth Codes of Ordinances Chapter 34, Peddlers, Solicitors and Transient Merchants Sec. 34-1 Definitions, defines a transient merchant as:

- *Transient merchant, itinerant merchant or itinerant vendor* are defined as any person, whether as owner, agent, consignee or employee, whether a resident of the city or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within such city, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, or public room in hotels, lodging houses, apartments, shops or any street, alley or other place within the city, for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction. Such definition shall not be construed to include any person who,

while occupying such temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery only. The person so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant or auctioneer. A transient merchant is not a person who has a permanent business presence in Leavenworth and conducts sales or activities similar as described herein on a temporary basis.

Fee for Transient Merchants:

- A Transient Merchant, Itinerant Merchant or Itinerant Vendor Permit fee is \$50.00 per day. The permit is not to exceed 5 days; and no more than two licenses may be issued during a calendar year.

If the City Commission should grant the waiver all applicable fees and insurance requirements would still apply, the waiver just allows the sale to be held on city property, specifically the Community Center which is prohibited by ordinance. The applicant is also required to provide a certificate of liability insurance prior to the date of the event along with any fees required by the Community Center.

CITY COMMISSION ACTION:

Grant a waiver of a Transient Merchants Permit for use of the Community Center for the Military Collectors Show on February 17, 2024;

Or

Deny the request for a Transient Merchant Permit

*Policy Report No. FIN-23-06
Cancellation of Outstanding City Checks*


November 28, 2023

Prepared By:



Roberta Beier
Finance Director

Approved By:



Paul Kramer
City Manager

Issue:

According to KSA 10-816a, checks that remain outstanding after a period of two years of issuance may be canceled by the City Commission. The City has a total of 33 checks in the amount of \$4,776.74 that remain outstanding after two years of issuance (see attached listing).

Recommendation:

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

Background:

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

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

City of Leavenworth
 Uncleared Checks > Two Years Old as of November 28, 2023
 November 28, 2023

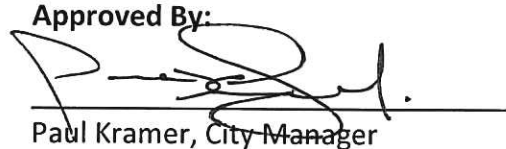
Check Number	Check Date	Vendor Number	Payee	Check Amount
290032162	11/23/2020	1	Jonathan Pheral	\$ 665.00
290032285	12/01/2020	1310	DERRICK COLLINS	\$ 23.00
290032293	12/01/2020	1491	SCOTT LATESSA	\$ 54.00
290032669	01/04/2021	10222	SWIFT HOLDINGS LLC	\$ 507.00
290032724	01/19/2021	1	Paul Bohannon	\$ 11.58
290032815	02/01/2021	1	Lisa Parks	\$ 20.00
290032898	02/01/2021	1967	RONALD PACKER	\$ 56.00
290033239	03/15/2021	1	James G C Crawford	\$ 14.00
290033451	04/01/2021	2099	MICHAEL BARLOW	\$ 32.00
290033475	04/06/2021	1	Myka Golden	\$ 10.00
290033759	05/03/2021	1556	ALIESHA WILBOURN	\$ 11.00
290033885	05/14/2021	1	Myus Synergy LLC-Mercury Series	\$ 124.57
290034098	06/01/2021	2079	MONTY DEBOE	\$ 20.00
290034358	07/02/2021	1	Holly Eller	\$ 300.00
290034415	07/02/2021	1456	JAMIE GASAWAY	\$ 205.00
290034603	07/16/2021	1	Mark Dobbs	\$ 100.00
290034857	08/02/2021	1556	ALIESHA WILBOURN	\$ 11.00
290035195	09/01/2021	1556	ALIESHA WILBOURN	\$ 11.00
290035196	09/01/2021	1767	TERRY BUSCH	\$ 3.00
290035253	09/03/2021	1	Dorian Williams	\$ 65.00
290035475	10/01/2021	1	Amanda Richard	\$ 5.00
290035477	10/01/2021	1	Jonathan D Saunders	\$ 40.49
290035543	10/01/2021	1377	JACQUELYN JACKSON	\$ 12.00
290035549	10/01/2021	1556	ALIESHA WILBOURN	\$ 11.00
290035553	10/01/2021	1767	TERRY BUSCH	\$ 3.00
290035636	10/01/2021	9860	US GEOLOGICAL SURVEY	\$ 1,275.00
290035641	10/01/2021	10222	SWIFT HOLDINGS LLC	\$ 538.00
290035695	10/08/2021	2264	BRAYDEN THUNEY	\$ 30.50
290035709	10/15/2021	1	Angel Morgan	\$ 190.80
290035773	10/15/2021	1	Payton Hofacker	\$ 190.80
290035917	11/01/2021	84	TYRONE K BUTLER	\$ 127.00
290035961	11/01/2021	2099	MICHAEL BARLOW	\$ 56.00
290035984	11/01/2021	2243	TOMMY SHEPHERD	\$ 54.00
				4,776.74

**POLICY REPORT
CONSIDER AMENDMENTS AND UPDATES TO CITY FEE SCHEDULE**

NOVEMBER 28, 2023

Prepared By:


 City Clerk's Office

Approved By:


 Paul Kramer, City Manager

ISSUE:

Consider amendments and updates to the City Fee Schedule of the following:

- Increasing Fee for Dog Adoption
- Amending the Land Disturbance Permits
- Increasing Fee for Off Duty Police Officer Presence
- Removal of Refuse Bags from Fee Schedule
- Increasing Sewer Service Charges

Animals – Adoption Fees-Dogs

Staff is proposing an increase to the dog adoption fee. Staff is proposing to enhance the Animal Control services to the general public by microchipping each dog that is adopted at the animal control facility. This practice has become an industry standard and is very helpful when it's necessary to help an animal get returned to its owner. The small fee increase would cover the cost of microchipping.

Animals		
Impoundment:		\$ Amount
	Pickup fee—per animal	20.00
	Plus confinement fee—per animal per day or actual costs if higher	10.00
	Plus any additional cost incurred	
	Surrender fee—per animal	50.00
Adoption fees:		
	Cats—per animal	65.00
	Dogs—per animal	85.00 95.00

Environment – Regulated Land Disturbance Permits

The changes that are being proposed are to clarify between site grading projects and construction projects, and to address the issue that commercial projects under one acre were not required to pay a permit fee.

Environment		
		\$ Amount
Oil and gas well drilling permits:		
	Initial permit—per location	725.00
	Renewal permit, annually—per location	375.00
	Permit transfer fee—each	100.00
Land disturbance permits:		
	Utility companies/contractors working for utility company with annual land disturbance permit	0

Regulated land disturbance activity:		
	Less than one acre	0
	1-5 acres—each event	150.00
	More than 5 acres—per event	250.00
	1 single family residence	0
	2 to 5 single family residences—per event	150.00
	More than 5 single family residences—per event	250.00

Environment		
		\$ Amount
Oil and gas well drilling permits:		
	Initial permit—per location	725.00
	Renewal permit, annually—per location	375.00
	Permit transfer fee—each	100.00
Land disturbance permits:		
	Utility companies/contractors working for utility company with annual land disturbance permit	0
Regulated land disturbance activity:		
Excavation/grading related work:		
	Site work less than 1 acre	0.00
	Site work 1 to 5 acres	250.00
	Site work more than 5 acres	350.00
Building construction related activity:		
	Non-residential site up to 5 acres	250.00
	Non-residential site more than 5 acres	350.00
	One single family dwelling/duplex/townhome	0
	Two to five single family dwellings/duplexes/townhomes within same subdivision applied for at the same time	250.00
	Six or more single family dwellings/duplexes/townhomes within same subdivision applied for at the same time	350.00

Law Enforcement – Uniformed Off Duty Officer:

Staff is proposing an increase to the hourly rate for an off duty officer. The current fee of \$35 per hour does not generally cover the full cost of an Officer's overtime rate, as well as other costs such as the Patrol Vehicle, fuel, maintenance, etc. This fee has been unchanged for more than 10 years, but costs have continued to rise over that timeframe.

Law Enforcement		
Public services:		\$ Amount
	Fingerprinting—each set	15.00
	Uniformed off duty officer presence—per hour	50.00 35.00

Solid Waste – Remove Refuse Bags fee

With the implementation of the Refuse Carts and the discontinuation of the refuse bags, the fee for the refuse bags is being removed.

Solid Waste		
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Special pick-up for inactive residential homes:		\$ Amount
	Up to three cubic yards	100.00
	Over 3 cubic yards or requiring use of mechanized loading equipment	250.00
	Dumpster permit	10.00
Collection and disposal of refuse – Single family units and multi-family complexes –monthly		
	Monthly fee	19.31
Brush disposal site fees:		
	Car—each	2.00
	Pick-up truck—each	5.00
	Single axle dump/flat bed—each	15.00
	Tandem axle dump high side bed—each	25.00
	Truck with chipper box —each	25.00
Trailers:		
	Up to 8 feet or fraction thereof—each	5.00
	9 to 16 feet or fraction thereof—each	10.00
	Each additional foot or fraction thereof over 16	1.00
	Additional for modified trailers or beds with walls that exceed 4 feet in height	5.00
	Refuse bags—each roll	7.00

Utilities-Sewer Service Charges

In the approved 2024 Budget, sewer service charges are set to increase by 5%. Staff also amended how the costs are shown to make the fee schedule easier to read.

Utilities					
Grease Discharge					\$ Amount
	Grease Discharge Permit				25.00
	Late Fee – after April 30 - each month permit is not current				25.00
Sewer					\$ Amount
Sewer connections					
	Sewer connection outside benefit district, sewer district or development- per square foot				.30
Sewer service charges					
Inside city customers with established service – monthly fee					
	Minimum monthly charge	7.13	5.17	12.92	12.30
Volume charge					
	First 2 Ccf	Included in minimum monthly charge			
	Next 13 Ccf	2.50	1.68	4.39	4.18
	Next 285 Ccf	1.98	.98	3.11	2.96
	All over 300 Ccf	1.76	.61	2.49	2.37
Outside city customers with established service – monthly fee					
	Minimum monthly charge	7.13	6.50	14.31	13.63
Volume charge					
	First 2 Ccf	Included in minimum monthly charge			
	Next 13 Ccf	2.50	1.91	4.63	4.41
	Next 285 Ccf	1.98	1.10	3.23	3.08
	All over 300 Ccf	1.76	0.71	2.59	2.47
New residential customer without established service– monthly fee					

	Minimum monthly charge	19.64	13.57	34.87	33.21
	Inside the City Extra strength surcharge for each mg/l over 350 mg/l-per month additional charge				
	Biochemical oxygen demand (BOD)	0.00191148	0.00007861	0.00208959	0.00199009
	Suspended solids (SS)	0.00133005	0.00005087	0.00144997	0.00138092
	Outside the City Extra strength surcharge for each mg/l over 350 mg/l-per month additional charge				
	Biochemical oxygen demand (BOD)	0.00191370	0.00021860	0.00223892	0.00213230
	Suspended solids (SS)	0.00133166	0.00013058	0.00153535	0.00146224
Other					
	Public improvement inspection fee—as percentage of total construction cost				6%


ACTION:

Motion to approve the amendments to the fee schedule as presented to be effective January 1, 2024.

**POLICY REPORT
RESOLUTION B-2352
TO AUTHORIZE SERVING COMPLIMENTARY (FREE) ALCOHOLIC LIQUOR
LEAVENWORTH MAIN STREET PROGRAM ALIVE AFTER FIVE EVENTS**

NOVEMBER 28, 2023

Prepared by:


Sarah Bodensteiner, CMC
City Clerk

Approved by:


Paul Kramer
City Manager

ISSUE:

To consider a resolution to authorize serving complimentary (free) alcoholic liquor or cereal malt beverages to members of the general public during the "Alive After Five Events" to be held at various businesses as sponsored by Leavenworth Main Street Program from January 1, 2024 through December 31, 2024.

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(C)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, 2024 through December 31, 2024.

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-2352 as presented.

ATTACHMENT:

- Resolution B-2352

RESOLUTION B-2352

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, 2024 through December 31, 2024.

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(C)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, 2024 through December 31, 2024.

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

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

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

PASSED AND APPROVED by the Governing Body this 28th day of November 2023.

CITY OF LEAVENWORTH, KANSAS

Jermaine Wilson, Mayor

{SEAL}

ATTEST:


Sarah Bodensteiner, CMC, City Clerk

Policy Report
Copier Lease and Maintenance Contract
November 28, 2023

Prepared By:


Carol Charity
Information Systems Manager

Reviewed By:


Penny Holler
Assistant City Manager

Reviewed By:


Paul Kramer
City Manager

Issue:

Consider a five-year copier lease and maintenance contract with Toshiba Business Solutions.

Background:

The City's current copier contract with Network Computing Solutions (NCS) expires at the end of November 2023. That had been the result of a competitive bid process conducted previously.

The City did a formal bid process in October 2023 for a new copier contract. Toshiba provided the lowest bid of \$2,085.47 per month (\$125,128 for the 60-month contract). The bid process took into account monthly copier lease fees, costs per paper printed (color and black/white), and equipment upgrade fees.

Budget Impact:

The annual lease, maintenance agreement, and anticipated copy charges total \$25,026 for thirteen copiers, which is in the 2024 operations budget.

Recommendation:

Staff recommends approving the 60-month copier lease and maintenance contract with Toshiba Business Solutions for \$125,128.

Attachment:

Toshiba Copier Lease Contract



LEASE WITH MAINTENANCE AGREEMENT



FINANCIAL SERVICES

APPLICATION NUMBER AGREEMENT NUMBER

The words you and your, refer to the Customer. The words Lessor, we, us, and our, refer to Toshiba Financial Services. The Toshiba Equipment is covered by the terms of the Toshiba Quality Commitment, a copy of which may be obtained from your service provider. We own the Equipment, as defined below, (excluding software) and you have the right to use it under the terms of this Agreement.

CUSTOMER CONTACT INFORMATION

Legal Company Name: CITY OF LEAVENWORTH, KANSAS Fed. Tax ID#:
Contact Person: Stephanie Alexander Bill-To Phone: (913) 684-0375 Bill-To Fax:
Billing Address: 100 N 5TH STREET City, State - Zip: LEAVENWORTH, KS 66048
Equipment Location: (if different than above) City, State - Zip:

TBS LOCATION

Contact Name: Ryan Birt Location: KC South

EQUIPMENT WITH CONSOLIDATED MINIMUMS

Table with 4 columns: ITEM DESCRIPTION, MODEL NO., SERIAL NO., STARTING METER. Rows list Toshiba e-STUDIO4528A equipment.

See attached form (Schedule "A") for Additional Equipment See attached form (Billing Schedule) for Additional Equipment/Payment Schedule

LEASE TERM & PAYMENT SCHEDULE

Number of Payments: 60 of \$ 1,475.47 * Security Deposit**: \$ 0.00 Received plus applicable taxes
Payments includes: 0 B&W Images per Month Excess Images at: \$ 0.00400 * per B&W Image
Payments includes: 0 Color Images per Month Excess Images at: \$ 0.03000 * per Color Image
Payments includes: Scan Images per Month Excess Images at: \$ * per Scan Image
Payments includes: B&W Print Images per Month Excess Images at: \$ * per B&W Print Image
Payments includes: Color Print Images per Month Excess Images at: \$ * per Color Print Image
Origination Fee: Up to \$99.00 (included in First Invoice) Lease payment period is monthly unless otherwise indicated.
Excess Images billed: Monthly Quarterly Semi-Annually Annually

End-of-Lease Options: You will have the following options at the end of your original term, provided the Agreement has not terminated early and no event of default under the Agreement has occurred and is continuing.
1. Purchase the Equipment at Fair Market Value per section 16.
2. Renew the Agreement per section 17.
3. Return Equipment.

** Security Deposit: The security deposit is non interest bearing and is to secure your performance under this Agreement. Any security deposit made may be applied by us to satisfy any amount owed by you in, in which event you will promptly restore the security deposit to its full amount as set forth above. If all conditions are fully complied with and provided you have not ever been in default of the Agreement in the Default section, the security deposit will be refunded to you after the return of the equipment in accordance with the Return of Equipment section.

THIS IS A NONCANCELABLE / IRREVOCABLE AGREEMENT. THIS AGREEMENT CANNOT BE CANCELLED OR TERMINATED.

LESSOR ACCEPTANCE

Toshiba Financial Services Signature: Title: Date:

CUSTOMER ACCEPTANCE

You hereby acknowledge and agree that your original or electronic signature below shall constitute an enforceable and original signature for all purposes. This Agreement may be executed in counterparts. The executed counterpart which has Lessor's original signature and/or is in Lessor's possession shall constitute chattel paper as that term is defined in the Uniform Commercial Code ("UCC") and shall constitute the original agreement for all purposes, including, without limitation, (i) any hearing, trial or proceeding with respect to this Agreement, and (ii) any determination as to which version of this Agreement constitutes the single true original item of chattel paper under the UCC. If Customer signs and transmits this Agreement to Lessor by facsimile or other electronic transmission, the transmitted copy, upon execution by Lessor, shall be binding upon the parties. Customer agrees that the facsimile or other electronic transmission of this Agreement manually signed by Lessor, when attached to the facsimile or other electronic copy signed by Customer, shall constitute the original agreement for all purposes, including, without limitation, those outlined above in this Section. Without limiting and subject to the foregoing, the parties further agree that, for purposes of executing this Agreement, (a) a document signed and transmitted by facsimile or other electronic transmission shall be treated as an original document, (b) the signature of any party on such document shall be considered as an original signature, (c) the document transmitted shall have the same effect as a counterpart thereof containing original signatures, and (d) at the request of Lessor, Customer, who executed this Agreement and transmitted its signature by facsimile, or other electronic transmission shall provide the counterpart of this Agreement containing Customer's original manual signature to Lessor. No party may raise as a defense to the enforcement of this Agreement that a facsimile or other electronic transmission was used to transmit any signature of a party to this Agreement. BY SIGNING THIS PAGE, YOU REPRESENT TO US THAT YOU HAVE RECEIVED AND READ THE ADDITIONAL TERMS AND CONDITIONS APPEARING ON THE SECOND PAGE OF THIS AGREEMENT. THIS AGREEMENT IS BINDING UPON OUR ACCEPTANCE HEREOF.

Name: Signature: X Title: Date:



SCHEDULE "A"



FINANCIAL SERVICES

APPLICATION NUMBER

AGREEMENT NUMBER

This Schedule "A" is to be attached to and becomes part of the item description for the referenced Agreement by and between the undersigned and Toshiba Financial Services.

CUSTOMER CONTACT INFORMATION

Legal Company Name: CITY OF LEAVENWORTH, KANSAS

Fed. Tax ID#:

Contact Person: Stephanie Alexander

Bill-To Phone: (913) 684-0375

Bill-To Fax:

Billing Address: 100 N 5TH STREET

City, State - Zip: LEAVENWORTH, KS 66048

Equipment Location: (if different than above
or if multiple locations see below)

City, State - Zip:

EQUIPMENT DESCRIPTION

ITEM DESCRIPTION	MODEL NO.	EQUIPMENT LOCATION (INCLUDE CITY, STATE - ZIP)	SERIAL NO.
Toshiba e-STUDIO5525AC	ESTUDIO5525AC	100 N 5TH STREET, LEAVENWORTH, KS 66048	
Toshiba e-STUDIO6527ACT	ESTUDIO6527ACT	100 N 5TH STREET, LEAVENWORTH, KS 66048	
Toshiba e-STUDIO6527ACT	ESTUDIO6527ACT	100 N 5TH STREET, LEAVENWORTH, KS 66048	
Toshiba e-STUDIO6527ACT	ESTUDIO6527ACT	100 N 5TH STREET, LEAVENWORTH, KS 66048	
Toshiba e-STUDIO7527ACT	ESTUDIO7527ACT	100 N 5TH STREET, LEAVENWORTH, KS 66048	

CUSTOMER ACCEPTANCE

This Schedule "A" is hereby verified as correct by the undersigned, who acknowledges receipt of a copy. You hereby acknowledge and agree that your electronic signature below shall constitute an enforceable and original signature for all purposes.

Name: Signature: X Title: Date:



SALES ORDER

SO-2.0.0

SALES PACKET NUMBER

ORDER DATE

Sales Representative: Ryan Birt

11/13/2023

CUSTOMER INFORMATION

Customer Name: CITY OF LEAVENWORTH, KANSAS

Tax ID#:

Billing Address: 100 N 5TH STREET

Phone #: (913) 684-0375 Ext:

Fax#:

Address 2:

Contact: Stephanie Alexander

Customer PO#:

City: LEAVENWORTH

State: KS

Zip: 66048

eMail: salexander@firstcity.org

EQUIPMENT AND SUPPLIES

QTY.	EQUIPMENT & ACCESSORIES	PRODUCT NUMBER	SHIP TO ADDRESS	UNIT PRICE	AMOUNT
1	Toshiba e-STUDIO7527ACT	ESTUDIO7527ACT	100 N 5TH STREET LEAVENWORTH, KS 66048		SEE LEASE
1	2,500-Sheet External Large Capacity Feeder	MP2503L			
1	65-Sheet Saddle Stitch Finisher	MJ1116			
1	Fax Unit / 2nd Line Fax Unit	GD1370N			
5	Toshiba e-STUDIO4528A	ESTUDIO4528A	100 N 5TH STREET LEAVENWORTH, KS 66048		
5	Large Capacity Feeder	KD1073LT			
5	65-sheet Multi-Staple Finisher	MJ1113			
5	Bridge Kit	KN5005			
5	Fax Unit / 2nd Line Fax Unit	GD1370N			
5	DSDf Document Feeder	MR4010			
2	Toshiba e-STUDIO4528A	ESTUDIO4528A	100 N 5TH STREET LEAVENWORTH, KS 66048		
2	Copier Stand	STAND5015			
2	Fax Unit / 2nd Line Fax Unit	GD1370N			
2	DSDf Document Feeder	MR4010			
2	65-sheet Multi-Staple Finisher	MJ1113			
2	Bridge Kit	KN5005			
3	Toshiba e-STUDIO6527ACT	ESTUDIO6527ACT	100 N 5TH STREET LEAVENWORTH, KS 66048		
3	65-Sheet Multi-Staple Finisher	MJ1115			
3	Fax Unit / 2nd Line Fax Unit	GD1370N			

SPECIAL INSTRUCTIONS

Sub Total

SEE LEASE

Other

EOL/Security

Professional Fees

Connectivity Fees

Move Fees

Taxable Total

Sales Tax %

Tax Paid

Advance Paid

Total

SEE LEASE

CUSTOMER ACCEPTANCE

You hereby acknowledge and agree that your electronic signature above shall constitute an enforceable and original signature for all purposes.

By signing this agreement, the customer acknowledges that he/she has read and understood the terms and conditions of this agreement.

1. **Limited Warranty.** The seller warrants that the goods to be delivered will be of the kind and quality described in this Agreement and will be free of defects in workmanship or material. Should any failure to conform to this warranty appear within ninety (90) days after the initial date of installation in the case of new goods, or thirty (30) days after the initial date of installation in the case of used or reconditioned goods, the seller at its option, shall correct such defects by suitable repair or replacement at its own expense, upon notification thereof and substantiation that the goods have been stored, installed, maintained, and operated in accordance with the Seller's recommendations or standard industry practice. The foregoing warranty does not apply to consumable parts such as, but not limited to, drums, cleaning brushes, filters, developer, toner, heat and oilier tubes, pressure pads, lamps, lenses and fuses.

This warranty is exclusive and is in lieu of any warranty of merchantability, fitness for a particular purpose or other warranty of quality, whether express or implied, except of title and against patent infringement. Correction of non-conformities, in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of the Seller to the Customer with respect to, or arising out of the goods, whether based on contract, negligence, strict tort liability of otherwise.

Print Name:

Signature: X

Title:

Date:

TBS ACCEPTANCE

Print Name:

Signature: X

Title:

Date:

TERMS AND CONDITIONS

- 1. Lease Agreement:** You agree to lease from us the equipment described under "ITEM DESCRIPTION" and on any attached Schedule (hereinafter, with all replacement parts, repairs, additions and accessories, referred to as the "Equipment") and as modified by Supplements to this Agreement from time to time signed by you and us. You authorize us to insert or correct missing information on this Agreement, including your accurate legal name, serial numbers and any other information describing the Equipment. You authorize us to change the amount of each Payment (set forth on page 1 of this Agreement) by not more than 15% due to changes in the equipment configuration which may occur prior to our acceptance of this Agreement or adjustments to reflect applicable sales taxes. We will send you copies of any changes. You agree to provide updated annual and/or quarterly financial statements to us upon request. You authorize us or our assignee to obtain credit reports and make credit inquiries regarding you and your financial condition and to provide your information, including payment history, to our assignees or third parties having an economic interest in this Agreement or the Equipment. Toshiba Financial Services (TFS) is not responsible for service or maintenance of the Equipment and is not party to any service maintenance agreement.
- 2. Lease Commencement:** This Agreement will commence upon your acceptance of the applicable Equipment. When you receive the Equipment, you agree to inspect it and verify your acceptance by telephone or, at our request, by delivery of written evidence of acceptance satisfactory to us. Upon acceptance, your obligations under this Agreement will become absolute and unconditional, and are not subject to cancellation, reduction or setoff for any reason whatsoever. You agree to pay us the amounts payable under the terms of this Agreement each period by the due date in accordance with the Term and Payment schedule set forth on page 1 of this Agreement. Payments shall be delivered to our address or to such other address as we may designate in writing. For any payment that is not received by its due date, you agree to pay a late charge equal to the higher of 10% of the amount due or \$22 (not to exceed the maximum allowed by law).
- 3. Image Charges:** Each month during the term of this Agreement, you agree to remit to us the Payment and all other sums when due and payable to the address we provided to you from time to time. In return for the Payment, you are entitled to produce the Images (set forth on page 1 of this Agreement) included for each applicable image type each month. You also agree to pay us the Excess Image charge (set forth on page 1 of this Agreement) for each metered image that exceeds the applicable Images Included. We reserve the right to estimate the number of images used if you do not provide us with meter readings within seven days of request. We will adjust the estimated charge for excess images upon receipt of actual meter readings. Notwithstanding any adjustments, you will never remit to us less than the Minimum Payment each month. You agree that we reserve the right to increase the maintenance and supplies portion of the Lease Payment and/or the Excess Image charge each year during the Term of the Schedule by an amount not to exceed fifteen percent (15%) of the Payment and/or the Excess Image charge in effect at the end of the prior annual period. At our option, you will: (a) provide meter readings via an automated website when requested by us. We may charge a fee to recover the cost of meter collections if meters are requested but not submitted through the automated website. (b) Provide us by telephone or facsimile the actual meter readings when requested by us. (c) Allow us (or our agent) access to the Equipment to obtain meter readings. (d) Allow us (or our agent) to attach an automatic meter reading device to the Equipment. We may audit the automatic meter reading device periodically. If you have a dispute with your service provider, you continue to pay us all Payments and Excess Image charges without deductions or withholding deductions. Images made on Equipment marked as "Customer Owned" will be included in determining your image and excess charges.
- 4. WARRANTY DISCLAIMER: WE MAKE NO WARRANTY EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABILITY. YOU AGREE THAT YOU HAVE SELECTED EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. YOU LEASE THE EQUIPMENT "AS IS". NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT WILL BIND US, NOR WILL ANY BREACH THEREOF RELIEVE YOU OF ANY OF YOUR OBLIGATIONS HEREUNDER. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES FOR ANY DEFAULT BY US UNDER THIS AGREEMENT.**
- 5. Statutory Finance Lease:** You agree that this Agreement qualifies as a statutory Finance Lease under Article 2A of the Uniform Commercial Code. To the extent you are permitted by applicable law, you waive all rights and remedies provided by Article 2A (sections 508-522) of the Uniform Commercial Code.
- 6. Security Interest:** You authorize us to file a financing statement with respect to the Equipment. If this Agreement is deemed to be a secured transaction, you grant us a security interest in the Equipment to secure all amounts you owe us under any agreement with us.
- 7. Use Maintenance and Repair of Equipment: YOU WILL USE THE EQUIPMENT ONLY IN THE LAWFUL CONDUCT OF YOUR BUSINESS AND NOT FOR PERSONAL, HOUSEHOLD OR FAMILY PURPOSES.** You will not move the Equipment from the equipment location listed on page 1 without our advance written consent. You will give us reasonable access to the Equipment so that we can check the Equipment's existence, condition and proper maintenance. At your cost, you will keep the Equipment in good repair, condition and working order, ordinary wear and tear excepted. You will not make any permanent alterations to the Equipment. You will keep the Equipment free and clear of all liens. You assign to us all of your rights, but none of your obligations, under any purchase agreement for the Equipment. We assign to you all our rights under any warranties, so long as you are not in default.
- 8. Software:** Except as provided in this paragraph, references to "Equipment" include any software referenced above or installed on the Equipment. We do not own the software and cannot transfer any interest in it to you. You are responsible for entering into any license and/or other agreement (each a "License Agreement") required by the applicable software supplier or software licensor no later than the effective date of this Agreement and you will fully comply with such License, if any, throughout the applicable term. We are not responsible for the software or the obligations of you or the software licensor under any License Agreement. If any items are listed with the Equipment and denoted as "(Software as a Service)" you understand the Payment set forth on page 1 includes the periodic amount you have agreed to pay for the software/subscription services described in your Master Software and Services Agreement and/or your Statement of Services relating to such software/subscription services ("SaaS") with Toshiba America Business Solutions Inc. ("TBS"). Please refer your SaaS for a description of your rights and obligations with respect to such software/subscription services. You acknowledge the SaaS is separate from this Agreement, it shall not affect your obligations under this Agreement in any way, and TBS is solely responsible for the performance obligations related to SaaS.
- 9. Taxes and Lease Charges:** You agree to pay all taxes, costs and expenses incurred by us as a consequence of the ownership, sale, lease or use of the Equipment, including all sales, use and documentary stamp taxes. Any fee charged under this Agreement may include a profit and is subject to applicable taxes. In addition, you agree to pay us a UCC filing fee of \$35.00.
- 10. Indemnity:** You will indemnify and hold us harmless from any and all liability, damages, losses or injuries including reasonable attorney's fees, arising out of the ownership, use, condition or possession of the Equipment, except to the extent directly caused by our gross negligence or willful misconduct. We reserve the right to control the defense and to select or approve defense counsel. This indemnity will survive the termination of this Agreement.
- 11. Risk of Loss; Insurance:** You are responsible for risk of loss or for any destruction of or damage to the Equipment. No such loss or damage shall relieve you from the payment obligations under this Agreement. You agree to keep the Equipment fully insured against loss until this Agreement is paid in full and to have us and our assigns named as lender's loss payee. You also agree to maintain public liability insurance covering both personal injury and property damage and you shall name us and our assigns as additional insured. Upon request, you agree to provide us certificates or evidence of insurance acceptable to us. If you fail to comply with this requirement within 30 days after the start of this Agreement: (a) we have the right but no obligation to obtain insurance covering our interest (and only our interest) in the Equipment for the lease term, and renewals. Any insurance we obtain will not insure you against third party or liability claims and may be cancelled by us at any time. You will be required to pay us an additional amount each month for the insurance and administrative fee. The cost may be more than the cost of obtaining your own insurance and we may make a profit. You agree to cooperate with us, our insurer and our agent in the placement of coverage and with claims; or (b) we may charge you a monthly property damage surcharge of up to .0035 of the Equipment cost as a result of our credit risk and administrative and other costs, as will be further described on a letter from us to you. We may make a profit on this program. Once an acceptable certificate or evidence of insurance is submitted, any such fees will be discontinued. If any of the Equipment is lost, stolen or damaged you would at your option and cost, either (a) repair the item or replace the item with a comparable item reasonably acceptable to us, or (b) pay us the sum set forth in the Remedies section.
- 12. Right to Perform:** If you fail to comply with any provision of this Agreement, we may, at our option, perform such obligations on your behalf. Upon invoice you will reimburse us for all costs incurred by us to perform such obligations.
- 13. Representations:** (a) You represent and warrant to us that (1) you have the lawful power and authority to enter into this Agreement, and (2) the individuals signing this Agreement have been duly authorized to do so on your behalf, (3) you will provide us such financial information as we may reasonably request from time to time, (4) all financial information provided (or to be provided) is (or will be) accurate and complete in all material respects, (5) you will promptly notify us in writing if you move your principal place of business or there is a change in your name, state of formation, or ownership, and (6) you will take any action we reasonably request to protect our rights in the Equipment. (b) We represent and warrant to you that (1) we have the lawful power and authority to enter into this Agreement, and (2) the individuals signing this Agreement have been duly authorized to do so on our behalf.
- 14. Default:** You will be in default under this Agreement if: (a) we do not receive any Payment due under this Agreement within five (5) days after its due date, (b) you fail to meet any of your obligations in the Agreement (other than payment obligations) and do not correct such default within 10 days after we send you written notice of such default, (c) you or your guarantor become insolvent, are liquidated or dissolved, merge, transfer a material portion of your ownership interest or assets, stop doing business, or assign rights or property for the benefit of creditors, (d) a petition is filed by or against you or your guarantor under any bankruptcy or insolvency law, (e) any representation made by you is false or misleading in any material respect, (f) you default on any other agreement with us or our assigns or any material agreement with any entity, or (g) there has been a material adverse change in your or any guarantor's financial, business or operating condition.
- 15. Remedies:** If you are in default, we may, at our option, do any or all of the following: (a) retain your security deposit, if any, (b) terminate this Agreement, (c) require that you pay, as compensation for loss of our bargain and not as a penalty, the sum of (1) all amounts due and payable by you or accrued under this Agreement, plus (2) the present value of all remaining Payments to become due under this Agreement (discounted at 2% or the lowest rate allowed by law), and (3)(i) the amount of any purchase option and, if none is specified, 20% of the original equipment cost, which represents our anticipated residual value in the Equipment or (ii) return the Equipment to a location designated by us and pay to us the excess, if any, of the amount payable under clause (3)(i) over the Fair Market Value of the returned Equipment as determined by us in our reasonable discretion, (d) recover interest on any unpaid balance at the rate of 12% per annum, and (e) exercise any other remedies available to us at law or in equity, including requiring you to immediately stop using any financed software. You agree to pay our reasonable attorney's fees and actual court costs including any cost of appeal. If we have to take possession of the Equipment, you agree to pay the cost of repossession and we may sell or re-let the Equipment at terms we determine, at one or more public or private sales, with or without notice to you. You may remain liable for any deficiency with any excess being retained by us.
- 16. Purchase Option:** At the end of the Term provided you are not in default, and upon 30 days prior written notice from you, you will either (a) return all the Equipment, or (b) purchase all the Equipment as is, without any warranty to condition, value or title for the Fair Market Value of the Equipment as determined by us in our reasonable discretion plus applicable sales and other taxes.
- 17. Automatic Renewal:** Except as set forth in Section 16, this Agreement will automatically renew on a month-to-month basis after the Term, and you shall pay us the same Payments and lease charges as applied during the Term (and be subject to the terms and conditions of this Agreement) until the Equipment is returned to us or you pay us the applicable purchase price (and taxes).
- 18. Return of Equipment:** If (a) a default occurs, or (b) you do not purchase the Equipment at the end of the Term pursuant to a stated purchase option, you will immediately return the equipment to any location(s) we may designate in the continental United States. The Equipment must be returned in "Average Saleable Condition" and properly packed for shipment in accordance with our recommendations or specifications, freight prepaid and insured. "Average Saleable Condition" means that all of the Equipment is immediately available for use by a third party, other than you, without the need for any repair or refurbishment. All Equipment must be free of markings. You will pay us for any missing or defective parts or accessories.
- 19. Assignment:** We may, without your consent, assign or transfer any Equipment or this Agreement, or any rights arising under this Agreement, and in such event our assignee or transferee will have the rights, power, privileges and remedies of Lessor hereunder, but none of the obligations. Upon such assignment you agree not to assert, as against our assignee, any defense, setoff, recoupment, claim or counterclaim that you may have against us. You will not assign, transfer or sublease this Agreement or any rights thereunder or any Equipment subject to this Agreement without our prior written consent.
- 20. Personal Property Tax (PPT):** You agree at our discretion to (a) reimburse us annually for all personal property and similar taxes associated with the ownership, possession or use of the Equipment or (b) remit to us each billing period our estimate of the prorated equivalent of such taxes. You agree to pay us an administrative fee for the processing of such taxes. We may make a profit on such a fee.
- 21. Tax Indemnity:** You agree to indemnify us for the loss of any income tax benefit caused by your acts or omissions inconsistent with our entitlement to certain tax benefits as owner of the Equipment.
- 22. Governing Law: BOTH PARTIES AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL.** This Agreement and any supplement shall be deemed fully executed and performed in the state in which our (or, if we assign this Agreement, our assignee's) principal place of business is located and shall be governed by and construed in accordance with its laws. Any dispute concerning this Agreement will be adjudicated in a federal or state court in such state. You hereby consent to personal jurisdiction and venue in such courts and waive transfer of venue.
- 23. Transition Billing:** In order to facilitate an orderly transition, the start date of this Agreement will be the date the Equipment is delivered to you or a date designated by us, as shown on the first invoice. If a later start date is designated, in addition to all Payments and other amounts due hereunder, you agree to pay us a transitional payment equal to 1/30th of the Payment, multiplied by the number of days between the date the Equipment is delivered to you and the designated start date. The first Payment is due 30 days after the start of this Agreement and each Payment thereafter shall be due on the same day of each month.
- 24. Miscellaneous:** This Agreement contains the entire agreement between you and us and may not be modified except as provided therein or in writing signed by you and us, and supersedes any purchase orders. We will not accept payment in cash. If you so request, and we permit the early termination of this Agreement, you agree to pay a fee for such privilege. Notices must be in writing and will be deemed given five days after mailing to your or our mailing address. If a court finds any provision of this Agreement to be unenforceable, all other terms of that Agreement will remain in effect and enforceable. You agree that any delay or failure to enforce our rights under this Agreement does not prevent us from enforcing any rights at a later time. In no event will we charge or collect any amounts in excess of those allowed by applicable law. Time is of the essence. You hereby acknowledge and confirm that you have not received any tax, financial, accounting or legal advice from us, or the manufacturer of the Equipment. It is the Customer's sole and exclusive responsibility to ensure that all data from all disk drives or magnetic media are erased of any customer data and information. You hereby consent to receive electronic marketing communication on Toshiba products and services. TO HELP THE GOVERNMENT FIGHT THE FUNDING OF TERRORISM AND MONEY LAUNDERING ACTIVITIES, FEDERAL LAW REQUIRES ALL FINANCIAL INSTITUTIONS TO OBTAIN, VERIFY AND RECORD INFORMATION THAT IDENTIFIES EACH PERSON WHO OPENS AN ACCOUNT. WHAT THIS MEANS TO YOU: WHEN YOU OPEN AN ACCOUNT, WE WILL ASK FOR YOUR NAME, ADDRESS AND OTHER INFORMATION THAT WILL ALLOW US TO IDENTIFY YOU. WE MAY ALSO ASK TO SEE IDENTIFYING DOCUMENTS.
- 25. Maintenance and Supplies Agreement ("MSA") with TBS:**
 - a) TBS agrees to provide full service maintenance including toner, developer and parts necessary to produce an image. TBS will provide inspections as required, which may be made in conjunction with regular or emergency service calls. If, upon your request, service is provided at a time other than during TBS's normal business hours, you will be charged at TBS's customary rates. TBS will not be obligated to provide service for repairs made necessary as a result of service by personnel not authorized by TBS or the use of supplies other than those provided by TBS. Separate charges for repairs or parts replacement due to the foregoing shall be borne by you.
 - b) Except as provided below, TBS will replace parts necessary to produce an image, consumables and supply items without charge. You agree to replace any parts, consumables and supply item as a result of carelessness on the part of the operator, accident, misuse (including failure to follow the manufacturer's published operating manual) abuse, neglect, theft, riot, vandalism, lightning, electrical power failure, fire, water, or other casualty.
 - c) If you are in default under the MSA, TBS has the right to deny performing any service and/or supplying any products.
 - d) Under the MSA, TBS's liability with respect to any property damage or injury (including death) to persons arising out of or connected with service performed under this Agreement is strictly limited to that imposed by law and there is no contract imposing any greater degree of liability.
 - e) Title to all supplies furnished hereunder including toner and toner bags remains with TBS until you consume said supplies to the extent they may not be further utilized in the image making process. We may charge you a supply freight fee to cover the cost of shipping supplies. You agree to use the supplies provided at "no charge" on the Equipment. You will not take designated supplies from Equipment to be used in any other Equipment not covered by this Agreement. You must purchase paper and staples separately.
 - f) Stated supply item yields represent 100% of manufacturer stated yields based on standard "letter size" copies with 6% image coverage. At the end of each annual billing period or billing cycle, you will be billed for any toner used in excess of that required based on yields stated above.

Addendum to Agreement # _____ and any future supplements/schedules thereto, between CITY OF LEAVENWORTH, KANSAS, as Customer and Toshiba Financial Services, as Lessor. The words "you" and "your" refer to Customer. The words "we" and "us" refer to Lessor.

1. The parties wish to amend the above-referenced Agreement by adding the following language:

REPRESENTATIONS AND WARRANTIES OF CUSTOMER: You hereby represent and warrant to us that: (i) you have been duly authorized under the Constitution and laws of the applicable jurisdiction and by a resolution or other authority of your governing body to execute and deliver this Agreement and to carry out your obligations hereunder; (ii) all legal requirements have been met, and procedures have been followed, including public bidding, in order to ensure the enforceability of this Agreement; (iii) this Agreement is in compliance with all laws applicable to you, including any debt limitations or limitations on interest rates or finance charges; (iv) the Equipment will be used by you only for essential governmental or proprietary functions of you consistent with the scope of your authority, will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use, and your need for the Equipment is not expected to diminish during the term of this Agreement; (v) you have funds available to pay Payments until the end of your current appropriation period, and you intend to request funds to make Payments in each appropriation period, from now until the end of the term of this Agreement; and (vi) your exact legal name is as set forth on page one of this Agreement.

INITIAL TERM AND RENEWAL TERM(S): The term of the Agreement consists of an initial term beginning on the date we pay Supplier and ending at the end of your fiscal year in which we pay Supplier, and a series of renewal terms, each co-extensive with your fiscal year. Except to the extent required by applicable law, if you do not exercise your right to terminate the Agreement under the Non-Appropriation or Renewal paragraph as of the end of any fiscal year, the Agreement will be deemed automatically renewed for the next succeeding renewal term.

An election by you to terminate the Agreement under the Non-Appropriation or Renewal paragraph is not a default.

Notwithstanding anything to the contrary set forth in the Agreement, if we cancel the Agreement following a default by you, we may require that you pay the unpaid balance of Payments under the Agreement through the end of your then-current fiscal year, but we may not require you to pay future Payments due beyond that fiscal year or the anticipated residual value of the Equipment. If we sell the Equipment following a default by you, you will not be responsible for a deficiency, except to the extent of our costs of repossession, moving, storage, repair and sale, and our attorneys' fees and costs.

NON-APPROPRIATION OR RENEWAL: If either sufficient funds are not appropriated to make Payments or any other amounts due under this Agreement or (to the extent required by applicable law) this Agreement is not renewed either automatically or by mutual ratification, this Agreement shall terminate and you shall not be obligated to make Payments under this Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, you shall, no later than the end of the fiscal year for which Payments have been appropriated or the term of this Agreement has been renewed, deliver possession of the Equipment to us. If you fail to deliver possession of the Equipment to us, the termination shall nevertheless be effective but you shall be responsible, to the extent permitted by law and legally available funds, for the payment of damages in an amount equal to the portion of Payments thereafter coming due that is attributable to the number of days after the termination during which you fail to deliver possession and for any other loss suffered by us as a result of your failure to deliver possession as required. You shall notify us in writing within seven days after (i) your failure to appropriate funds sufficient for the payment of the Payments or (ii) to the extent required by applicable law, (a) this Agreement is not renewed or (b) this Agreement is renewed by you (in which event this Agreement shall be mutually ratified and renewed), provided that your failure to give any such notice under clause (i) or (ii) of this sentence shall not operate to extend this Agreement or result in any liability to you.

SUPPLEMENTS; SEPARATE FINANCINGS: To the extent applicable, in the event that the parties hereafter mutually agree to execute and deliver any supplement or schedule ("Supplement") under the above-referenced Agreement, such Supplement, as it incorporates the terms and conditions of the Agreement, shall be a separate financing distinct from the Agreement or other Supplements thereto. Without limiting the foregoing, upon the occurrence of an event of default or a non-appropriation event with respect to the Agreement or a Supplement (each, a separate "Contract"), as applicable, we shall have the rights and remedies specified in the Agreement with respect to the Equipment financed and the Payments payable under such Contract, and we shall have no rights or remedies with respect to Equipment financed or Payments payable under any other Contract unless an event of default or non-appropriation event has also occurred under such other Contract.

2. The parties wish to amend the above-referenced Agreement by restating certain language as follows:

Any provision in the Agreement stating that you shall indemnify and hold us harmless is hereby amended and restated as follows: "You shall not be required to indemnify or hold us harmless against liabilities arising from this Agreement. However, as between you and us, and to the extent permitted by law and legally available funds, you are responsible for and shall bear the risk of loss for, shall pay directly, and shall defend against any and all claims, liabilities, proceedings, actions, expenses, damages or losses arising under or related to the Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof, except that you shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses that arise directly from events occurring after you have surrendered possession of the Equipment in accordance with the terms of this Agreement to us or that arise directly from our gross negligence or willful misconduct."

Any provision in the Agreement stating that the Agreement is governed by a particular state's laws and you consent to such jurisdiction and venue is hereby amended and restated as follows: "This Agreement will be governed by and construed in accordance with the laws of the state where you are located. You consent to jurisdiction and venue of any state or federal court in such state and waive the defense of inconvenient forum."

Any provision in the Agreement stating this Agreement supersedes any invoice and/or purchase order is hereby amended and restated as follows: "You agree that the terms and conditions contained in this Agreement, which, with the acceptance certification, is the entire agreement between you and us regarding the Equipment and which supersedes any purchase order, invoice, request for proposal, response or other related document."

Any provision in the Agreement stating that this Agreement shall automatically renew unless the Equipment is purchased, returned or a notice requirement is satisfied is hereby amended and restated as follows: "Unless the purchase option is \$1.00 or \$101.00, you agree to send us written notice at least 30 days before the end of the final renewal term that you want to purchase or return the Equipment, and you agree to so purchase or return the Equipment not later than the end of the final renewal term. If you fail to so purchase or return the Equipment at or before the end of the final renewal term, you shall be a holdover tenant with respect to this Agreement and the Equipment, and this Agreement shall renew on a month-to-month basis under the same terms hereof until the Equipment has been purchased or returned."

Any provision in the Agreement stating that we may assign this Agreement is hereby amended and restated as follows: "We may sell, assign, or transfer this Agreement without notice to or consent from you, and you waive any right you may have to such notice or consent."

Any provision in the Agreement stating that you grant us a security interest in the Equipment to secure all amounts owed to us under any agreement is hereby amended and restated as follows: "To the extent permitted by law, you grant us a security interest in the Equipment to secure all amounts you owe us under this Agreement and any

NOTE: CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.

supplements hereto. You authorize and ratify our filing of any financing statement(s) and the naming of us on any vehicle title(s) to show our interest."

Any provision in the Agreement stating that a default by you under any agreement with our affiliates or other lenders shall be an event of default under the Agreement is hereby amended and restated as follows: "You will be in default if: (i) you do not pay any Payment or other sum due to us under this Agreement when due or you fail to perform in accordance with the covenants, terms and conditions of this Agreement; (ii) you make or have made any false statement or misrepresentation to us; or (iii) you dissolve, liquidate, terminate your existence or are in bankruptcy.

Any provision in the Agreement stating that you shall pay our attorneys' fees is hereby amended and restated as follows: "In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay, to the extent permitted by law and to the extent of legally available funds, our reasonable attorneys' fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee."

Any provision in the Agreement requiring you to pay amounts due under the Agreement upon the occurrence of a default, failure to appropriate funds or failure to renew the Agreement is hereby amended to limit such requirement to the extent permitted by law and legally available funds.

3. If your end-of-term option is the purchase of all Equipment for \$1.00 or \$101.00, the following applies: Unless otherwise required by law, upon your acceptance of the Equipment, title to the Equipment shall be in your name, subject to our interest under this Agreement.

4. With respect to any "Financed Items," the following provisions shall be applicable to such Financed Items:

This Addendum concerns the granting to you of certain software and/or software license(s) ("Licensed Software"), the purchase by you of certain software components, including but not limited to, software maintenance and/or support ("Products") and/or the purchase by you of certain implementation, integration, training, technical consulting and/or professional services in connection with software ("Services") (collectively, the "Financed Items") from software licensor(s) and/or supplier(s) (collectively, the "Supplier"), all as further described in the agreement(s) between you and Supplier (collectively, the "Product Agreement"). For essential governmental purposes only, you have requested and we have agreed that instead of you paying the fees pursuant to the Product Agreement to Supplier for the Financed Items, we will satisfy your obligation to pay such fees to Supplier, and in consideration thereof, you shall repay the sums advanced by us to Supplier by promptly making certain installment payments to us, which are included in the Payments set forth in the Agreement.

To the extent permitted by law, you grant us a security interest in the license(s), including without limitation, all of your rights in the Licensed Software granted thereunder, the Products, all rights to payment under the Product Agreement, the Financed Items, and all proceeds of the foregoing to secure all amounts you owe us under this Agreement. You authorize and ratify our filing of any financing statement(s) to show our interest.

Ownership of any Licensed Software shall remain with Supplier thereof. All Financed Items shall be provided by a Supplier unrelated to us, and your rights with respect to such Financed Items shall be governed by the Product Agreement between you and

By signing this Addendum, Customer acknowledges the applicable changes noted above are incorporated by reference into the Agreement. In all other respects, the terms and conditions of the Agreement remain in full force and effect and remain binding on Customer. In the event of any conflict between the terms and conditions of the Agreement and this Addendum, the terms and conditions of this Addendum shall control. Customer has caused this Addendum to be executed by its duly authorized officer as of the date below.

Toshiba Financial Services

Lessor

Signature

Title

Date

Supplier, which shall not be affected by this Agreement. IN NO EVENT SHALL WE HAVE ANY OBLIGATION TO PROVIDE ANY FINANCED ITEMS, AND ANY FAILURE OF SUPPLIER TO PROVIDE ANY FINANCED ITEMS SHALL NOT EXCUSE YOUR OBLIGATIONS TO US IN ANY WAY. YOU HAVE SELECTED SUPPLIER AND THE FINANCED ITEMS BASED UPON YOUR OWN JUDGMENT. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE FINANCED ITEMS. SUPPLIER IS NOT AN AGENT OF OURS AND WE ARE NOT AN AGENT OF SUPPLIER, AND NOTHING SUPPLIER STATES OR DOES CAN AFFECT YOUR OBLIGATIONS HEREUNDER. **YOU WILL MAKE ALL PAYMENTS UNDER THIS AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST ANY SUPPLIER, LICENSOR OR MANUFACTURER, AND ANY FAILURE OF A SERVICE PROVIDER TO PROVIDE SERVICES WILL NOT EXCUSE YOUR OBLIGATIONS TO US UNDER THIS AGREEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE FINANCED ITEMS COVERED BY THE PRODUCT AGREEMENT AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR AS TO ANY PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT, CONDITION, QUALITY, ADEQUACY, TITLE, DATA ACCURACY, SYSTEM INTEGRATION, FUNCTION, DEFECTS OR ANY OTHER ISSUE IN REGARD TO THE FINANCED ITEMS. YOU HEREBY WAIVE ANY CLAIM (INCLUDING ANY CLAIM BASED ON STRICT LIABILITY OR ABSOLUTE LIABILITY IN TORT) THAT YOU MAY HAVE AGAINST US FOR ANY LOSS, DAMAGE (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF DATA OR ANY OTHER DAMAGES) OR EXPENSE CAUSED BY THE FINANCED ITEMS COVERED BY THE PRODUCT AGREEMENT OR A TERMINATION OF THE FINANCED ITEMS PURSUANT TO AN EVENT OF DEFAULT, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, LOSS, EXPENSE OR COST.**

The following shall be additional events of default under the Agreement: (i) you fail to perform in accordance with the covenants, terms and conditions of the Product Agreement, or (ii) the Product Agreement is terminated, suspended, materially restricted or limited.

The following shall be additional remedies we have for your default under the Agreement: We shall have the right to: (a) cause the termination of the Financed Items and you irrevocably consent to such termination of the Financed Items by Supplier; and (b) require you to immediately stop using the Financed Items (regardless of whether you are in default under the Product Agreement) and you shall, at our option, either deliver to us a certification executed by a duly authorized officer certifying that you have ceased use of the Financed Items or deliver the Financed Items to a location designated by us. In the event you are entitled to transfer the right to use the Financed Items to any third party, you hereby agree to transfer any such right to use the Financed Items to any third party selected by us and acknowledge that you shall have no right to fees payable by any third party in connection with such transfer. However, we shall not be required to mitigate our damages caused by a default by transferring any Financed Items to a third party.

CITY OF LEAVENWORTH, KANSAS

Customer
X

Signature

Title

Date

NOTE: CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.

Sales Representative: Ryan Birt

SALES PACKET NUMBER

DATE

11/13/2023

CUSTOMER INFORMATION

Customer Name: CITY OF LEAVENWORTH, KANSAS		Customer Contact: Stephanie Alexander	
Billing Address: 100 N 5TH STREET		Phone #: (913) 684-0375	Ext. Customer PO #:
Suite #:		Meter Contact: Carol Charity	Meter Phone: 913-684-0369
City: LEAVENWORTH	State: KS	Zip: 66048	Meter Email: ccharity@firstcity.org

METER COLLECTION CHOICES:

Let your printers and copiers do the reporting for you.



What is Toshiba's Automated Meter Read Program (AMR)? As part of your service contract with TBS, you are required to report usage data for all your printers, copiers, and multifunction devices. With manual reporting, you must go to each device, record the serial numbers and meter readings, and submit this information via email, fax or phone. Toshiba's AMR program automatically gathers usage data for each device and sends it securely to TBS at scheduled intervals. The result is more accurate and timely reporting, fewer billing errors, and less busy work for you.

How much does Toshiba AMR cost me?

Nothing. Ever.

What information does AMR gather?

The automated meter reading system captures all required information for billing purposes; Machine model, Serial number, and usage information.

Is the transmission secure?

Yes. Data is completely secure.

Toshiba Business Solutions IT Team will work with you to set up equipment meter collections in the priority listed below:

1 Automated Meter Read (e-Bridge CloudConnect)

Your Toshiba system will be equipped with two-way communication capabilities. TBS will provide updates, system back ups, and meter collection automatically. Equipment MUST be connected to your network.

2 Automated Meter Read (On Site Software)

TBS will provide free AMR software that will automatically pull meter information and input into TBS billing system. Equipment MUST be connected to your network.

3 Meters Online (MOL)

An automatic meter request is sent to the End User directly from the TBS billing system. End User collects the meter readings and goes to <http://meters.toshiba.com> and enters the meters online manually. All meters submitted via online are electronically imported into the TBS billing with no manual entry or interaction by TBS.

TBS may charge a fee to recover the cost of meter collections if meters are not submitted through the automated website. TBS reserves the right to convert Customer to a flat fee, based upon the greater of a specific unit's historical average volume or the device type's midpoint manufacturer recommended volume, if meters are not made available for the device(s) after 3 consecutive billing periods.

ELECTRONIC INVOICING CHOICE:

Toshiba is committed to the environment through its worldwide green initiatives. One of the primary goals of Toshiba's green initiatives is environmental management through corporate social responsibility. One of TBS's Eco-Innovation initiatives is to convert to electronic invoicing whenever possible. Converting to electronic invoicing will enable TBS to decrease its consumption of environmental resources tremendously.

Please select if you will accept Electronic Invoices when possible: Yes No

Upon receipt of first TFS Lease invoice, visit www.financing.eportaldirect.com or call 1-800-328-9092 to register.

Please select preferred Electronic Invoice Method (TBS Invoices Only):

Email Attachment Only:

PDF copy of invoice sent to email listed below

Invoice Portal Access:

Link to web portal allowing invoicing viewing and E-Pay option. Email will be sent with link when new invoices generate.

Email Address for invoice notifications: salexander@firstcity.org

CUSTOMER ACCEPTANCE:

Print Name:

Signature:

Title:

Date:



CONNECTIVITY OPTIONS AGREEMENT

CA-1.0.0

SALES PACKET NUMBER

EFFECTIVE DATE

Sales Representative: Ryan Birt

11/13/2023

CUSTOMER INFORMATION

Customer Name: CITY OF LEAVENWORTH, KANSAS	Customer Contact: Stephanie Alexander	
Billing Address: 100 N 5TH STREET	Phone #: (913) 684-0375 Ext.	Customer PO #:
Address 2:	IT Contact: Carol Charity	IT Phone #: 913-684-0369
City: LEAVENWORTH State: KS Zip: 66048	eMail: ccharity@firstcity.org	

CONNECTIVITY OPTIONS (Check All That Apply)

OPTION A: Network Administrator Integration and Training FREE (\$400 VALUE) (Remote)

Includes basic device configuration, print driver installation on up to three workstations and administrator training. Additional Professional Services will be billed at published TBS Professional Services rates. Includes Remote Orientation of an Administrator to controller on their network, installation of 3 workstations for printing, scanning, and PC faxing. Connection Project not to exceed 2 hours. Any additional time required beyond 2 hours will be billed at current Professional Services Rates. If less than 2 hours is required, no time is banked for future use. Includes installation of Re-Rite on client server, configuration of 6 advanced scanning workflows; Word, Excel, Text Searchable PDF, PDF Form, Slim PDF, Secure PDF. Workflows include one Advanced Scanning Template Group, 6 Templates, and 4 Re-Rite workflows, all delivered to a common output folder. One hour of MFP Training - No more than 5 users per session - Training covers basic copier functions, printing, and scanning.

<input type="checkbox"/> OPTION B: Custom Network Integration - Variable / Additional Charges	Qty	Charge	Unit Description
• Base Device Configuration - Setup of Network Protocols on Device			Device
• Print Driver Installation			Workstation
• PC Fax Driver Installation			Workstation
• Print Driver and PC Fax Driver on same Workstation			Workstation
• Scan to Copier Controller			Scanning Template
• Scan to Network Folder			Scanning Template
• Scan to Email - Initial Setup of communication to local SMTP server			Initial Setup
- Additional Setup per Scanning Template			Scanning Template
- Off-site SMTP Server			Hour Until Completion
- Additional Setup per Scanning Template			Scanning Template
• Incoming Fax Routing to Copier Controller			Fax Destination
• Incoming Fax Routing to Network Folder Location			Fax Destination
• Incoming Fax Routing to Email - Initial Setup of SMTP Server Communication to a Local SMTP Server			Initial Setup
- Additional Setup per Destination			Destination
- Off-site SMTP Server			Hour Until Completion
- Additional Setup per Destination			Destination
• User Code Enforcement			10 User Codes
• Copier Configuration Backup and Restore			Backup/Restore Event

Total Connectivity Fee:

Note: Any Additional Connectivity Services performed not specified above will be billed at a rate of: \$200.00 per hour. Connectivity support may be completed remotely or on-site at the discretion of TBS. Support covers initial installation only.

CUSTOMER ACCEPTANCE

You hereby acknowledge and agree that your electronic signature above shall constitute an enforceable and original signature for all purposes.
 By signing this agreement, the customer acknowledges that he/she has read and understood the statement of work and terms and conditions of this agreement.

Print Name:	Signature: X	Title:	Date:
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DECLINATION

Customer certifies that they have read the statement of work and that they have decided to decline all assistance from TBS regarding the installation of their copier/printer. TBS is under no obligation and has no liability concerning any aspect of the installation process.

Print Name:	Signature: X	Title:	Date:
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TBS ACCEPTANCE

Print Name:	Signature: X	Title:	Date:
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STATEMENT OF WORK

This Statement of Work for Connectivity & Security Options outlines the services and deliverables for the planned implementation. This Statement of Work is intended to detail the obligations of Toshiba Business Solutions (TBS) and the Customer.

CONNECTIVITY OPTIONS - WORK TO BE PERFORMED

Option B: Covers the selected work only. Additional Professional Services fees apply for any additional work at the current TBS Professional Services rates.

Base Device Configuration Includes:

1. Verify proper network settings, i.e., print queue configuration, TCP/IP address, etc.
2. Connect base unit to customer's network via customer supplied/installed cabling.
3. Perform color calibration on base unit and RIP device.

Print Driver Installation Includes:

1. Install print drivers onto designated workstations (up to three – Option A or as specified in Option B.)
2. Confirm print capabilities via standard print driver test page.

Administrator Training Includes:

1. Training on base unit, print driver and RIP software.
2. Orientation of the administrator to the print controller on the network.

While Toshiba print drivers are compatible with most common office applications, TBS does not provide training on specific printing applications.

STATEMENT OF WORK ASSUMPTIONS

The following are the assumptions on which this Statement of Work is based. If any of these assumptions either change or are incorrect, changes to the Statement of Work may be required, which may result in changes to the Connectivity Services fee. Please review this section to make sure these assumptions are correct.

1. Client is responsible for ensuring that all applications and data are successfully backed up prior to TBS beginning work. TBS is not responsible for any lost information.
2. Building environmental conditions are within equipment specifications for airflow, temperature, humidity, and electrical quality.
3. Cabling and WAN Data Communication Lines are properly installed and tested. TBS is not responsible for any improper cabling or issues involving telecommunications lines. All troubleshooting and corrective action will be billed outside of this SOW on a time and materials basis.
4. TBS is not responsible for any conflicts with existing hardware that is no longer supported by the manufacturer.
5. TBS is only responsible for integration tasks outlined in this Statement of Work. Any work outside of this SOW will be handled through a Change Order Request Process, which may require additional billable time and materials. Customer will be informed before any out of scope work is performed.
6. Customer will provide systems personnel for the project familiar with all aspects of Customer's enterprise configuration – security, remote access, domain structure, WAN/LAN connectivity, applications used for this particular project – to work in conjunction with TBS on this implementation. Additionally, a desktop technician may be required to perform client-side duties.
7. All software being utilized is registered and authentic.
8. Equipment is connected to a dedicated power source per product specifications furnished by TBS.
9. All network addresses, print queue names and printer names, etc. are available upon request.

TERMS AND CONDITIONS

The following Terms and Conditions are an amendment to the TBS Maintenance contract. In the event that the Customer has declined a Maintenance contract, the following Terms and Conditions do not apply to this agreement.

Toshiba products and software are warranted to be compatible with hardware and operating systems listed on product specification sheet at time of installation. TBS does not guarantee compatibility with future operating systems or hardware.

Inclusions – Hardware: Service calls, replacement parts for connected devices that allow the equipment to interface with PC's and networks, e.g. printer interface cards, NIC cards, print controllers, print/scan enablers or any other items that enhance the functionality of these products.

Diagnosis of device failures will be limited to confirmation of print capabilities with a laptop computer connected via a crossover cable using a standard print driver test page.

Inclusions – Software: Service calls required as a result of the failure of Toshiba software. Upgrades to Toshiba software are included.

Service Availability: Service calls performed during normal business hours, Monday through Friday, 8:00am to 5:00pm, excluding company holidays.

Exclusions:

1. Electrical work external to the equipment.
2. Charges to install or improve telephone lines.
3. Charges to improve electrical service and/or network lines.
4. Network wiring to improve or connect the hardware to a computer or network.
5. Service necessitated as a result of malfunction of equipment when unauthorized parts, attachments, or conflicting software is used with the equipment.
6. Service necessitated as a result of alterations, malfunctioning computer or network hardware and/or operating systems.

In such event, TBS reserves the right to terminate the maintenance contract if it is determined that such changes, alterations or malfunctions make it impractical to continue to service the equipment.

7. Reinstallation of drivers and/or installation of connected devices due to changes in computer and/or network operating systems, system configuration, addition/upgrades to application software or malfunction of devices.

8. Reinstallation/service required due to the relocation of equipment.

Excluded services will be invoiced to the Customer at TBS's normal hourly labor rate then in effect for Digital Systems Integration Services.

**POLICY REPORT
FIRST CONSIDERATION ORDINANCE
GAS FRANCHISE AGREEMENT KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC.**

NOVEMBER 28 2023


Sarah Bodensteiner, CMC City Clerk


Paul Kramer, City Manager

ISSUE:

Consider the Gas Franchise Agreement with Kansas Gas Service, a Division of One Gas, Inc.

BACKGROUND:

On August 27, 2013 the City of Leavenworth and Kansas Gas Service entered into a ten (10) year Contract Franchise Agreement via Ordinance as required by Kansas Statute K.S.A. 12-2001 et. seq. The contract became effective upon passage by the governing body of the City and its publication in the official City newspaper and continued to be in effect until August 30, 2023.

On January 4, 2023 the City received notice from Kansas Gas Service of their intent to negotiate a new Contract Franchise Agreement, in advance of the expiration of the 2013 agreement. The proposed agreement has been reviewed by the City Attorney and City Staff. The following are some of the highlights of the agreement:

- Kansas Gas Service will remit to the City a franchise fee of 5.25% of Gross Receipts. This is an increase from the previously received 5% currently in place.
- Kansas Gas Service is still required to obtain necessary permits and licenses
- Use of Public Right-of-Way – The City still maintains its home rule powers in administration and management of public right-of-way
- The Franchise ordinance shall be in effect for fifteen (15) calendar years, unless terminated sooner as provided in the ordinance. Thereafter, this Franchise ordinance will renew automatically for five (5) one (1) year terms

ACTION:

Place on first consideration Ordinance the Gas Franchise Agreement with Kansas Gas Service, a Division of One Gas, Inc.

ATTACHMENTS:

- Proposed Ordinance Franchise Agreement
- Ordinance 7927 dated August 27, 2013

ORDINANCE NO. XXXX

AN ORDINANCE GRANTING TO KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC., AN OKLAHOMA CORPORATION, A NATURAL GAS FRANCHISE INCLUDING THE RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM OR DISTRIBUTION FACILITIES WITHIN THE CORPORATE LIMITS OF THE CITY OF LEAVENWORTH, KANSAS.

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

WHEREAS, Kansas Gas Service, a Division of ONE Gas, Inc., an Oklahoma corporation ("Franchisee") desires to operate its Facilities for the purpose of providing said Service in the City and therefore has applied to the City for a franchise in order to operate its Facilities; and

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

WHEREAS, the City Commission considered this Franchise Ordinance for first reading at its regular meeting held on November 28, 2023, with the second and final reading held at a regular meeting of the City Commission on December 12, 2023.

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

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

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

"Consumer" or "Consumers" means a Sales Consumer and/or a Transportation Consumer.

"Distributed" or "Distribution" shall mean all sales, supply, or transportation of natural gas to any Sales or Transportation Consumer for use within the City by the Franchisee or by others through the Distribution Facilities of Franchisee in the Right of Way.

"Distribution System", "Distribution Facilities", or "Facilities" means a pipeline or system of pipelines, including without limitation, mains, pipes, boxes, reducing and regulating stations, laterals, conduits and services extensions, together with all necessary appurtenances thereto, or any part thereof located within the right-of-way, for the purpose of "Distribution" or supplying natural gas for light, heat, power and all other purposes.

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

"Franchisee" means Kansas Gas Service, a Division of ONE Gas, Inc., an Oklahoma corporation, and its successors, transferees, or assigns.

"Franchise Fee" means the fee imposed by the City on Franchisee solely because of its status as a franchisee in accordance with said State constitutional provision and K.S.A. 12-2001, as set forth in Section 4 below. It shall not include: (a) any tax, fee, or assessment of general applicability including any which are imposed on Franchisee; (b) requirements or charges incidental to the awarding or enforcing the Franchise Ordinance, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages, (c) any other fee imposed by federal, state or local law, except as set forth in Section 4 below.

"Gross Receipts" shall mean any and all compensation and other consideration derived directly or indirectly by the Franchisee from any Distribution of natural gas to Consumers within the City. Such term shall not include revenue from certain miscellaneous charges and accounts, including but not limited to: connection fees, disconnection and reconnection fees, temporary service charges, delayed or late payment charges, collection fees, bad debts, customer project contributions, meter test fees, revenues received by Franchisee from Consumers as Franchise Fee reimbursement, and returned check charges. Additionally, Gross Receipts shall not include credit extended pursuant to the Cold Weather Rule (or substitute rule) of the Kansas Corporation Commission for natural gas sold within the corporate limits of the City, nor Volumetric Rate Fees collected by Franchisee and remitted to City in accordance with Section 4 of this Franchise Ordinance (subject to Franchisee's obligations to remit a sum equal to the Volumetric Rate multiplied by the number of MCF of Transport Gas for the distribution of Transport Gas for Transportation Consumers, as set forth in such Section 4).

"KCC" means the Kansas Corporation Commission.

"MCF" shall mean a measurement of natural gas equal to one thousand (1,000) cubic feet. It is assumed for purposes of this Franchise Ordinance that one MCF equals one million (1,000,000) British Thermal Units.

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

"Right-of-way" shall mean only the area of real property in which City has a dedicated or acquired right-of-way interest in the real property, and shall include any area on, below, or above the present and future streets, alleys, avenues, roads, sidewalks, highways, parkways, or boulevards dedicated or acquired as right-of-way by the City. The term does not include easements obtained by private entities providing utilities services or private easements in platted subdivisions or tracts.

"Sales Consumer" shall mean, without limitation, any Person that purchases natural gas within the corporate City limits from Franchisee for delivery to such consumer within the City through the Franchisee's Distribution System or Distribution Facilities.

"Service" means the Distribution of natural gas through Franchisee's Facilities.

"Settlement Prices" shall mean the settlement prices for natural gas futures contracts traded on the New York Mercantile Exchange (NYMEX) on the fifteenth day of each month as

published in nationally recognized publications such as the CME Group (CME) or S&P Global Platts (Platts) on the following business day (or the next day in which a Settlement Price is published).

“Transportation Consumer” shall mean without limitation, any Person that transports Transport Gas within the corporate City limits through Franchisee’s Distribution Facilities for consumption within the City’s corporate limits.

“Transport Gas” shall mean all natural gas transported by the Franchisee, or by others, but not sold by the Franchisee, to any consumer within the City through the Distribution Facilities of the Franchisee.

“Volumetric Rate” is the rate applicable to each Mcf of Transport Gas distributed to Transportation Consumers. The Volumetric Rate shall be based on a twelve-month average of Settlement Prices as calculated from July through June. Initially, the Settlement Price shall mean \$0.2462 per MCF for Transport Gas distributed to Transportation Consumers within the City as represented in “Attachment A,” which is incorporated herein and attached hereto. There shall be an annual recalculation of the Volumetric Rate which shall be effective each January 1. The recalculation shall be based on Settlement Prices for the previous twelve-month period. The average Settlement Prices for each of the twelve months shall be summed and divided by twelve and multiplied by five and one-quarter percent (5.25%) to obtain the Volumetric Rate to be effective January 1 of the next succeeding year. The Franchisee shall calculate the Volumetric Rates in accordance with the procedures set out herein and then filed with the City Clerk by July 31 of each year for those rates to be effective on January 1 of the following year.

“State” means the State of Kansas.

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

Section 2. Grant.

- (a) Franchisee is hereby granted the right, privilege, and franchise to: provide Service to Consumers within the City; to obtain natural gas and/or comparable blends of combustible gasses, from any source available; to do all things reasonably necessary to carry on Franchisee’s business related to the Services; and to construct, operate, and maintain its Facilities in, over, under, across, through, and /or along the City’s Right-of-way on a nonexclusive basis, subject, however, to the terms and conditions herein set forth within this Franchise Ordinance. As a condition of this grant, Franchisee shall be required to obtain and shall be responsible for any necessary permit, license, certification, grant, registration or any other authorization required by an appropriate governmental entity, including, but not limited to, the City, the State or the KCC, subject to Franchisee’s right to challenge in good faith such authorization as established by the State, KCC or other City ordinance.
- (b) Notwithstanding the foregoing, this Franchise shall not:
 - (i) Permit the use of the Franchise or the right-of-way by Franchisee or other parties for any other purpose, and a separate franchise shall be required therefor;
 - (ii) Convey equitable or legal title in the right-of-way;

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

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

- (a) Franchisee's use of right-of-way shall in all matters be subordinate to the City's use of the right-of-way. Franchisee shall coordinate with the City or its designee the placement of its Facilities in a manner that minimizes adverse impact on public improvements and maximizes public safety, as reasonably determined by the City, provided any such exercise must be competitively neutral and may not be unreasonable or discriminatory, not in conflict with state or federal law.
- (b) All earth, materials, sidewalks, pavings, crossings, utilities, public improvements, or improvements of any kind damaged or removed by Franchisee in its activities under this Franchise shall be fully repaired or replaced promptly by Franchisee at its sole expense to their prior condition or to existing municipal standards as are then in existence, and to the reasonable satisfaction of the City.
- (c) Franchisee shall keep and maintain accurate records and as-build drawings depicting approximate horizontal location of all Facilities constructed, reconstructed, or relocated in the right-of-way. Upon request by the City, Franchisee shall provide to the City a set of plans showing Franchisee's Facilities within City right-of-way or easements in a commonly agreed upon industry standard format. Franchisee shall designate a person familiar with the Facilities who is responsible for timely response to information requests of the City and other users of the right-of-way. Such person or such person's designee shall be available on a scheduled basis in the City to talk to City officials and citizens, including regular City scheduled utility coordinating staff meetings.
- (d) Not less than three (3) working days prior to construction or relocation of any Facilities in the right-of-way or easement, Franchisee shall give written notice to the Director of Public Works or, in the absence of such Director, the City Manager, of the proposed activity.
- (e) Franchisee shall relocate or adjust any Facilities in the right-of-way for any publicly-funded or publicly-guaranteed improvement project. Such relocation or adjustment shall be performed by Franchisee at its sole expense without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the City. Franchisee shall not be required to relocate or adjust, at Franchisee's cost, any individual Facilities at the same specific location more often than once in any five (5)

year period. Such relocation or adjustment shall be completed as soon as reasonably possible and within the time set forth in any request by the City for such relocation or adjustment provided such time is reasonable. Any damages suffered by the City or its contractors as a result of Franchisee's failure to timely relocate or adjust its Facilities shall be borne by Franchisee.

If the City shall require the Franchisee to adapt or conform its Facilities or in any way to alter, relocate, or change its property to enable any other person, firm, corporation, or entity (public or private), other than the City or as part of any publicly-funded or publicly-guaranteed improvement project, to use the Right-of-Way, the Franchisee shall be reimbursed by the person, firm, corporation, or entity desiring or occasioning such change for any and all loss, cost, or expense occasioned thereby. "Person," "Firm," "Corporation," and "Entity" as used in this paragraph shall not include regular departments of the City, or any trust or authority formed by or for the benefit of the City for public utility purposes, but shall include any other agency or authority of the City, whether acting in a governmental or non-governmental capacity, including, but not limited to, any urban renewal authority, or any other agency or authority, which as a part of its program clears whole tracts of land within the municipal corporate limits and relocates citizens for the purpose of urban development or similar aims.

- (f) It shall be the responsibility of the Franchisee to take reasonable measures to protect and defend its Facilities in the right-of-way from harm or damage. If Franchisee fails to accurately or timely relocate Facilities when requested, it shall have no claim, for costs or damages against the City and its authorized contractors unless such party is responsible for the harm or damage by its negligent or intentional conduct. Franchisee shall be responsible to the City and its authorized contractors for all damages including, but not limited to, delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of Franchisee to perform its obligations under this Franchise ordinance unless the damaged party is responsible for the harm or damage by its negligence or intentionally caused harm.
- (g) Franchisee shall notify the City not less than three (3) working days in advance of any construction, reconstruction, repair or relocation of Facilities which would require any street closure which reduces traffic flow to less than two (2) lanes of moving traffic. Except in the event of any emergency, as reasonably determined by Franchisee, no such closure shall take place without such notice and prior authorization from the City. The City shall follow its policies in the grant or denial of such authority, which shall not be unreasonably delayed. In addition, all work performed in the traveled way or in which in any manner impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected at Franchisee's expense. Such signing shall be in conformance with the latest edition of the Federal Highway Administration's Standards and Guidelines for Work Zone Traffic Control, unless otherwise agreed to by the City.
- (h) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the Facilities in the right-of-way shall be in accordance with the applicable present and future federal, state and City laws and regulations, including but not limited to the most recent standards of the Kansas Corporation Commission and Department of Transportation, or such substantive equivalents as may hereafter be adopted or promulgated, insofar as they are consistent with the jurisdiction of the Kansas Corporation Commission or such other regulatory authority.

- (i) It is recognized that the natural gas to be delivered hereunder is to be supplied from a pipeline system transporting natural gas from distant sources of supply; and the Franchisee, by its acceptance of this Franchise does obligate itself to furnish natural gas in such quantity and for such length of time, limited by the terms hereof, as the said sources and said pipelines are reasonably capable of supplying.

Section 4. Franchise Fee. In consideration of and as compensation for the Franchise hereby granted to the Franchisee by the City, the Franchisee shall make an accounting to the City of all natural gas that has been "Distributed" within the City on a monthly basis. The Franchisee shall pay the City as compensation:

- (a) Effective the first day of the second month following the effective date of this Franchise Ordinance, Franchisee shall pay as its Franchise Fee an amount which will be equal to five and one-quarter percent (5.25%) of the actual Gross Receipts collected by Grantee from the Grantee's Distribution of natural gas to Sales Consumers within the corporate limits of the City;
- (b) Effective the first day of the second month following the effective date of this Franchise Ordinance, Franchisee shall pay as its Franchise Fee an amount which will be equal to five and one-quarter percent (5.25%) of the Gross Receipts received by Grantee from the Grantee's Distribution of natural gas to Transportation Consumers plus a sum equal to the Volumetric Rate multiplied by the number of MCF of Transport Gas for the distribution of Transport Gas for Transportation Consumers.

Prior to those dates, payments shall continue to be calculated and be paid in the manner previously provided in Ordinance No. 7927 and amendments thereto. The Franchise Fee required herein shall be in lieu of all taxes, charges, assessments, administrative licenses, fees and impositions of general applicability that are or may be imposed by the City under K.S.A. 12-2001, K.S.A. 17-1902, and amendments thereto. From and after the date hereof, the permit fees required of the Franchisee by any ordinance (presently in effect or hereafter adopted) for a permit to excavate in, or adjacent to, any Right-of-way shall be deemed a part of the compensation paid pursuant to this Franchise Ordinance and shall not be separately assessed or collected by the City; in no event, however, shall this provision be interpreted to waive the requirement of notice to the City and the procedural requirements of such ordinance. The Franchise Fee is compensation for use of the public Right-of-way only. Such Franchise Fee shall be payable by Franchisee on or before the last day of each calendar month without invoice or reminder from the City, and shall be based on the Gross Receipts and Volumetric Rate of the previous month.

Section 5. City's Right to Audit and Access to Records. Franchisee shall annually file with the City a "Gross Receipts Report" regarding all applicable monthly revenues. The City acknowledges that Franchisee considers such information to be confidential and proprietary, that such information is the sole property of Franchisee, and that such records should not be subject to disclosure under the Kansas open records act, K.S.A. 45-215 *et seq.* ("KORA") To the extent City, in its sole determination, determines that such records are subject to disclosure under KORA, then to the extent permitted under KORA and subject to applicable time limitations under KORA, the City will use its reasonable commercial efforts to provide Franchisee with advance notice of its intent to disclose such information. The City shall also have access to and the right to examine, within two (2) years of any payment of fees hereunder, at all reasonable times, all relevant books, receipts, files, records, and documents of the Franchisee necessary to verify the correctness of such statement and to correct the same, if found to be erroneous. If such statement of Gross Receipts or Volumetric Rate is incorrect, then such payment shall be made upon such

corrected statement, including interest on said amount at the annual statutory rate then in effect. Further, the City's acceptance of any payment determined as hereinabove provide to be deficient shall not be construed as a release of liability from the City or an accord or satisfaction of any claim that the City may have for additional sums owed by Franchisee. In addition to access to the records of Franchisee for audits, upon request, Franchisee shall provide reasonable access for records necessary to verify compliance with the terms of this Franchise Ordinance.

Section 6. Term. This Franchise ordinance shall be effective upon its passage by the governing body of the City and its publication in the official City newspaper and continue to be in effect until that date which is fifteen (15) calendar years after such effective date, unless sooner terminated as provided herein. Thereafter, this Franchise ordinance will renew automatically for five (5) one (1) year terms, unless either party notifies the other party of its intent to terminate the franchise prior to ninety (90) days before the termination of the then current term.

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

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

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

Section 9. Transfer of Franchise. The rights granted by this franchise are exclusive to Franchisee and shall inure to the benefit of Franchisee and any parent, subsidiary, affiliate or successor entity now or hereafter existing. No other party may use Franchisee's rights granted herein and the rights herein shall not be assignable without the express written consent of the Governing Body of the City, except Franchisee may assign its rights under this Franchise to a parent, subsidiary, affiliate, or successor entity without such consent. Provided, that no assignment shall be effective until the assignee assumes all of the obligations contained herein as of the effective date of the assignment, including, but not limited to, the obligations with regard to indemnity, insurance, and bond (with the intent being that there shall be no lapse in any coverage as a result of the assignment). Any required consent is to be evidenced by an ordinance or resolution of the Governing Body of the City that fully recites the terms and conditions, if any, upon which consent is given. In the event of any assignment, Franchisee shall timely notify the City of the name of the assignee, provide a point of contact for the assignee, and advise the City of the effective date of the assignment.

Section 10. Other Service Providers. Franchisee shall not interfere with any agreement between the City and another service provider.

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

Kansas Gas Service
7421 W. 129th Street
Overland Park, Kansas 66213

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

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

Section 13. Insurance Requirements.

- (a) During the term of this franchise, Franchisee shall maintain insurance coverage at its sole expense, from a reputable insurance company qualified to do business in the State of Kansas. Franchisee may elect to self-insure to the extent of any or all of the insurance requirements in this Franchise Ordinance, as provided in subsection (b) below. Franchisee shall provide not less than the following insurance:
 - (i) Workers' compensation as provided under any workers' compensation or similar law in the State of Kansas, with an employers' liability limit equal to the amount required by law; and
 - (ii) Commercial general liability, including coverage for contractual liability and products completed operations liability with a limit of not less than two million dollars (\$2,000,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Franchisee's operations under this Franchise; and
 - (iii) Employer's liability limit with a limit of one million dollars (\$1,000,000.00) for each accident/disease/incident/occurrence.
- (b) As an alternative to the requirements of subsection (a), Franchisee may demonstrate, to the satisfaction of the City, that it is self-insured by providing a permit issued by the State of Kansas showing Franchisee is a qualified self-insurer for any or all of the coverages required by this section.

- (c) Franchisee shall, prior to the commencement of any work, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. In the event of a claim, Franchisee shall make available to the City upon written request the relevant policy declarations page and copy of the policy in effect.

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

Section 15. Reservation of Rights. In addition to any rights specifically reserved to the City by this Franchise Ordinance, the City reserves to itself every right and power available to it under the constitutions of the United States and the State, and any other right or power, including, but not limited to all police powers and authority to regulate and legislate to protect and promote the public health, safety, and welfare. Nothing in this Franchise Ordinance shall limit or govern the right of the City to exercise its municipal authority to the fullest extent allowed by law. The waiver by the City of any provision in any one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of this Franchise Ordinance unless the statement so recites. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

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

- (a) For violations concerning the use of the right-of-way as described in this Franchise Ordinance and deemed by the City to be a public nuisance and/or emergency, the following procedure shall apply. The City shall provide written notice by certified mail to Franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee shall have fourteen (14) days subsequent to receipt of such notice to inform the City in writing of the action Franchisee is taking to correct the violation. Such corrective action shall be commenced within such 14-day period, and completed within thirty (30) days subsequent to receipt of notice; provided, that if the violation is such that it cannot reasonably be completed within thirty (30) days, then Franchisee shall have such time as is reasonably necessary to complete such correction, not to exceed sixty (60) days without consent of the City, provided that Franchisee has commenced such correction within the time period provided herein and is diligently pursuing the same to completion. If at the end of such period the City deems that the conditions of such franchise have not been reasonably complied with by Franchisee and that such franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which such franchise is to be cancelled and terminated. If Franchisee fails to take corrective action within the period set forth above,

nothing herein shall preclude the City from maintaining an action against Franchisee to recover damages as a result of such failure to take corrective action, including, but not limited to, reasonable attorney fees and the costs of corrective action incurred by the City.

- (b) For all other violations of the Franchise Ordinance, the following procedure shall apply. The City shall provide written notice by certified mail to Franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee shall have ninety (90) days after the mailing of such notice in which to comply with the conditions of this franchise. If at the end of such period the City deems that the conditions of such franchise have not been reasonably complied with by Franchisee and that such franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the ground upon which such franchise is to be cancelled and terminated.
- (c) If within thirty (30) days after the effective date of an ordinance to terminate the franchise in accordance with Section 16(a) or 16(b) herein, the Franchisee shall not have instituted an action in the District Court of Leavenworth County, Kansas, to determine whether or not the Franchisee has violated the terms of such franchise and that the Franchise is subject to cancellation by reason thereof, such franchise shall be cancelled and terminated at the end of such 30-day period. If within such thirty (30) day period the Franchisee does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that such franchise is subject to cancellation by reason of the violation of its terms, such franchise shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

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

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

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

To revoke this franchise in accordance with the provisions of this Section regarding Revocation of Franchise, the following procedure shall apply. The City shall enact an ordinance setting out the grounds upon which such franchise is to be cancelled and terminated. Prior to the enactment of such ordinance, Franchisee shall be provided with timely written notice by certified mail, and Franchisee shall be allowed to address the Governing Body before final consideration of such ordinance. If within thirty (30) days after the effective date of such ordinance to terminate such franchise, the Franchisee shall not have instituted an action in the District Court of Leavenworth County, Kansas to determine whether or not the Franchise was appropriately terminated in

accordance to the provisions of this Section and is subject to cancellation by reason thereof, such franchise shall be cancelled and terminated at the end of such thirty-day period. If within such thirty (30) day period the Franchisee does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that such franchise is subject to cancellation by the reason addressed by this Section, such franchise shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

Section 18. Miscellaneous Provisions.

- (a) Nonexclusive Clause. The privilege to construct, erect, operate and maintain Facilities and to provide service within the City is nonexclusive. The City expressly reserves the right to grant other franchises to other Persons.
- (b) Exclusive Benefit of Franchise Right by Franchisee. The rights granted to Franchisee by this Franchise Ordinance shall be for the sole use of Franchisee to provide Facilities as authorized herein. The rights are for the exclusive benefit of Franchisee, except where otherwise provided herein, or when authorized by the City.
- (c) Franchisee is Without Remedy Against the City. Unless granted herein or otherwise required by law, Franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from the enactment of the provisions or requirements of this Franchise Ordinance, or for the failure of the City to have the authority to grant, all, or any part, of the Franchise Ordinance granted. Franchisee shall accept the provisions of this ordinance in writing, and in doing so the Franchisee: (i) expressly acknowledges that it accepted the Franchise Ordinance granted in reliance on its independent and personal investigation and understanding of the power and authority of the City to grant the Franchise conferred upon Franchisee; (ii) expressly acknowledges by its acceptance of this Franchise Ordinance that it has not been induced to enter into this franchise upon an understanding, or promise, whether given verbally or in writing by or on behalf of the City, or by any other person concerning any term or condition of this Franchise Ordinance not expressed herein; and (iii) expressly acknowledges by the acceptance of this franchise that it has carefully read the provisions, terms, and conditions of this Franchise Ordinance and is willing to, and does accept, all of the risk directly or indirectly attendant to its provisions, terms, and conditions.
- (d) Federal, State and City Jurisdiction. This Franchise Ordinance shall be construed in a manner consistent with all applicable federal, State, and local laws. Notwithstanding any other provisions of this Franchise Ordinance to the contrary, the construction, operation and maintenance of the Facilities by Franchisee or its agents shall be in accordance with all laws and regulations of the United States, the State and any political subdivision thereof, or any administrative agency thereof, having jurisdiction hereof. In addition, Franchisee shall meet or exceed the most stringent technical standards set by regulatory bodies, including, but not limited to the City, now or hereafter having jurisdiction. Franchisee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Franchisee shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power. Finally, Franchisee acknowledges that its failure to comply with any law or regulation governing the operation of the Facilities could result in a forfeiture of the Franchise in accordance with the provisions of this Franchise Ordinance.

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

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

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

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

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

 Jermaine Wilson, Mayor

{SEAL}

ATTEST:

 Sarah Bodensteiner, City Clerk

ATTACHMENT A

Volumetric Rate Calculation Form												
For the Transportation of Natural Gas in Pipelines Located in the City												
Based on the NYMEX settlement prices for the dates shown, published the following business day												
Source: Wall Street Journal, or DTN, or Gas Daily												
Year	1	2	3	4	5	6	7	8	9	10	11	12
Month-Day	2022 Jul-15	2022 Aug-15	2022 Sep-15	2022 Oct-17	2022 Nov-15	2022 Dec-15	2023 Jan-17	2023 Feb-15	2023 Mar-15	2023 Apr-17	2023 May-15	2023 Jun-15
Aug - 2022	7.016											
Sep - 2022	6.926	8.728										
Oct - 2022	6.917	8.712	8.324									
Nov - 2022	6.997	8.788	8.372	5.999								
Dec - 2022	7.096	8.903	8.522	6.479	6.034							
Jan - 2023	7.184	8.963	8.620	6.714	6.395	6.970						
Feb - 2023	6.881	8.497	8.319	6.508	6.143	6.589	3.586					
Mar - 2023	5.961	7.108	7.280	5.913	5.457	5.820	3.253	2.471				
Apr - 2023	4.825	5.394	5.791	5.014	4.765	5.279	3.218	2.555	2.439			
May - 2023	4.697	5.220	5.648	4.948	4.750	5.244	3.283	2.709	2.546	2.275		
Jun - 2023	4.748	5.268	5.698	5.023	4.833	5.339	3.421	2.896	2.759	2.444	2.375	
Jul - 2023	4.800	5.318	5.751	5.103	4.924	5.428	3.551	3.067	2.958	2.652	2.542	2.533
Aug - 2023		5.329	5.762	5.115	4.933	5.414	3.584	3.114	2.997	2.717	2.624	2.609
Sep - 2023			5.743	5.084	4.870	5.337	3.528	3.080	2.964	2.688	2.620	2.606
Oct - 2023				5.158	4.918	5.389	3.597	3.152	3.043	2.778	2.721	2.719
Nov - 2023					5.229	5.590	3.995	3.568	3.370	3.167	3.157	3.131
Dec - 2023						5.921	4.423	3.933	3.764	3.619	3.654	3.569
Jan - 2024							4.670	4.162	3.957	3.862	3.922	3.822
Feb - 2024								4.033	3.841	3.765	3.843	3.746
Mar - 2024									3.514	3.447	3.511	3.477
Apr - 2024										3.155	3.148	3.157
May - 2024											3.129	3.139
Jun - 2024												3.238
Avg Settlement Price	6.171	7.186	6.986	5.588	5.271	5.693	3.676	3.228	3.179	3.047	3.104	3.146
July 2022 through June 2023 settlement price average							4.690					
X Bundled Franchise Fee Rate							5.25%					
=Volumetric Rate/MCF for 2023							0.2462	Note: If the 15th of the month falls on a weekend or h then use the settlement price on next business day.				

(Published August 30, 2013)
ORDINANCE NO. 7927

AN ORDINANCE, granting to Kansas Gas Service, a Division of ONEOK, Inc., its successors and assigns, a natural gas franchise in the city of Leavenworth, Kansas; prescribing the terms thereof and relating thereto, and repealing Ordinance No. 7576.

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

SECTION 1. Definitions.

For purposes of this Franchise, the following words and phrases shall have the meanings given herein:

"City" as the Grantor shall mean the City of Leavenworth, Kansas.

"Company", as the Grantee shall mean Kansas Gas Service, a Division of ONEOK, Inc.

"Distribution System or Distribution Facilities" shall mean a pipeline or system of pipelines, including without limitation, mains, pipes, boxes, reducing and regulating stations, laterals, conduits and services extensions, together with all necessary appurtenances thereto, or any part thereof located within the Right-of-Way, for the purpose of "Distribution" or supplying natural gas for light, heat, power and all other purposes.

"Distributed or Distribution" shall mean all sales, supply, or transportation of natural gas to any Sales or Transportation Consumer for use within the City by the Grantee or by others through the Distribution Facilities of Grantee in the Right of Way.

"Entity" shall mean any individual person(s), governmental entity, business, corporation, partnership, firm, limited liability corporation, limited liability partnership, unincorporated association, joint venture or trust and shall include all forms of business enterprise not specifically listed herein.

"Franchise" shall mean the grant of authority by the City to transport, distribute or sell natural gas to the inhabitants of the City and to operate a Distribution System or Distribution Facilities. The grant of authority shall be in accordance with the provisions of K.S.A. 12-2001, et seq., as amended and City ordinances.

"Franchise Fee" shall mean consideration paid in the form of a charge upon the Grantee as prescribed in this Franchise Ordinance.

"Franchise Ordinance" shall mean this Ordinance No. 7927 granting a natural gas franchise to the Grantee.

"Grantee" shall mean Kansas Gas Service, a Division of ONEOK, Inc.

"Gross Receipts" shall mean any and all compensation and other consideration derived directly or indirectly by the Grantee from any Distribution of natural gas to all consumers within the City. Such term shall not include revenue from certain miscellaneous charges and accounts including but not limited to

delayed or late payment charges, connection and disconnection fees, reconnection fees, customer project contributions, returned check charges, and temporary service charges.

"MCF" shall mean a measurement of natural gas equal to one thousand (1,000) cubic feet. It is assumed for purposes of this Franchise Ordinance that one MCF equals one million (1,000,000) British Thermal Units.

"Public Improvement" shall mean any existing or contemplated public facility, building, or capital improvement project, financed by or through the City, including without limitation streets, alleys, sidewalks, sewer, water, drainage, Right-of-Way improvement and Public Projects.

"Public Project" shall mean any project planned or undertaken and financed by or through the City or any governmental entity for construction, reconstruction, maintenance, or repair of public facilities or improvements, or any other purpose of a public nature paid for with public funds.

Public Project for Private Development" shall mean a Public Project, or that portion thereof, arising from a request or requirement of a third party which in the City's opinion is primarily for the benefit and use of a third party.

"Right-of-Way" shall mean the area on, below or above the present and future streets, avenues, alleys, bridges, boulevards, roads, highways, parks, parking places and public areas dedicated to or acquired by the City.

"Sales Consumer" shall mean, without limitation, any "Entity" that purchases natural gas within the Corporate City limits from Grantee for delivery to such consumer within the City through the Grantee's Distribution System or Distribution Facilities.

"Settlement Prices" shall mean the settlement prices for natural gas futures contracts traded on the New York Mercantile Exchange (NYMEX) on the fifteenth (15th) day of each month as published in the Wall Street Journal (WSJ), or other nationally recognized publication, on the following business day (or the next day in which a Settlement Price is published).

"Street Right-of-Way" shall mean the entire width between property lines of land, property or an interest therein of every way publicly maintained where any part thereof is open to the use of the public for purposes of vehicular traffic, including street, avenue, boulevard, highway, expressway, alley or any other public way for vehicular travel by whatever name.

"Transportation Consumer" shall mean without limitation, any Entity that transports "Transport Gas" within the Corporate City limits through Grantee's Distribution Facilities for consumption within the City's corporate limits.

"Transport Gas" shall mean all natural gas transported by the Grantee, or by others, but not sold by the Grantee, to any consumer within the City through the Distribution Facilities of the Grantee.

"Volumetric Rate" shall mean the charge per MCF for Transport Gas distributed to Transportation Consumers. The Volumetric Rate shall be subject to adjustment and recalculation in the future in accordance with the provisions set forth below. The Volumetric Rate Calculation form incorporated herein and attached hereto as Attachment A shall be used for recalculating the Volumetric Rate. There shall be an annual recalculation of the Volumetric Rate which shall be effective each January 1. The recalculation shall

be based on Settlement Prices for the twelve (12) month period beginning in July of the second (2nd) preceding year and ending in June of the preceding year. For the fifteen (15th) day of each month during said twelve (12) month period, the Settlement Prices for natural gas for the next twelve (12) months will be summed and divided by twelve (12) to determine an average Settlement Price. The average Settlement Prices for each of the twelve (12) months shall then be summed and divided by twelve (12) and multiplied by a percentage factor as set forth below to obtain the Volumetric Rate to be effective January 1 of the next succeeding year. For the Volumetric Rate calculated to go into effect on January 1, 2015, the average Settlement Price as calculated above shall be multiplied by three percent to obtain the Volumetric Rate to be effective January 1, 2015; for the Volumetric Rate to be effective on January 1, 2016, the average Settlement Price as calculated above shall be multiplied by four percent to obtain the Volumetric Rate to be effective January 1, 2016; for the Volumetric Rate to be effective on January 1, 2017, and each January 1 thereafter, the average Settlement Price as calculated above shall be multiplied by five percent to obtain the Volumetric Rate to be effective on January 1, 2017 and each year thereafter. The Volumetric Rates shall be calculated in accordance with the procedures set out herein and filed with the City Clerk by July 31 of each year for those rates to be effective on January 1 of the following year. The form attached hereto as Attachment A is an example only for the calculation of the Volumetric Rate using a multiplier of 3%. It shows how the Settlement Prices would be calculated for a charge that would be effective on January 1, 2014 using the Settlement Prices from July 2012 through June 2013. There is no Volumetric Rate charge during 2013 and 2014. The Volumetric Rate charge begins in January 2015 and will be calculated for that date and adjusted annually thereafter in the manner set forth above.

SECTION 2. Grant of Franchise:

That in consideration of the benefits to be derived by the City and its inhabitants, there is hereby granted to Grantee the right, privilege, and authority for the full term of this Franchise Ordinance, the non-exclusive right, privilege and franchise to occupy and use the Right-of-Way of the City, for the placing and maintaining of Distribution Facilities necessary to carry on the business of distributing natural gas for all purposes to the City, and its inhabitants, and through said City and beyond the limits thereof; to obtain said natural gas from any source available; and to do all things necessary or proper to carry on said business.

SECTION 3: Term and Re-opener Provisions.

- (a) The term of this Franchise shall be ten (10) years from the effective date of this Franchise.
- (b) Upon written request of either the City or the Grantee, this Franchise may be reopened and reviewed after five (5) years from the effective date and every five (5) years from the effective date of this Franchise Ordinance and either the City or the Grantee may propose amendments to any provision of this Franchise by giving sixty (60) days written notice to the other of the amendment(s) desired. The City and the Grantee shall negotiate in good faith in an effort to agree upon a mutually satisfactory amendment(s).
- (c) Upon written request of either the City or the Grantee, the Franchise Ordinance shall be reopened and renegotiated at any time upon any of the following events:
 - 1. Change in federal, state, or local law, regulation, or order, which materially affects any rights or obligations of either the City or the Grantee, including but not limited to the scope of the grant to the Grantee or the compensation to be received by the City;

2. Change in the structure or operation of the natural gas industry which materially affects any rights or obligations of either the City or the Grantee, including but not limited to the scope of the grant to the Grantee or the compensation to be received by the City:
 3. Any other material and unintended change or shift in the economic benefit to the City or the Grantee relied upon and anticipated upon entering into this Franchise.
- (d) Upon written request by the Grantee to the City, the compensation provisions of this Franchise Ordinance shall be reopened and renegotiated if energy consumers within the City have access to alternative natural gas suppliers or other suppliers of energy which use the Right-of-Way and/or easements granted on publicly owned property and pay a franchise fee or other payment which results in a material or economic disadvantage to the Grantee. Upon written request by the Grantee to the City, the compensation provisions of this Franchise Ordinance and the use of the Right-of-Way provisions of this Franchise Ordinance shall be reopened and renegotiated if energy consumers within the City have access to alternative natural gas suppliers or other suppliers of energy which use the Right-of-Way and do not have requirements on the use of the Right-of-Way substantially equivalent to the requirements of this Franchise Ordinance, which results in a material or economic disadvantage to the Grantee. Upon any such event, the City shall have up to 120 days after receiving written request of the Grantee in which to restore competitive neutrality, provided that any adjustment in compensation resulting from renegotiations under this Subsection (d) shall be effective no later than ninety (90) days after such notice.
- (e) Amendments under this Section, if any, shall be made by ordinance as prescribed by statute. This Franchise Ordinance shall remain in effect according to its terms pending completion of any review or renegotiation pursuant to this Section.

SECTION 4: Compensation to the City.

In consideration of and as compensation for the Franchise hereby granted to the Grantee by the City, the Grantee shall make an accounting to the City of all natural gas that has been "Distributed" within the City on a monthly basis. The Grantee shall pay the City as compensation:

- A. Beginning with the first cycle of Grantee's monthly billing cycle beginning in November 2013 through the remaining term of this Franchise Ordinance, a sum equal to five percent of the Gross Receipts received by Grantee from the Grantee's Distribution of natural gas to Sales Consumers.;
- B. Beginning with the first cycle of Grantee's monthly billing cycle beginning in November 2013 through the end of billing cycles for December 2014, a sum equal to five percent of the Gross Receipts received by Grantee from the Grantee's Distribution of natural gas to Transportation Consumers.
- C. Beginning with the first cycle of Grantee's monthly billing cycle beginning in January 2015 through the remaining term of this Franchise Ordinance, a sum equal to five percent of the Gross Receipts received by Grantee from the Grantee's Distribution of natural gas to Transportation Consumers plus the amount set forth in Section D below to be charged to Transportation Consumers only.
- D. A sum equal to the Volumetric Rate multiplied by the number of MCF of Transport Gas for the distribution of Transport Gas for Transportation Consumers.

The sums in A above shall be collected from Sales Consumers and the sums in B through D above shall be collected from Transportation Consumers and shall be adjusted for uncollectible receivables and for uncollectible receivables which are later collected.

Payments of the compensation above shall commence with the first cycle of the monthly billing cycle which begins in November 2013. Prior to that date, payments shall continue to be calculated and be paid in the manner previously provided in Ordinance No. 7576 and amendments thereto. Such payments shall be made on or before the last day of each month and shall be based upon such Gross Receipts charges and collected for the preceding month.

The payments and compensation herein provided shall be in lieu of all other licenses, taxes, charges, and fees, except that the usual general property taxes and special ad valorem property assessments, sales, and excise taxes or charges made for privileges which are not connected with the natural gas business, will be imposed on the Grantee and are not covered by the payments herein. From and after the date hereof, however, the permit fees required of the Grantee by any ordinance presently in effect or hereafter adopted for a permit to excavate in or adjacent to any street, alley, or other public place shall not be deemed a part of the compensation paid in this Section 4 and shall be separately assessed or collected by the City.

SECTION 5. Use of Right-of-Way

The Grantee's use of the Right of Way granted by the City shall be subject to all rules, regulations and policies now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power. In addition, the Grantee shall be subject to all laws, rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City relating to permits, sidewalk and pavement cuts, utility location, construction coordination, and other requirements on the use of the Right of Way; provided however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the Grantee to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulation, policy, resolution, or ordinance proposed, adopted, or promulgated by the City and, further provided other than the items enumerated in Section 4 herein, that such laws, rules, regulations, policies, resolutions or ordinances shall not require the payment of additional fees or additional costs for the use of the Right of Way. In any event, the Grantee is granted an offset for such fees and costs against the franchise fees required to be paid hereunder. Further, the Grantee shall comply with the following:

(a) The Grantee's use of Right-of-Way shall in all matters be subordinate to the City's use of the Right-of-Way for any public purpose. The Grantee shall coordinate the installation of its Distribution Facilities in Right-of-Way in a manner which minimizes adverse impact on Public Improvements, as reasonably determined by the City. Where installation is not otherwise regulated, the Distribution Facilities shall be placed with adequate clearance from such Public Improvements so as not to conflict with such Public Improvement.

(b) All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind located within the Right-of-Way damaged or removed by the Grantee in its activities under this franchise shall be fully repaired or replaced promptly by the Grantee without cost to the City, however, when such activity is a joint project the expenses thereof shall be prorated among the participants, and to the reasonable satisfaction of the City in accordance with the ordinances and regulations of the City pertaining thereto.

(c) The Grantee shall notify the City in writing at least two working days prior to any construction, reconstruction, repair, or relocation of Distribution Facilities which would require any street

closure which reduces traffic flow to less than two lanes of moving traffic except in the event of an emergency, as reasonably determined by the Grantee. In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected.

(d) The Grantee shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the location of its Distribution Facilities located within Right-of-Way when requested by the City or its authorized agents for a Public Project. Such location and identification shall be promptly communicated in writing to the City without cost to the City, its employees, agents, or authorized contractors. The Grantee shall designate and maintain an agent, familiar with the Distribution Facilities, who is responsible for providing timely information needed by the City for the design and replacement of Distribution Facilities in the Right-of-Way during and for the design of Public Improvements. At the request of the Grantee, the City may include design for Distribution Facilities in the design of Public Projects. Also at the request of the Grantee, the City and/or its Contractor(s) or Agent(s) shall provide accurate and timely plans of proposed Public Projects in the event the Grantee is required to install new and/or relocate its Distribution Facilities.

(e) The Grantee shall promptly locate, remove, relocate, or adjust any Distribution Facilities located in Right-of-Way if reasonably necessary and requested by the City for a Public Project. Such location, removal, relocation or adjustment for a particular Public Project shall be performed by the Grantee once without expense to the City, its employees, agents, or authorized contractors, and shall be specifically subject to rules and regulations of the City pertaining to such; provided, that if the Grantee demonstrates to the satisfaction of the City that the Distribution Facility was originally established in a private easement that thereafter became part of the Right-of-Way, the removal, relocation, or adjustment shall be without expense to the Grantee. If additional location, removal, relocation or adjustment is the result of the inaccurate or mistaken information of the Grantee, the Grantee shall be responsible for costs associated with such without expense to the City. Likewise, if additional location, removal, relocations or adjustment is the result of inaccurate or mistaken information of the City and/or its agents, the City or its agents shall reimburse Grantee for any additional expense necessarily incurred by the Grantee directly due to such inaccurate or mistaken information.

The Grantee shall not be responsible for the expenses of relocation to accommodate any new Public Project for Private Development initiated after the effective date of this ordinance. The expenses attributable to such a project shall be the responsibility of the third party upon the request and appropriate documentation of the Grantee. Before such expenses may be billed to the third party, the Grantee shall be required to coordinate with the third party and the City on the design and construction to ensure that the work required is necessary and done in a cost effective manner. Upon the request of the Grantee or the third party, an allocation of expenses attributable to project shall be made in the reasonable determination of the City. Eligible third parties may request the City to levy a special assessment of those expenses billed by the Grantee under this section.

The City will use its best efforts, but is not required, to continue to provide a location in the Right-of-Way for the Grantee's Distribution Facilities as part of a Public Project, provided that the Grantee has cooperated promptly and fully with the City in the design of its Distribution Facilities as part of the Public Project.

(f) It shall be the responsibility of the Grantee to take adequate measures to protect and defend its Distribution Facilities in the Right-of-Way from harm or damage. If the Grantee fails to accurately locate Distribution Facilities when requested, it shall have no claim for costs or damages against the City and its authorized contractors except to the extent the City or its authorized contractors are responsible for the harm or damage by their negligence or intentional conduct. Grantee shall be responsible to the City and its agents, representatives, and authorized contractors for all damages

including, but not limited to, delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of the Grantee to perform any of its obligations under this agreement except to the extent another party is responsible for the harm or damage by its negligence or intentionally caused harm, provided, that if the responsibility of the city and its agents, representative, and authorized contractors does not arise as a contractual obligation, the Grantee shall have the right at its option to step in and defend such claim in its own right. The above general provisions notwithstanding, the City and its authorized contractors shall take reasonable precautionary measures including calling for utility locations through Kansas One Call and exercising due caution when working near Grantee's Distribution Facilities. The Grantee shall have the right to collect for damages to its Distribution Facilities resulting from negligence or intentional misconduct by the City, its agents, representative and its contractors.

(g) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the Distribution Facilities in the Right-of-Way shall be in accordance with applicable present and future federal, state and City laws and regulations, including but not limited to the most recent standards of the Kansas Corporation Commission and Department of Transportation, or such substantive equivalents as may hereafter be adopted or promulgated. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this franchise may be additional to or stricter than such minimum standards.

(h) The City encourages the conservation of Right-of-Way by the sharing of space by all utilities. Notwithstanding provisions of this franchise prohibiting third party use, to the extent required by Federal or State law, the Grantee will permit any other franchised entity by an appropriate grant, or contract or agreement negotiated by the parties, to use any and all Distribution Facilities constructed or erected by the Grantee.

(i) It is recognized that the natural gas to be delivered hereunder is to be supplied from a pipeline system transporting natural gas from distant sources of supply; and the Grantee, by its acceptance of this Franchise does obligate itself to furnish natural gas in such quantity and for such length of time, limited by the terms hereof, as the said sources and said pipelines are reasonably capable of supplying.

SECTION 6. Indemnity and Hold Harmless.

The Grantee shall indemnify and hold and save the City, its officers, employees, agents, and authorized contractors, harmless from and against all claims, damages, expense, liability, and costs including reasonable attorney fees, to the extent occasioned in any manner by the Grantee's occupancy of Right-of-Way, except to the extent that such were caused by the negligence or intentional misconduct of the City, its officers, employees, agents, or authorized contractors. In the event a claim shall be made or an action shall be instituted against the City growing out of such occupancy of the right-of-Way by Distribution Facilities of the Grantee, then upon notice by the City to the Grantee, the Grantee shall assume responsibility for the defense of such actions at the cost of the Grantee, subject to the option of the City to appear and defend, at its own cost, any such case; provided, that the Grantee shall have no duty to defend any such action to the extent that such action has resulted from the negligence or intentional misconduct of the City, its officers, employees, agents, or authorized contractors.

SECTION 7. Assignment

This Franchise Ordinance shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made.

SECTION 8. Acceptance of Terms by Grantee and Effective Date of Ordinance.

This Franchise Ordinance shall take effect and be in force from and after its passage, approval by the City, acceptance by the Grantee, and publication in the official city newspaper. Grantee shall have sixty (60) days after the final passage and approval of this Franchise Ordinance to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Franchise and when so accepted, this Franchise Ordinance and acceptance shall constitute a contract between the City and Grantee and said contract shall be deemed effective on the date Grantee files acceptance with the City.

SECTION 9. Notice of Property Annexed by City.

Notwithstanding anything to the contrary in this Franchise Ordinance, the fees provided for in Section 4 above shall not become effective within any area annexed by the City until the first of the month billing cycle which begins no more than 60 days after the date that the City provides the Grantee with a certified copy of the annexation ordinance, proof of publication as required by law and a map of the City detailing the annexed area.

SECTION 10. Conditions of Franchise.

This Franchise Ordinance is granted pursuant to the provisions of K.S.A. 12-2001 and amendments thereto. This non-exclusive franchise, grant and privilege is granted under and subject to all applicable laws and under and subject to all of the orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction, and each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other causes beyond Grantee's control.

SECTION 11. Invalidity of Ordinance.

If any clause, sentence or section of this ordinance shall be held to be invalid, it shall not affect the remaining provisions of this ordinance.

SECTION 12. Payment of Costs.

Grantee shall be responsible for payment of all costs and expense of publishing this Franchise Ordinance and any amendments thereof.

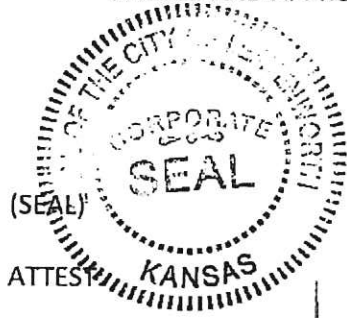
SECTION 13. Actions by the Kansas Corporation Commission.


Should the Kansas Corporation Commission take any action with respect to this Franchise Ordinance and any amendments thereto which precludes Grantee from recovering from its customers any costs or fees provided for hereunder, the parties shall renegotiate this Franchise Ordinance in accordance with the Commission's ruling.

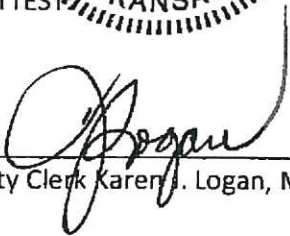
SECTION 14. Repeal of Conflicting Ordinances.

Ordinance No. 7576 and amendments thereto which heretofore granted a non-exclusive franchise to the Grantee, and which became a contract between the City and the Grantee in accordance with its terms and all other ordinances and resolutions or parts thereof inconsistent or in conflict with the terms hereof, are hereby repealed, effective as of the first cycle of the monthly billing cycle which begins in November 2013.

PASSED AND APPROVED this 27th day of August, 2013.




Mayor Laura Janas Gasbarre


City Clerk Karen J. Logan, MMC

Published in the Leavenworth Times 8-30-2013

Volumetric Rate Calculation Form
For the Transportation of Natural Gas in Pipelines Located in the City
Based on the NYMEX settlement prices for the dates shown, published the following business day

Source: Wall Street Journal, or DTN, or Gas Daily

Month	Last Year <u>16-Jul</u>	Last Year <u>15-Aug</u>	Last Year <u>17-Sep</u>	Last Year <u>15-Oct</u>	Last Year <u>15-Nov</u>	Last Year <u>17-Dec</u>	This Year <u>15-Jan</u>	This Year <u>15-Feb</u>	This Year <u>15-Mar</u>	This Year <u>16-Apr</u>	This Year <u>15-May</u>	This Year <u>17-Jun</u>
Aug Last Year	2.801											
Sep Last Year	2.793	2.748										
Oct Last Year	2.820	2.787	2.865									
Nov Last Year	3.040	2.981	3.016	3.486								
Dec Last Year	3.322	3.272	3.273	3.774	3.703							
Jan Current Year	3.471	3.409	3.417	3.898	3.821	3.358						
Feb Current Year	3.489	3.423	3.444	3.808	3.834	3.398	3.455					
Mar Current Year	3.461	3.408	3.434	3.868	3.807	3.416	3.453	3.153				
Apr Current Year	3.443	3.384	3.430	3.820	3.782	3.444	3.476	3.218	3.672			
May Current Year	3.469	3.432	3.474	3.843	3.812	3.488	3.522	3.288	3.909	4.137		
Jun Current Year	3.507	3.478	3.515	3.884	3.847	3.530	3.572	3.346	3.952	4.168	4.070	
Jul Current Year	3.553	3.518	3.557	3.926	3.886	3.574	3.622	3.404	3.985	4.214	4.113	3.875
Aug Current Year		3.540	3.577	3.942	3.907	3.600	3.647	3.430	4.008	4.243	4.133	3.897
Sept Current Year			3.580	3.943	3.910	3.606	3.656	3.438	4.003	4.233	4.130	3.898
Oct Current Year				3.978	3.945	3.639	3.687	3.468	4.013	4.240	4.144	3.908
Nov Current Year					4.042	3.746	3.792	3.591	4.084	4.305	4.210	3.978
Dec Current Year						3.831	3.891	3.801	4.244	4.455	4.369	4.125
Jan Next Year							4.092	3.908	4.324	4.548	4.452	4.202
Feb Next Year								3.911	4.300	4.504	4.428	4.183
Mar Next Year									4.234	4.400	4.349	4.145
Apr Next Year										4.040	4.087	3.987
May Next Year											4.082	3.992
Jun Next Year												4.023
Avg Settlement Price	3.264	3.283	3.382	3.856	3.858	3.561	3.864	3.496	4.078	4.291	4.214	4.018

July 2012 through June 2013 settlement price average	3.747
X Bundled Franchise Fee Rate	3.0%
=Volumetric Rate/MCF for 2014	0.1124

Note: If the 15th of the month falls on a week-end or holiday, then use the next business day settlement price.

**POLICY REPORT
FIRST CONSIDERATION ORDINANCE
2023-29-SUP
2805 2nd Avenue**


NOVEMBER 28, 2023

SUBJECT:

Place on first consideration an ordinance to approve 2023-29-SUP



Prepared By:
Julie Hurley
Director of Planning and
Community Development



Reviewed By:
Paul Kramer
City Manager

NATURE OF REQUEST

The applicant, The City of Leavenworth, is requesting a Special Use Permit to allow a government facility in the R-MF zoning district, located at 2805 2nd Avenue. The property is occupied by Fire Station 3, which was constructed in the 1960's and is currently scheduled to be replaced with a new Fire Station facility on the same site in 2024. Government facilities are allowed in the R-MF district with approval of a Special Use Permit.

The existing fire station facility is considered a nonconforming use, as it was constructed prior to zoning regulations and there is no existing Special Use Permit. Replacement of the facility requires the approval of a Special Use Permit. Per section 1.05 the adopted Development Regulations:

Any lawfully existing nonconforming use of part or all of a structure or any lawfully existing nonconforming use of land, not involving a structure or only involving a structure which is accessory to such use or land, may be continued, so long as otherwise lawful.

Section 1.05 of the Development Regulations also states in regards to nonconforming uses:

If a structure devoted to a nonconforming use is damaged or destroyed by more than fifty percent (50%) of its fair market value, such building shall not be restored if the use of such building is not in conformance with the regulations of the zoning district in which it is located.

The Development Review Committee reviewed the site plan and building elevations associated with the new fire station facility on October 19th, 2023. Items related to sewer, access, and setbacks were discussed, and will be addressed to meet all applicable requirements at the time of building permit.

COMMISSION FINDINGS

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

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

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

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

This property has functioned as a fire station since the 1960's, providing a vital service to the welfare of the public.

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

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

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

The proposed new fire station facility will be largely similar in size, scale and placement to the existing facility and will not cause any substantial impact to the surrounding neighborhood.

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

The Planning Commission considered this item at their November 6, 2023 meeting and voted 4-0 to recommend approval of the Special Use Permit.

STAFF RECOMMENDATION:

Staff recommends approval of the Special Use Permit request based on the analysis and findings included herein.

ACTION:

- Place an ordinance on first consideration to approve the Special Use Permit request to allow a Government Facility in the R-MF zoning district at 2805 2nd Avenue.
- Deny the Special Use Permit request to allow a Government Facility in the R-MF zoning district at 2805 2nd Avenue.
- Remand the Special Use Permit request to allow a Government Facility in the R-MF zoning district at 2805 2nd Avenue to the Planning Commission for further consideration.

ORDINANCE NO. XXXX

**AN ORDINANCE ALLOWING A SPECIAL USE FOR
GOVERNMENT FACILITY IN R-MF, MULTIPLE FAMILY
RESIDENTIAL ZONING DISTRICT LOCATED AT 2805 2ND
AVENUE IN THE CITY OF LEAVENWORTH, KANSAS.**

WHEREAS, under the 2016 Development Regulations of the City of Leavenworth, Kansas, as amended, the Governing Body of the City of Leavenworth, Kansas was given the power to locate special uses in each zoning district by ordinance; and

WHEREAS, the City Planning Commission, after fully complying with the requirements of the ordinances of the City of Leavenworth, Kansas held a public hearing on November 6, 2023 in the Commission Chambers, 1st Floor of City Hall, 100 N. 5th Street, Leavenworth, Kansas the official date and time set out as was published in the Leavenworth Times newspaper; and

WHEREAS, upon a motion made, duly seconded, and passed, the Planning Commission adopted findings of fact and recommended approval of the request for a Government Facility in R-MF, Multiple Family Residential, located at 2805 2nd Avenue, Leavenworth, Kansas.

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

Section 1. That a special use permit be issued for a Government Facility on the following described property:

A tract of land in Block Ten (10), Johnson’s Subdivision, Leavenworth County, Kansas. Beginning at a point 100.00 feet East of the Southwest corner, of said Block 10; thence East along the South line of Lot 10, 200.00 feet; thence North parallel with the West line of said Lot 10, 150.00 feet; thence West parallel with the South line of said Lot 10, 283.13 feet; said point being 16.67 feet East of the West line of said Block 10; thence Southeasterly 169.45 feet to the point of beginning, containing 0.83 acres, City of Leavenworth, Leavenworth County, Kansas. More commonly referred to as: 2805 2nd Avenue, Leavenworth, Kansas.

Section 2. That this Ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper of the City of Leavenworth, Kansas, as provided by law.

Passed by the Leavenworth City Commission on this ____ day of _____, 2023.

Jermaine Wilson, Mayor

ATTEST:

Sarah Bodensteiner, CMC, City Clerk



SPECIAL USE PERMIT
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

CASE NO.: 2023-29 SUP

Application No.	14272
Fee (non-refundable)	\$350.00
Filing Date	9/18/23
Received By	NA
Hearing Date	11/6/23
Publication Date	10/11/23

As provided in Section 2.04 of the 2016 Development Regulations, application is hereby made for a SPECIAL USE PERMIT for the operation of a: New Fire Station #3 (replacement of existing Fire Station #3).
(Allow gov. facility to operate in R-MF zoning district)

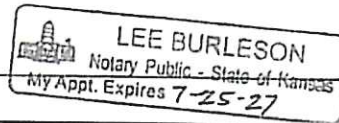
in accordance with the attached site plan on the following described property:

Subject Property:	2805 2nd Ave., Leavenworth, KS 66048		
Legal Description:	<i>(Attach a full legal description provided by the Register of Deeds Office)</i>		
Real Estate PID #:	1010103012037000		
Zoning:	R-MF	Historic District:	NA

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

Name(s) of Owner (print):	City of Leavenworth, KS		
Owner Address:	100 N. 5th Street, Leavenworth, KS 66048		
Contact No.	Chief Gary Birch	Email:	gbirch@firstcity.org
Signature of Owner(s):	<i>[Signature]</i>		

State of Kansas
County of Leavenworth (SEAL)



Signed or attested before me on: Sept. 18, 2023

Notary Public: *[Signature]*

My Appointment Expires: 7/25/2027

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

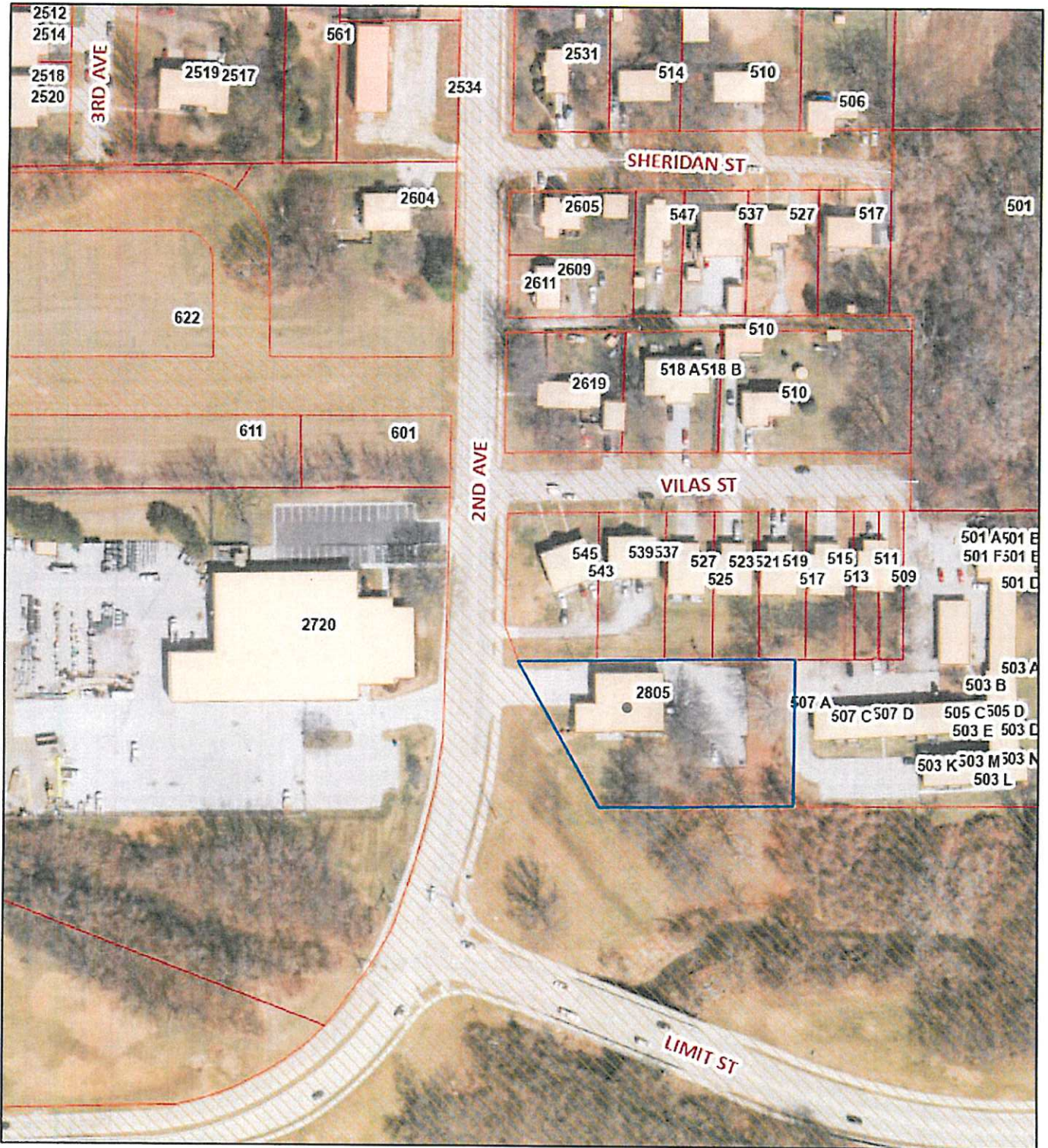
Name of Lessee:	NA		
Address:			
Contact No.		Email:	

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

Check list below...

<input type="checkbox"/>	Non-Refundable Fee of \$350.00 is due at time of application
<input type="checkbox"/>	Certified list of property owners within two hundred (200) feet of the subject property
<input type="checkbox"/>	Attach full legal description obtained through the Register of Deeds Office
<input type="checkbox"/>	Site Plan drawn to scale (See General Instructions)
<input type="checkbox"/>	Supporting documentation (See General Instructions)

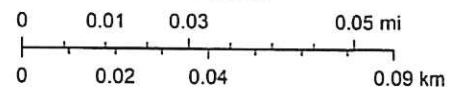
2023-29-SUP



11/1/2023, 3:06:58 PM

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- Parcels_Current
- Leavenworth City Limits
- Buildings
- City Right-of-Way
- Address (Points)
- RoadCenterline



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

2023-29-SUP (Zoning)



11/1/2023, 3:07:33 PM

1:2,257

Zoning_CURRENT

OBD

PUD

R-MF

R1-6

66 Parcels_Current

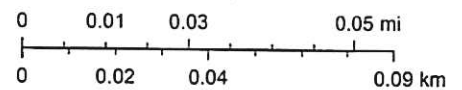
Buildings

Address (Points)

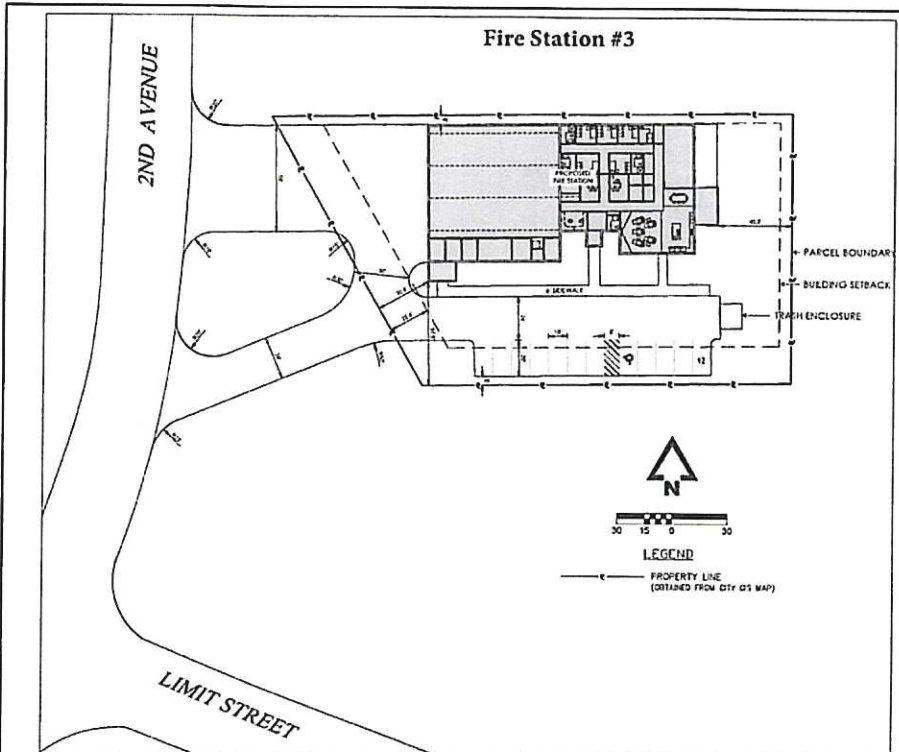
Leavenworth City Limits

City Right-of-Way

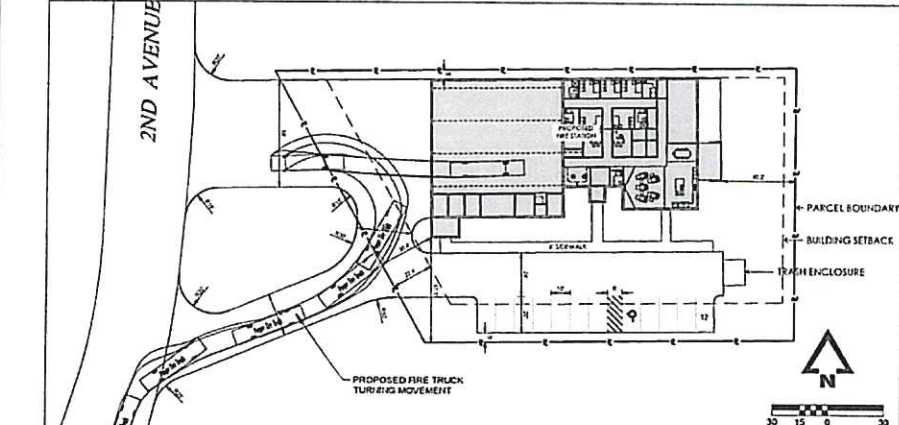
RoadCenterline



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



SUP SITE PLAN



FIRE TRUCK TURNING SITE PLAN



GIS SITE MAP

LANDSCAPING NOTE:

THE LANDSCAPING AND SCREENING WILL BE PROVIDED IN ACCORDANCE WITH THE APPLICABLE CITY ORDINANCE.

SITE DRAINAGE NOTE:

THE EXISTING DRAINAGE PATTERNING WILL BE MAINTAINED. THE SITE STORMWATER RUNOFF WILL DRAIN TO THE EXISTING FLOODPLAIN ADJACENT TO THE SITE.

SITE UTILITY NOTE:

THE BUILDING WILL BE SERVED BY EXISTING UTILITIES THAT CURRENTLY SERVE THE EXISTING BUILDING.

LEGAL DESCRIPTION:

A TRACT OF LAND in block 5th (10), Johnson's Subdivision, Leavenworth County, Kansas, beginning at a point 100.00 feet East of the Southwest corner of said Block 30; thence East along the South line of Lot 10, 200.00 feet; thence North parallel with the West line of said Lot 10, 150.00 feet; thence West parallel with the South line of said Lot 10, 203.13 feet; said point being 10.67 feet East of the West line of said Block 30; of Leavenworth, Leavenworth County, Kansas.

PARKING TABLE

TOTAL PARKING SPACES SHOWN = 12 SPACES
ADA PARKING REQUIRED = 1 SPACES
TOTAL ADA PARKING SHOWN = 1 SPACES

SITE ADDRESS

2905 2ND AVENUE
LEAVENWORTH, KANSAS 66048



making lives

11031 Strong Ave
Leavenworth, Kansas 66215
P 913-888-4000
F 913-888-4800

NOTICE:
McClure Engineering Company accepts any and all responsibility and liability for problems which arise from failure to take these Plans, Specifications, and the engineering intent they convey, or for problems which arise from failure to retain and/or follow the engineer's guidance with respect to any errors, omissions, inaccuracies, ambiguities, or conflicts which are created.

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No reproduction, changes, or copies in any manner shall be made without obtaining prior written consent from McClure Engineering Company.

KANSAS CERTIFICATE OF AUTHORITY NO. R2723 EXPIRES: DECEMBER 31, 2023

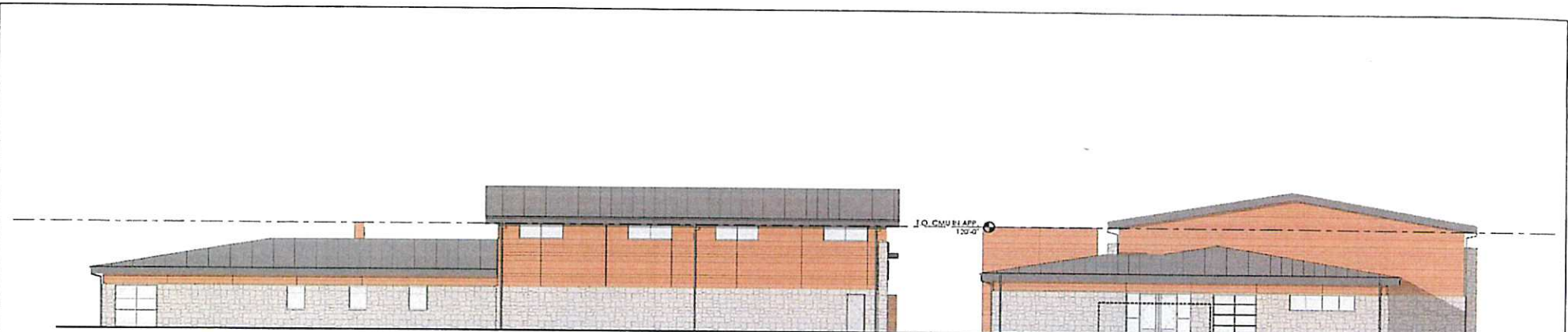
LEAVENWORTH FIRE STATION NO. 3 SUP PLANS

SUP SITE PLAN

CITY OF LEAVENWORTH, KANSAS
PROJECT NO. 202201811-000
ISSUE DATE: 9-15-2023

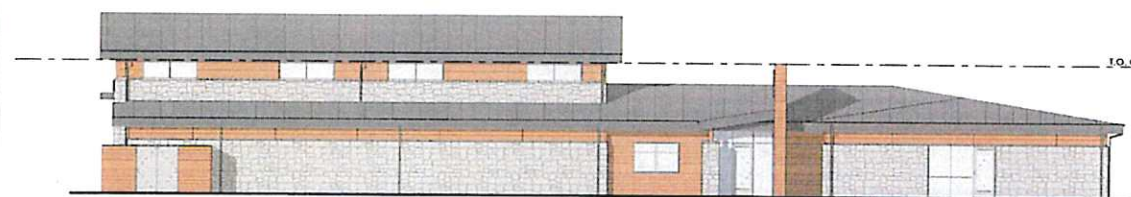
DESIGNED BY: FLK
CHECKED BY: FLK
DRAWN BY: BCK
FIELD BOOK NO.

SHEET NO. C-1.00



NORTH ELEVATION -
OPTION 1-A
1/8" = 1'-0"

EAST ELEVATION -
OPTION 1-A
1/8" = 1'-0"



SOUTH ELEVATION -
OPTION 1-A
1/8" = 1'-0"



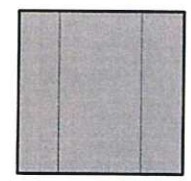
WEST ELEVATION -
OPTION 1-A
1/8" = 1'-0"



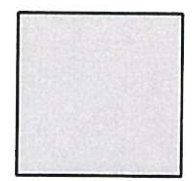
WOOD / FIBER
CEMENT PANEL



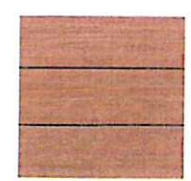
STONE VENEER



STANDING SEAM MTL.
ROOF / FASCIA COLOR



ALUMINUM WINDOW
FRAME / STOREFRONT
COLOR



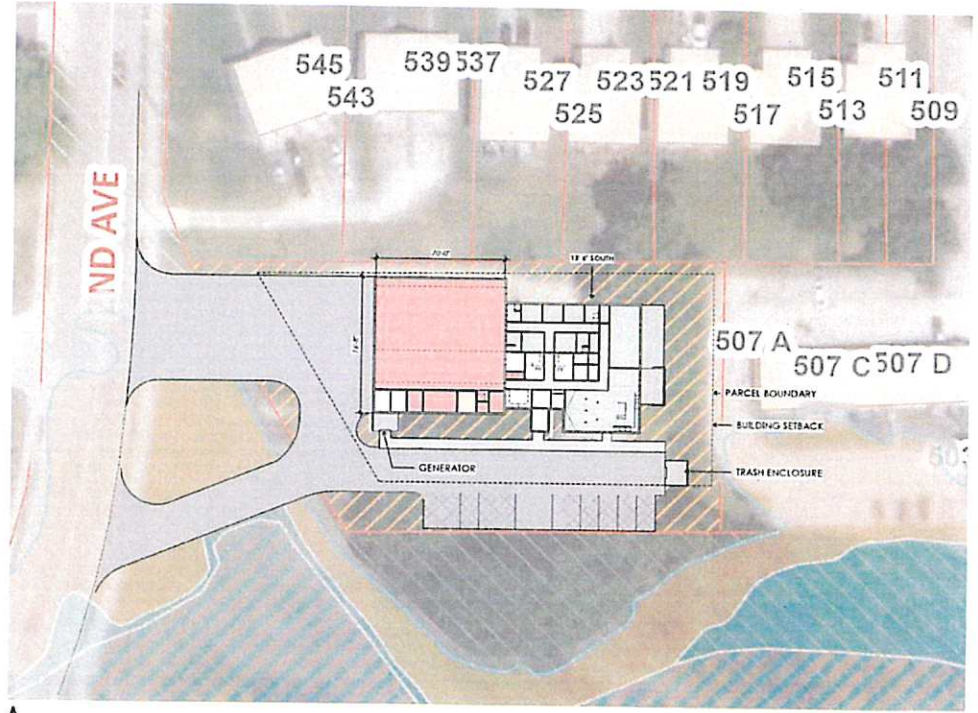
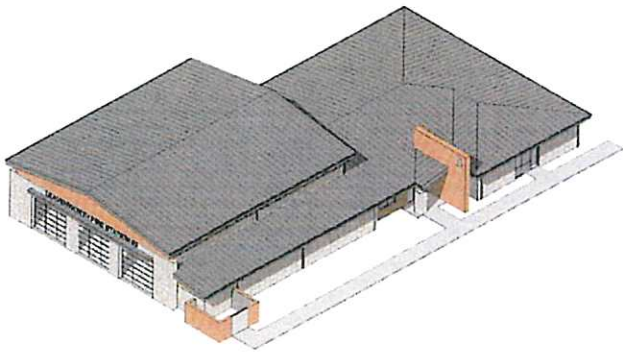
FENCE MATERIAL



WSKF, P.C. © 2023



LEAVENWORTH FIRE STATION 3 OPTION 1-A

10 / 12 / 23




SITE PLAN
 1" = 30'-0"


WSKF, Inc. © 2023



LEAVENWORTH FIRE STATION 3 OPTION 1

10 / 12 / 23

**POLICY REPORT
FIRST CONSIDERATION ORDINANCE
2023-31-SUP
2103 METROPOLITAN AVENUE**


NOVEMBER 28, 2023

SUBJECT:

Place on first consideration an ordinance to approve 2023-31-SUP



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



Reviewed By:
Paul Kramer,
City Manager

NATURE OF REQUEST

The applicant, Robyn Smith of Peace at Heart Senior Living LLC, is requesting a Special Use Permit to allow the operation of an assisted living facility at 2103 Metropolitan Ave. in an existing home on the property. The property is currently zoned R1-9, Medium Density Single Family Residential. The adopted Development Regulations defines an Assisted Living Facility as:

“Facilities which provide residents with supervision or assistance with activities of daily living; coordination of services by outside health care providers; and monitoring of resident activities to help ensure their health, safety, and wellbeing.”

Assisted Living Facilities are allowed in the R1-9 zoning district with issuance of a Special Use Permit.

In working to obtain the required state license to operate an Assisted Living Facility, the property has been inspected by the State of Kansas and approved for up to 3 residents. The applicant has indicated that there will be 1-2 staff members on site at all times for the care of the residents. In addition to the residents, a number of other daytime enrichment and therapeutic services will be offered to clients who may come to the facility on a scheduled basis to receive those services. The additional services will be provided in the primary residence on the structure. There is an existing detached structure on the property which will function as office space and storage for the facility.

The property includes an approximately 120’ deep, 22’ wide driveway, as well as parking areas in front of and behind the home, providing ample parking for residents, clients, and staff.

COMMISSION FINDINGS

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

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

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

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

There is a current need within the community for Assisted Living Facility uses. The proposed facility will provide primarily seniors cooking, cleaning, ADLs (Activities of daily living), and activities to its residents. It will help to improve the overall wellbeing of the residents in a home-like setting, as well as providing additional services to clients not residing on premises.

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

Staff has no indication that the proposed use will cause any substantial injury to the value of other property in the neighborhood.

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

No new structures or building modifications are proposed as part of this special use permit. The property will continue to look and function as it currently does.

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

The Planning Commission considered this item at their November 6, 2023 meeting and voted 4-0 to recommend approval of the Special Use Permit

STAFF RECOMMENDATION:

Staff recommends approval of the Special Use Permit request based on the analysis and findings included herein, subject to the following conditions:

1. Obtain an active registration of an Assisted Living Facility with the State of Kansas.

Failure to maintain compliance with all conditions shall result in revocation of the Special Use Permit.

ACTION/OPTIONS:

- Place an ordinance on first consideration to approve the Special Use Permit request to allow an assisted living facility in the R1-9 zoning district at 2103 Metropolitan Avenue.
- Deny the Special Use Permit request to allow an assisted living facility in the R1-9 zoning district at 2103 Metropolitan Avenue.
- Remand the Special Use Permit request to allow an assisted living facility in the R1-9 zoning district at 2103 Metropolitan Avenue to the Planning Commission for further consideration.

ORDINANCE NO. XXXX

AN ORDINANCE ALLOWING A SPECIAL USE FOR ASSISTED LIVING FACILITY IN R1-9, MEDIUM DENSITY SINGLE FAMILY RESIDENTIAL ZONING DISTRICT LOCATED AT 2103 METROPOLITAN AVENUE IN THE CITY OF LEAVENWORTH, KANSAS.

WHEREAS, under the 2016 Development Regulations of the City of Leavenworth, Kansas, as amended, the Governing Body of the City of Leavenworth, Kansas was given the power to locate special uses in each zoning district by ordinance; and

WHEREAS, the City Planning Commission, after fully complying with the requirements of the ordinances of the City of Leavenworth, Kansas held a public hearing on November 6, 2023 in the Commission Chambers, 1st Floor of City Hall, 100 N. 5th Street, Leavenworth, Kansas the official date and time set out as was published in the Leavenworth Times newspaper; and

WHEREAS, upon a motion made, duly seconded, and passed, the Planning Commission adopted findings of fact and recommended approval of the request for an Assisted Living Facility in R1-9, Medium Density Single Family Residential, located at 2103 Metropolitan Avenue, Leavenworth, Kansas.

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

Section 1. That a special use permit be issued for Assisted Living Facility on the following described property:

A tract of land in the Northwest Quarter of Section 27, Township 8 South, Range 22 East of the 6th P.M., Leavenworth County, Kansas, more fully described as follows: Commencing at a point of the South line of the United States Military Reservation 1190 feet Westerly from the Northwest corner of the Bull Tract of the Gist Survey; thence running South 523 feet to the North line of Dakota Street as said street is laid out, opened, and used in the City of Leavenworth, Kansas; thence East along the North line of said Dakota Street 250 feet; thence North parallel with the West line of Twentieth Street to the South line of said Military Reservation a distance of 535.73 feet; thence Westerly along the said South line of said Military Reservation to the point of beginning; less any part thereof taken or used for road or street purpose. LESS AND EXCEPT The West half of a tract of land in the Northwest Quarter of Section 27, Township 8 South, Range 22 East of the 6th P.M., Leavenworth County, Kansas, more fully described as follows: Commencing at a point 618 feet West of the Northwest corner of Twentieth and Dakota Street thence West 250 feet to a point thence North parallel to the West line of Twentieth Street 523 feet to a point on the South line of Metropolitan Avenue; thence Easterly

along the South line of Metropolitan Avenue to a point that is 535.73 feet North of the point of beginning; thence South and parallel to the West line of Twentieth Street 535.73 feet to the point of beginning. ALSO LESS AND EXCEPT The South half of the East half of a tract of land in the Northwest Quarter of Section 27, Township 8 South, Range 22 East of the 6th P.M., Leavenworth County, Kansas, more fully described as follows: Commencing at a point 618 feet West of the Northwest corner of Twentieth Street and Dakota Street; thence West 250 feet to a point; thence North parallel to the West line of Twentieth Street 523 feet to a point on the South line of Metropolitan Avenue; thence Easterly along the South line of Metropolitan Avenue thence South and parallel to the West line of Twentieth Street 535.73 feet to the point of beginning. More commonly referred to as: 2103 Metropolitan Avenue, Leavenworth, Kansas.

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

- a. Obtain an active registration of an Assisted Living Facility with the State of Kansas

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

Passed by the Leavenworth City Commission on this _____ day of _____, 2023.

Jermaine Wilson, Mayor

ATTEST:

Sarah Bodensteiner, CMC, City Clerk



SPECIAL USE PERMIT
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

CASE NO.: 2023-31 SUP

Application No.	<u>14294</u>
Fee (non-refundable)	\$350.00
Filing Date	<u>9/19/23</u>
Received By	<u>AK</u>
Hearing Date	<u>11/6/23</u>
Publication Date	<u>10/11/23</u>

As provided in Section 2.04 of the 2016 Development Regulations, application is hereby made for a SPECIAL USE PERMIT for the operation of a: Assisted Living/ Home plus Day Stay Program

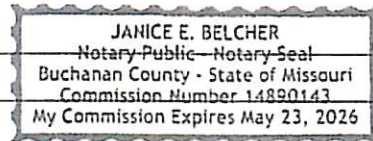
in accordance with the attached site plan on the following described property:

Subject Property:	<u>2103 Metropolitan Leavenworth KS 66048</u>		
Legal Description:	<u>(Attach a full legal description provided by the Register of Deeds Office)</u>		
Real Estate PID #:			
Zoning:	<u>R1-9</u>	Historic District:	<u>NA</u>

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

Name(s) of Owner (print):	<u>Elanea Arnett / Carrie Davies MetroKC Rentals LLC</u>		
Owner Address:	<u>2103 Metropolitan Ave Leavenworth, KS 66048</u>		
Contact No.	<u>9135475223</u>	Email:	<u>matt.warner@metrokcrentals.com carrie@metrokcrentals.com</u>
Signature of Owner(s):	<u>[Signature]</u>		

State of MO
County of PLATE (SEAL)



Signed or attested before me on: 9-18-23

Notary Public: [Signature]

My Appointment Expires: May 23, 2026

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

Name of Lessee:	<u>Robyn Smith - Peace At Heart Senior Living LLC</u>		
Address:	<u>140 S Ethel Lane Lansing KS 66043</u>		
Contact No.	<u>9135651120</u>	Email:	<u>pa@homecare-services@gmail.com</u>

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

Check list below...

<input type="checkbox"/>	Non-Refundable Fee of \$350.00 is due at time of application
<input type="checkbox"/>	Certified list of property owners within two hundred (200) feet of the subject property
<input type="checkbox"/>	Attach full legal description obtained through the Register of Deeds Office
<input type="checkbox"/>	Site Plan drawn to scale (See General Instructions)
<input type="checkbox"/>	Supporting documentation (See General Instructions)

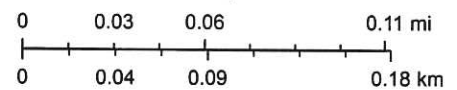
2023-31-SUP



11/15/2023, 11:26:06 AM

1:4,514

-  Parcels (City Owned)
-  Parcels_Current
-  Ft Leavenworth Military Installation
-  Leavenworth City Limits
-  City Right-of-Way
-  RoadCenterline



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

Web AppBuilder for ArcGIS

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

2023-31-SUP (Zoning)



11/15/2023, 11:27:18 AM

1:4,514

Zoning_CURRENT

R1-9

Parcels (City Owned)

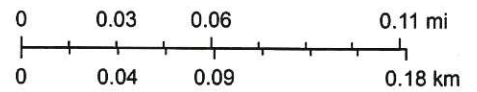
Parcels_Current

Ft Leavenworth Military Installation

Leavenworth City Limits

City Right-of-Way

RoadCenterline



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

Letter Of Intent

712 1st Terrace Ste. 207- L

Lansing, KS 66043

Pahhomecareservices@gmail.com

Sept 12, 2023

City of Leavenworth Planning Commission

100 N. 5th St

Leavenworth, KS 66603

To Whom It May Concern:

I am writing this Letter with the intent to initiate the beginning process of Opening, Licensing and credentialing our Home Plus Assisted Living facility for "Peace At Heart Senior Living" Through the state of Kansas and the City of Leavenworth's planning Commission and Special use Permits Department.

As the Owner and Operator (registration #1383) of this establishment I am Confident that I have the education and Knowledge to operate this Future Home to our prospective Residents. We currently Own and Operate Peace At Heart Home Care Services LLC which is a licensed Home Health agency through the state of Kansas. We are looking to Grow our business and expand by adding these additional Services and to offer our current clients with more options for all their healthcare needs. The Assisted Living will have fewer residents than your traditional style assisted living. It is in a much smaller setting. It is in a residential home to implement and give a more homelike feel so we can gear our focus on our seniors feeling more comfortable by providing more resident centered and quality of care. In the Assisted Living we will do Homemaker Chore Services like cooking, Cleaning, ADLs, and Activities.

We Want to be able to continue providing stability and consistency in their care by providing them with more available options for their care. We want to help them age in place without having to worry about transitioning into a new healthcare setting or with a new healthcare team with hopes this will allow them to live longer healthier lives. Our Goal is to become a one stop shop for all of our client's healthcare needs.

We Hope that with your Permission in Granting us a special use permit and with our current Licensed agency you will also consider our application for the Home Plus (Assisted Living) so that we can continue to be a resource for seniors in the metropolitan area and in our community by having the planning commission granting us a special use Permit. Thank You for your time and consideration of our vision for our Seniors.

Sincerely

Robyn Smith Owner/Operator

712 1st Terrace Ste.207-L Lansing Ks

913-565-1120

Peace At Heart Senior Living

9/13/23

