



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

**Call to Order – Pledge of Allegiance Followed by Silent Meditation**

**PROCLAMATION & PRESENTATION:**

- 1. Presentation to Ron and Kay Beaman – Wheel Thing Skate Center
- 2. Proclamation – Military America Saves Week (pg. 3)

**OLD BUSINESS:**

**Consideration of Previous Meeting Minutes:**

- 3. Minutes from January 23, 2018 Regular Meeting and January 24, 2018 and February 6, 2018 Special Meetings  
**Action:** Motion (pg. 4)

**Second Consideration Ordinances:**

- 4. Second Consideration Charter Ordinance No. 58 to Create Stormwater Management Program  
**Action:** Roll Call Vote (pg. 12)

**NEW BUSINESS:**

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

**General Items:**

- 5. Consider Approval of Tattoo Establishment at 2710 S 4<sup>th</sup> Street **Action:** Motion (pg. 15)
- 6. Review of Property on Demolition List – 1921 5<sup>th</sup> Avenue **Action:** Motion (pg. 17)
- 7. Mayor Appointments **Action:** Motion (pg. 23)
- 8. Dates for City Commission Budget Work Session & Goal Setting **Action:** Motion (pg. 24)

**Resolutions:**

- 9. Resolution B-2187 Setting Maximum Amount Allowed for 2018 Asphalt Overlay-General Improvements **Action:** Motion (pg. 25)
- 10. Resolution B-2188 Section Eight Management Assessment Program (SEMAP) **Action:** Motion (pg. 28)

**Bids, Contracts and Agreements:**

- 11. Consider Bids for Parks & Recreation Department Mowing Contract **Action:** Motion (pg. 35)
- 12. Consider Bids for Code Enforcement SUV **Action:** Motion (pg. 40)
- 13. Consider Design Service Agreement with BG Consultants for 2018 Sidewalk Project  
**Action:** Motion (pg. 43)

14. Consider Bids for Water Pollution Control Landfill Services

**Action:** Motion (pg. 59)

**First Consideration Ordinances:**

15. First Consideration Ordinance Telecommunications Contract Franchise Agreement- AT & T

**Action:** Consensus (pg. 63)

16. First Consideration Ordinance to Repeal Article VII of Chapter 14-Professional Wrestling Matches

**Action:** Consensus (pg. 87)

17. First Consideration Charter Ordinance to Repeal Charter Ordinance No. 6

**Action:** Consensus (pg. 90)

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**Consent Agenda:**

Claims for January 20, 2018 through February 9, 2018 in the amount of \$2,073,091.99; Net amount for Pay #3 effective February 2, 2018 in the amount of \$317,444.64 (No Police & Fire Pension). **Action:** Motion

**Other Items:**

**Adjourn:**        **Action:** Motion



# Proclamation



*Whereas, personal and household savings are fundamental to America's stability and vitality; and*

*Whereas, adequate emergency savings, retirement funds, and safe debt-income ratios are critical components of personal financial security; and*

*Whereas, personal financial security of service members is a crucial aspect of military readiness; and*

*Whereas, Military Saves is a national social marketing campaign to persuade, encourage, and motivate service members and their families to take financial action in building wealth through saving money and reducing debt;*

*Whereas, Armed Forces Bank, N.A. is a partner in the Military Saves campaign and is committed to helping its customers, employees, and their family members, as well as all service members, take immediate financial action to build wealth, not debt;*

*Now, Therefore, I, Mark Preisinger, Mayor of the City of Leavenworth, Kansas, do hereby proclaim the week of February 26<sup>th</sup> – March 3<sup>rd</sup>, 2018 to be*

## *"Military Saves Week"*

*I Hereby call upon the residents of Leavenworth, Kansas to set a personal savings or debt reduction goal, make a simple savings plan, and take action on that plan or take another positive wealth-building action during Military Saves Week and pledge to sustain that action during the following year.*

*In Witness Whereof, I have hereunto caused this seal to be affixed and set my hand this thirteenth day of February in the year two thousand and eighteen.*

\_\_\_\_\_  
Mark Preisinger, Mayor

ATTEST:

\_\_\_\_\_  
Carla K. Williamson, CMC, City Clerk



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

**Others present:** Assistant City Manager Taylour Tedder, Finance Director Ruby Maline, Police Chief Pat Kitchens, Public Works Director Mike McDonald, Deputy Public Works Director Mike Hooper, WPC Superintendent Chuck Staples, City Planner Julie Hurley, Public Information Officer Melissa Bower, City Attorney Tom Dawson, Deputy City Clerk Cary Collins and City Clerk Carla K. Williamson.

Mayor Preisinger opened the meeting with the pledge of allegiance followed by silent meditation.

**Presentation to out-going Mayor Nancy Bauder** – Mayor Preisinger presented on behalf of the City Commission a plaque to Commissioner Nancy Bauder for her term as Mayor from January 10, 2017 to January 8, 2018.

#### **OLD BUSINESS:**

##### **Consideration of Previous Meeting Minutes:**

Commissioner Bauder moved to approve the minutes from the January 8, 2018 special meeting and the January 9, 2018 regular meeting as presented. Commissioner Dedeke seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

##### **Second Consideration Ordinances:**

**Second Consideration Ordinance No. 8066 to Vacate a Portion of Linn Street** – City Clerk Carla Williamson stated that since the ordinance was placed on first consideration at the January 9, 2018 City Commission meeting the only change has been the correction of the spelling of Linn Street on attachments A & B. Ordinance 8066 was presented for Roll Call Vote.

Mayor Preisinger called for the roll call vote and Ordinance No. 8066 was unanimously approved.

**Second Consideration Ordinance No. 8067 to Vacate an Easement, Tract C, Branches Addition 2** - City Clerk Carla Williamson stated there have been no changes since the City Commission placed this on first consideration at the January 9, 2018 City Commission meeting. Ordinance 8067 was presented for Roll Call Vote.

Mayor Preisinger called for the roll call vote and Ordinance No. 8067 was unanimously approved.

**Second Consideration Ordinance No. 8068 to Remove 225 Delaware from the Downtown Town Square Redevelopment District** - City Clerk Carla Williamson stated there have been no changes since the City Commission placed this on first consideration at the January 9, 2018 City Commission meeting. Ordinance 8068 was presented for Roll Call Vote.

Mayor Preisinger called for the roll call vote and Ordinance No. 8068 was unanimously approved.

#### **NEW BUSINESS:**

## **Citizen Participation:**

### **Bruce Simpson – Head Coach American Legion Baseball League**

- Bill Geiger has agreed to sponsor the league
- 13-15 year olds in league
- Choice to go to paid league and pay year round or
- Move up to compete in senior league young men up to 19
- Sportsfield one is the only field that they can play on
- Fees for use of the field for practice and games
- American Legion is a non-profit and cannot afford to pay the field fees
- Has discussed with Parks Department
- American Legion is not considered a city sponsored league by city
- All boys on American Legion are from Leavenworth
- Currently practice at Lansing field and West Middle School field
- Need a regulation field to practice and play
- Would like to work with the City to be able to use Sportsfield one
- Would like to start practice in March
- March to middle of July use of field
- Request is to use the fields for practice and games

### **Mayor Preisinger**

- \$2.6 million upgrade to Sportsfield several years ago
- Professional field
- Will not disallow practice but we do charge for use of the field due to the expense and upkeep of the field
- Do not allow anyone else to do the cleanup of the field because of the special needs for the upkeep
- Checked with other cities regarding the use of bigger fields
- Other cities require the same type of fees for use of fields
- Do not allow Leavenworth High to use the field
- City fields by Eagles will be improved this spring; will have a mound and full field; will be available for practices

### **Commissioner Bauder**

- Referenced other park areas and fields and if they could be used

### **Mayor Preisinger**

- Not sufficient size for this age of players
- Suggested possibly contacting the school
- City field by Eagles ready possibly in April

### **Commissioner Wilson**

- Asked how many home games are played
- Would the commission be able to waive fees for non-profits

### **Commissioner Preisinger**

- Just because non-profits do not waive fees
- Many non-profits use and pay for the field

### **Commissioner Griswold**

- Asked if we could have a study session in the future

Commissioner Preisinger

- If a consensus could have a study session but he is not in favor
- City has a policy and we have followed it in the past
- Charge is \$50.00 per game
- We are not doing anything out of the ordinary with regards to the fees for use of the field

Mayor Preisinger wanted to go on record that he would personally sponsor and pay for one of the games out of his own pocket.

There was a consensus to put this on a study session to review

**General Items:**

**Consider Request for a Waiver of a Transient Merchants License-Military Memorabilia Show at Riverfront Community Center (RFCC) on February 17, 2018** – City Clerk Carla Williamson presented for consideration a request for a Transient Merchants License for a Military Memorabilia Show at the Riverfront Community Center on February 17, 2018. Chapter 78 of the City Code of Ordinances requires a waiver by the City Commission for a Transient Merchants License to be issued for use in or on city owned property. This show has been at the RFCC for the past 11 years. The waiver allows the event to be held on city property and all applicable fees will still be required. The Transient Merchants License is \$50.00 per day. The City notifies the Kansas Department of Revenue (KDOR) of all events held on city property and the City and KDOR work hand in hand on the collection of applicable sales taxes.

Commissioner Dedeke moved to grant a waiver of a Transient Merchants Permit for use of the Community Center for the Military Collectors Show on February 17, 2018. Commissioner Bauder seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

**Consider Approval of a Cereal Malt Beverage License for Main Street events at Haymarket Square** – Deputy City Clerk Cary Collins presented for consideration an on-premises Cereal Malt Beverage License for 2018 Main Street events held at Haymarket Square.

Commissioner Bauder moved to approve the 2018 on premises Cereal Malt Beverage License for Leavenworth Main Street at Haymarket Square. Commissioner Dedeke seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

**Consider Request for Waiver of a Temporary Liquor License; St. Joseph Church and Immaculate Conceptions Church** - Deputy City Clerk Cary Collins presented for consideration a waiver of the code requirement that prohibits alcoholic liquor from being sold or served from a location within 300 feet of any church, school, nursing home, library or hospital. The waiver would be for a temporary liquor license for the following locations and dates:

- Immaculate Conception Church, 711 N. 5<sup>th</sup> Street, Sunday March 11, 2018 for their annual Corned Beef and Cabbage Dinner
- St. Joseph Church, 306 N. Broadway, Saturday, June 2, 2018 for their annual Germanfest Dinner and Dance

Leo Fink from the Church was present but no comments were made.

Commissioner Bauder moved to approve the request to waive the 300 foot requirement for a liquor permit for these events as presented. Commissioner Dedeke seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

**Review of Properties on Demolition List – 2608 S. 4<sup>th</sup> Street and 1214 Pottawatomie Street** – City Planner Julie Hurley presented an update on the two properties placed on the demolition list on October 10, 2017 by passing Resolution B-2179.

On October 10, 2017 2608 S. 4th Street was given a 90 day extension to complete repairs. Roger Eagle has since purchased the property and permits to replace the roof and reconnect gas service have been obtained. Roof has been mostly replaced with some additional work needed.

On November 14, 2017 Amanda Reed appeared on behalf of her husband, the owner of 1214 Pottawatomie and indicated their intent to sell the property to be rehabilitated. The City Commission granted an extension until January 23, 2018 to have the property sold and a signed remediation agreement in place. At the January 9, 2018 Ms. Reed appeared before the City Commission during Citizen Participation and informed the Commission that a buyer had been found and asked that the property be removed from the demolition list. Ms. Reed was directed to return to the January 23, 2018 meeting with the buyer so the Commission could take action.

Mr. Eagle, owner of 2608 S. 4<sup>th</sup> Street stated that weather permitting he should have it habitable soon. Will be installing vinyl siding. Mr. Eagle would like the property removed from the demolition list. He is unable to obtain insurance on the property while on the demolition list.

Commissioner Dedeker moved to remove 2608 S, 4<sup>th</sup> from the demolition list. Commissioner Bauder seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

The new owner of 1214 Pottawatomie, Kristina Russell, stated they have started on the inside and want to check the electricity before it is turned back on. A remediation agreement has been signed. Ms. Russell said she cannot guarantee when it will be completed until they gut the inside. Plan is to have it back on the market by spring.

Commissioner Dedeker moved to remove 1214 Pottawatomie Street from the demolition list. Commissioner Bauder seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

#### **Resolution:**

**Resolution B-2186 to Set Public Hearing for Dangerous Structure Damaged by Fire at 850 Sherman Avenue** – Public Works Director Mike McDonald presented for consideration Resolution B-2186 to set a public hearing regarding 850 Sherman Avenue. The multi-family structure was damaged by fire on November 5, 2017. The City has been in contact with the owner and the owner's intent is to demolish the structure. Resolution B-2186 would set the public hearing for March 13, 2018.

Commissioner Bauder moved to adopt Resolution B-2186 setting March 13, 2018 as the date of the public hearing regarding the unsafe structure located at 850 Sherman Avenue. Commissioner Dedeker seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

#### **Bids, Contracts and Agreements:**

**Consider Bids for Police SWAT Vehicle** – Police Chief Pat Kitchens presented for consideration the purchase of one SWAT vehicle from LDV Custom Specialty Vehicles in the amount of \$126,063.00. This would be a replacement of the SWAT vehicle purchased in 2000. The Police Department staff prepared specification and sought bids from three different companies and received the following bids:

- LDV \$126,063.00
- Summit Truck Group \$136,570.00
- Summit Bodyworks \$195,830.00

Commissioner Bauder moved to approve the purchase of the SWAT replacement vehicle from LDV in the amount of \$126,063.00. Commissioner Griswold seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

**Consider Sole Source Bid for a Laser Scanner for Police Department** – Police Chief Pat Kitchens presented for consideration the approval to purchase one 3D HW LS Focus 70 Laser Scanner from FARO Technologies, Inc. in the amount of \$44,548.23. The sole source is requested due to the specific nature of the technology and the ability to be involved in a user group with other law enforcement agencies in the region that use the same equipment. Additionally the technology will allow the incorporation of our drone(s) to further enhance the information collected.

Commissioner Bauder moved to approve the sole source purchase of one 3D HW LS Focus 70 Laser Scanner from FARO Technologies, Inc. for no more than \$44,548.23. Commissioner Dedeke seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

**Consider Change Order to the 2017 WPC Landfill Contract with Hamm Quarry** – Public Works Director Mike McDonald presented for consideration the approval of a change order in the amount of \$8,923.76 to the contract with Hamm Quarry for the 2017 landfill services for dewatered sludge.

Commissioner Bauder moved to approve the change order for the 2017 contract to Hamm’s Landfill for the disposal of dewatered sludge in the amount of \$8,923.76. Commissioner Dedeke seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

**Consider Design Contract with TreanorHL for Phase 4 of the Riverfront Community Center (RFCC) Stone Replacement Project** – Deputy Public Works Director Mike Hooper gave a brief history of the stone restoration to this point. Mr. Hooper then presented for consideration and approval the design contract with TreanorHL for Phase 4 of the Riverfront Community Center Stone Replacement Project in an amount not to exceed \$66,300.00. Julia Manglitz, project manager with TreanorHL gave a PowerPoint presentation on the history of the Community Center.

Commissioner Bauder moved to approve the design contract with TreanorHL for Phase 4 of the Riverfront Community Center Stone Replacement Project in an amount not to exceed \$66,300.00. Commissioner Dedeke seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

**First Consideration Ordinances:**

**First Consideration Charter Ordinance related to Stormwater Program** –City Clerk Carla Williamson presented for first consideration a charter ordinance exempting the city from K.S.A. 12-3101 et. seq. to create a Stormwater Management Program for the City of Leavenworth.

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

**CONSENT AGENDA:**



Commissioner Griswold moved to approve claims for January 6, 2018 through January 19, 2018 in the amount of \$1,258,959.08; Net amount for Pay #2 effective January 19, 2018 in the amount of \$322,656.38 (Including Police & Fire Pension of \$11,572.36). Commissioner Dedeke seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

**Other:**

Commissioner Wilson stated that he spoke with County Attorney Todd Thompson about the police shooting and it is still being investigated.

Mayor Preisinger encouraged all Citizens to contact representatives about the government shutdown.

Assistant City Manager Taylour Tedder stated that March 6<sup>th</sup> will be the first available meeting for discussion of Sportsfield.

**Adjourn:**

Commissioner Dedeke moved to adjourn the meeting. Commissioner Bauder seconded the motion and was unanimously approved. The Mayor declared the motion carried and the meeting adjourned.

Time Meeting Adjourned 8:46 p.m.

Minutes taken by City Clerk Carla K. Williamson, CMC



CITY OF LEAVENWORTH  
100 N. 5th Street  
Leavenworth, Kansas 66048

City Commission Special Meeting  
Commission Chambers  
Wednesday, January 24, 2018 2:00 p.m.

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

The Governing Body signed the consent for the special meeting, and proper notice was given.

**Others present:** City Manager Paul Kramer, City Attorney Tom Dawson and City Clerk Carla K. Williamson.

Mayor Preisinger called for a motion to open the Special Meeting. Commissioner Dedeke moved to open the Special Meeting. Commissioner Wilson seconded the motion and was unanimously approved. The Mayor declared the motion carried and the meeting opened.

**Consider a Motion to Ratify the Petition Law Suit as Filed** – Mayor Preisinger stated that the special meeting is in regards to the mutual agreement signed in March 2016 between the City of Lansing, the City of Leavenworth and Leavenworth County. The County unilaterally made changes to the agreement without the agreement of the City of Lansing or the City of Leavenworth. The City of Leavenworth filed in District Court a petition against the County.

City Manager Paul Kramer stated that the City can ask for the previous petition to be removed or we can file a new petition.

Mayor Preisinger stated that the Supreme Court ruled on a case involving the City of Wichita which found that a City Manager has the authority to file actions and the action does not require a vote by the Governing Body.

Commissioner Dedeke moved to file a petition for declaratory judgment against Leavenworth County for the violation of the MOU agreement regarding the Eisenhower Road Project. Commissioner Griswold seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

**ADJOURN:**

Commissioner Griswold moved to adjourn the meeting. Commissioner Dedeke seconded the motion and was unanimously approved. The Mayor declared the motion carried and the meeting adjourned.

Time Special Meeting Adjourned 2:04 p.m.  
Minutes taken by City Clerk Carla K. Williamson, CMC



**The City Commission met for a Special Meeting with the following members present:** Mayor Pro-Tem Jermaine Wilson, Commissioners Nancy Bauder and Myron J. (Mike) Griswold. Absent: Mayor Mark Preisinger and Commissioner Larry Dedeke.

**Others Present:** City Manager Paul Kramer, Assistant City Manager Taylour Tedder, Public Works Director Mike McDonald, Deputy Public Works Director Mike Hooper, Public Information Officer Melissa Bower and City Clerk Carla K. Williamson.

The Governing Body signed the consent for the special meeting written waiver notice.

Mayor Pro-Tem Wilson called for a motion to open the special meeting.

Commissioner Bauder moved to open a Special Meeting. Commissioner Griswold seconded the motion and was unanimously approved 3-0.

**Consider Addition of 225 Delaware to the Neighborhood Revitalization Area (NRA)** – Assistant City Manager Taylour Tedder presented for consideration and approval the addition of 225 Delaware to the NRA. On January 23, 2018 the City Commission approved Ordinance No. 8068 removing 225 Delaware from the Downtown Town Square Redevelopment District. This addition will not affect the overall structure of the plan, which is set to expire on December 31, 2026.

Commissioner Bauder moved to approve the addition of 225 Delaware to the Neighborhood Revitalization Area. Commissioner Griswold seconded the motion and was unanimously approved 3-0.


Commissioner Griswold moved to adjourn. Mayor Pro-Tem Wilson seconded the motion and was unanimously approved 3-0.

Meeting adjourned at 7:51 p.m.  
Minutes taken by City Clerk Carla K. Williamson

**POLICY REPORT  
SECOND CONSIDERATION  
CHARTER ORDINANCE 58 TO CREATE A STORMWATER MANAGEMENT PROGRAM**

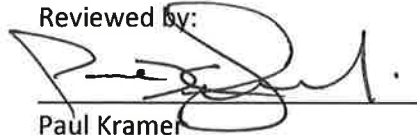
**FEBRUARY 13, 2018**

Prepared by:



Carla K. Williamson, CMC  
City Clerk

Reviewed by:



Paul Kramer  
City Manager

**BACKGROUND:**

At the January 23, 2108 meeting the City Commission discussed and placed on first consideration:

**A CONSTITUTIONAL CHARTER ORDINANCE EXEMPTING THE CITY OF LEAVENWORTH, KANSAS FROM THE PROVISIONS OF THE KANSAS WATER POLLUTION ACT K.S.A 12-3101 ET SEQ AND PROVIDING FOR THE CREATION OF AN ORDINANCE ESTABLISHING A STORMWATER MANAGEMENT PROGRAM AND A STORMWATER UTILITY FEE FOR THE CITY OF LEAVENWORTH, KANSAS FOR THE PURPOSE OF PLANNING, DESIGNING, FUNDING, CONSTRUCTING AND MAINTAINING STORMWATER MANAGEMENT, SEDIMENT AND EROSION CONTROL, AND FLOOD AND STORMWATER DISCHARGE PROGRAMS, PROJECTS AND FACILITIES AND REVIEWING AND APPROVING STORMWATER MANAGEMENT AND SEDIMENT CONTROL PLANS FOR LAND DISTURBING ACTIVITIES, AND PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT THEREOF AND PROVIDING FOR STORMWATER MANAGEMENT RATES TO BE SET BY RESOLUTION OF THE GOVERNING BODY.**

**ACTION:**

Charter Ordinance No. 58 is now presented for second consideration and requires a roll call vote with four (4) affirmative votes.

**CHARTER ORDINANCE NO. 58**

**A CONSTITUTIONAL CHARTER ORDINANCE EXEMPTING THE CITY OF LEAVENWORTH, KANSAS FROM THE PROVISIONS OF THE KANSAS WATER POLLUTION ACT K.S.A 12-3101 ET SEQ AND PROVIDING FOR THE CREATION OF AN ORDINANCE ESTABLISHING A STORMWATER MANAGEMENT PROGRAM AND A STORMWATER UTILITY FEE FOR THE CITY OF LEAVENWORTH, KANSAS FOR THE PURPOSE OF PLANNING, DESIGNING, FUNDING, CONSTRUCTING AND MAINTAINING STORMWATER MANAGEMENT, SEDIMENT AND EROSION CONTROL, AND FLOOD AND STORMWATER DISCHARGE PROGRAMS, PROJECTS AND FACILITIES AND REVIEWING AND APPROVING STORMWATER MANAGEMENT AND SEDIMENT CONTROL PLANS FOR LAND DISTURBING ACTIVITIES, AND PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT THEREOF AND PROVIDING FOR STORMWATER MANAGEMENT RATES TO BE SET BY RESOLUTION OF THE GOVERNING BODY.**

**WHEREAS** the state of Kansas has passed legislation, known as the Kansas Water pollution act, K.S.A 12-3101 et seq. (KWPA) which has been found by the Kansas Supreme Court to be a non-uniform legislative act that affects different classes of cities in the State in different manners and

**WHEREAS** the KWPA also has a provision that allows the Secretary of Kansas Department of Health and Environment (KDHE) to by resolution allow cities to create their own storm water utility under the KWPA and

**WHEREAS** the Kansas Legislature has not created in the KPWA the authority for the KDHE to issue resolutions, and KDHE has taken the position that it does not have the authority to issue resolutions allowing cities to create a storm water utility under the KWPA: and

**WHEREAS** various cities have used their Constitutional Charter Ordinance authority to exempt themselves from the provision of the KWPA and KWPA is not uniform as it applies to all cities in the state which permits the exemption; and

**WHEREAS** the City of Leavenworth, Kansas seeks to create a storm water utility for the purpose of managing storm water in the City and to collect a fee for that and other applicable services and to manage, administer and enforce such regulations as promulgated by the City of Leavenworth for that purpose;

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

**Section 1.** Exemption from State law. The City of Leavenworth by virtue of the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas hereby exempts itself from the provisions of the KWPA, K.S.A 12-3101 *et seq.* for the purpose of creating a storm water utility and a fee to implement the same.

**Section 2.** Repeal of inconsistent provisions. Any provision of the current ordinances of the City that are inconsistent or in conflict with this Charter Ordinance are hereby repealed to the extent of such inconsistency or conflict; other all such provisions are hereby ratified and confirmed.

**Section 3.** This Charter Ordinance shall be published once a week for two (2) consecutive weeks in the official city newspaper.

**Section 4.** This Charter Ordinance shall take effect sixty-one (61) days after its final publication, unless a sufficient petition for a referendum is filed and a referendum held on this Charter Ordinance as provided in Article 12, Section 5, Subsection (c) (3) of the Constitution of the State of Kansas, in which case this Charter Ordinance shall become effective if approved by a majority of the electors voting thereon.

Passed and approved by the Governing Body, not less than two-thirds of the members elect voting in favor thereof, the 13<sup>th</sup> day of February 2018.

\_\_\_\_\_  
Mark Preisinger, Mayor

{SEAL}

ATTEST:

\_\_\_\_\_  
Carla K. Williamson CMC, City Clerk

Published: The Leavenworth Times

First Publication Date: February 16, 2018

Second Publication Date: February 23, 2018

**POLICY REPORT  
CONSIDER APPROVAL OF A TATTOO ESTABLISHMENT  
RIGHTEOUS TATTOO STUDIO  
2710 S. 4<sup>TH</sup> STREET**

**FEBRUARY 13, 2018**

  
Carla K. Williamson, CMC City Clerk

  
Paul Kramer, City Manager

**ISSUE:**

Consider approval of a Tattoo Establishment License for Righteous Tattoo Studio at 2710 S. 4<sup>th</sup> street.

**BACKGROUND:**

Donnie and Amanda McQuitty submitted an application for a Tattoo Establishment License for a new business they intend to open at 2710 S 4<sup>th</sup> Street.

Typically the approval of a Tattoo Establishment comes to the City Commission after the business has been inspected and approved by the Chief of Police and City Health Inspector. In this instance, the applicant has not yet begun work at the proposed location. Construction of the interior to prepare for the opening of the business is expected to take approximately three (3) months.

Before signing the lease and starting construction, the applicant has asked for an approval contingent upon passing all inspections.

The applicant has had a tattoo business in Bonner Springs since September 2013 and is looking to expand to Leavenworth.

**ACTION:**

- Approve the Tattoo Establishment License for Righteous Tattoo Studio at 2710 S. 4<sup>th</sup> contingent upon passing all inspections

or

- Deny the request

**ATTACHMENT:**

Map showing location of proposed business





**POLICY REPORT**

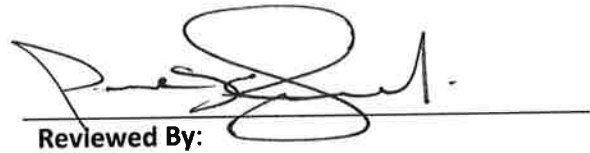
**Review of Properties on Demolition List  
1921 5<sup>th</sup> Avenue**

**FEBRUARY 13, 2018**



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**Prepared By:**  
Julie Hurley,  
City Planner



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

**DISCUSSION**

On October 10, 2017, the City Commission passed Resolution B-2179 finding 8 structures, including the property located at 1921 5<sup>th</sup> Avenue to be in an unsafe or dangerous condition and directing the structures be repaired or removed. Douglas Neu, owner of 1921 5<sup>th</sup> Avenue, signed a Remediation Agreement on October 6, 2017 agreeing to replace the roof, replace the siding and paint the house, and provided a letter stating that he believed he could have the repairs complete in 8-10 months. The Commission voted at that time to review the property for progress in 30 days.

At the November 14, 2017 City Commission meeting, Douglas Neu addressed the Commission and discussed the plan for repair. At that time, vegetation had been cleared and a permit to install new siding had been obtained. Mr. Neu stated that he would need 4 additional months to complete all of the required repairs. The Commission voted to grant a 90 day extension.

Since that time, siding has been installed. No new permits for work have been obtained, and there is no visible indication of additional work being performed.

**RECOMMENDED ACTION**

- Motion to remove property located at 1921 5<sup>th</sup> Avenue from demolition list.
- Motion to grant extension to property located at 1921 5<sup>th</sup> Avenue Pottawatomie for further repair and review.
- Motion to proceed with demolition of property located at 1921 5<sup>th</sup> Avenue.



***Heartland Plumbing & Heating LLC***

*17271 Hollingsworth Rd.*

*Basehor, Kansas 66007 (913) 724-1646*

*Email: [heartlandplghtg@netzero.com](mailto:heartlandplghtg@netzero.com)*



*Certified APLUS Dealer*



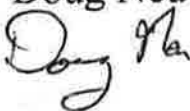
City of Leavenworth

October 1, 2017

To whom it Concern,

My name is Doug Neu and I own the house and property at 1921 5th Ave. Leavenworth. I want to do the repairs to the house to bring it up to livable conditions. I'm working out of town for the next 6 months but would work on the house as much as I can. My estishment time to compete this I believe will be 8-10 months. I will remove the overgrown vegetation in the next 2 weeks. I would appreciate you working with me on this.

Thank you.

Sincerly,  
Doug Neu  


property.

6. A **wood detached garage** on the property located at **715-717 6th Avenue**, legally described as the North ½ of Lot 10 and the North ½ of the West 25 feet of Lot 9 and the North 35 feet of the East 35 feet of Lot 9, Block 27, Latta's Addition to the City of Leavenworth, according to the recorded plat thereof, AND ALSO the South ½ of Lot 10 and the West 25 feet of the South ½ of Lot 9, Block 27, Latta's Addition to the City of Leavenworth, according to the recorded plat thereof, in Leavenworth County, Kansas. CAMA No. 0773501030004000.
  - a. City Planner Julie Hurley stated that the owner has voluntarily demolished the structure.
  - b. Owner not present.
  - c. Mayor and Commissioners agreed to remove the wood detached garage from the demolition list.
  
7. A **two-story wood frame house and any accessory structures** on the property located at **800 Miami Street**, legally described as Lots 37 and 38, Block 4, Mix's Subdivision, City of Leavenworth, Leavenworth County, Kansas. CAMA No. 0772604305023000.
  - a. City Planner Julie Hurley stated that the owner requested a copy of the Remediation Agreement on September 25, 2017 but there has been no contact since.
  - b. Owner not present.
  - c. Mayor and Commissioners discussed the issue and agreed to demolish the two-story wood frame house and any accessory structures on the property.
  
8. A **one-story wood frame house and any accessory structures** on the property located at **1609 Lawrence Avenue**, legally described as Tract I: The West 1/2 of the West 1/2 of Block 6, Marshall's Subdivision, of the City of Leavenworth, according to the recorded plat thereof, less any part thereof taken, used or occupied by the railroad. Tract II: A tract of land lying in Block 6 of Marshall's Subdivision, in the City of Leavenworth, described as follows: Beginning at the intersection of the Southerly line of said Block 6 with the Southwesterly property line of the Atchison, Topeka and Santa Fe Railway Company, said point being distance North 88° 45' East (bearing assumed for the purpose of this description) 64.00 feet from the Southwest corner of said Block 6; thence North 88° 45' East along said Southerly line of Block 6, a distance of 15.60 feet to a point in a line parallel with and distance Northeasterly 14.34 feet measured at right angles from said Southwesterly property line; thence North 24° 27' 30" West along said parallel line, 192.21 feet to a point in the Easterly line of Lawrence Ave.; thence South along the Easterly line of Lawrence Avenue 34.63 feet to said Southwesterly property line; thence South 24° 27' 30" East along said Southwesterly property line, 154.54 feet to the point of beginning, said property also lying within the Northeast 1/4 of Section 2, Township 9 South, Range 22 East, both being in Leavenworth County, Kansas. CAMA No. 1010201008001000.
  - a. City Planner Julie Hurley stated that the owner has voluntarily demolished the structure.
  - b. Owner not present.
  - c. Mayor and Commissioners agreed to remove from the demolition list.
  
9. A **one-and-a-half-story wood frame house and any accessory structures** on the property located at **1921 5th Avenue**, legally described as Lots 10 and 11, Block 19, Rees, Doniphan and Thornton Subdividing, a subdivision in Leavenworth County, Kansas. CAMA No. 1010102023011000.
  - a. City Planner Julie Hurley stated that the owner signed a Remediation Agreement on October 6, 2017 and provided a letter that he believes he can have the repairs complete the repairs in 8-10 Months and have overgrown vegetation removed in the next two weeks. No permits pulled at this time and no work has started.
  - b. Owner not present.
  - c. Mayor and Commissioners discussed the issue and agreed to give a 30 day extension for repairs to the one-and-a-half-story wood frame house and any accessory structures on the property. The Commission

would like to see some work and effort to repair the property, building permits, estimates of repairs and proof of funding. Commission will review the first regular meeting after 30 days.

10. A **one-story wood frame house and any accessory structures** on the property located at **2608 S 4th Street**, legally described as Lot 5 and the North 13 feet of Lot 6, Block 4, Halsey Heights, City of Leavenworth, Leavenworth County, Kansas. CAMA No. 1010104010013000.
- a. City Planner Julie Hurley stated that the owner has indicated intent to repair; no permits have been pulled no work has begun. There is another party interested in purchasing the property and he is present to discuss the property with the City Commission.
  - b. Owner not present.
  - c. Rodger Eagle 12512 Blue Grass Lane addressed the Commission. Mr. Eagle stated that the owner has financial difficulty and he has made an offer to the owner to purchase the property and the bank (Country Club Bank) has accepted it. They are working toward a contract to purchase the property. He is unable to pull any permits until the house is in his name. Would like 90 days to complete the purchase of the property and begin repairs.
  - d. Mayor and Commissioners discussed the issue and agreed to give Mr. Eagle 90 days to complete the purchase and begin repairs. The Commission will review after 90 days.

**Close Public Hearing:**

Commissioner Dedeke moved to close the public hearing. Commissioner Preisinger seconded the motion and was unanimously approved. The Mayor then declared the motion carried.

**Consider Resolution B-2179 Demolition or Repair of Unsafe & Dangerous Structures**

Commissioner Weakley moved to approve Resolution B-2179 to Demolish or Repair Dangerous Structures with the changes recommended by staff. Commissioner Preisinger seconded the motion and was unanimously approved. The Mayor then declared the motion carried.

**Resolutions:**

**Resolution B-2178 Leavenworth Main Street Alive After Five; Alcoholic Beverage** – City Clerk Carla Williamson presented for consideration a Resolution to allow serving complimentary (free) alcoholic beverage to the general public during Main Street Alive After Five events January 1, 2018 – December 31, 2018. The City Commission has approved such a resolution for the past two years.

Commissioner Preisinger moved to approve Resolution B-2178 for Alive after Five Main Street Event. Commissioner Raney seconded the motion and was unanimously approved. The Mayor then declared the motion carried.

**Bids, Contracts and Agreements:**

**Consider Contract with Black & Veatch for Wastewater Rate Study** – Public Works Director Mike McDonald presented for consideration a contract with Black & Veatch for a Wastewater Rate Study. The last study was approximately 20 years ago. The basic rate study is expected to cost \$51,520.00.

Anna White with Black & Veatch addressed the Commission and discussed the study. They will look at the revenue the facility should be generating and how much it is actually generating. After reviewing the data the City will have a 5 year rate plan.

Commissioner Dedeke moved to approve the contract with Black & Veatch in the amount of \$51,520.00. Commissioner Preisinger seconded the motion and was unanimously approved. The Mayor then declared the motion carried.

- A residential kennel permit is then defined by the lot size
- Once over 4 dogs a lot must have 2,000 square feet per animal

The item will be put on a Study Session for further consideration.

#### **General Items:**

**Review Dangerous Structure- 1921 5<sup>th</sup> Avenue** – City Planner Julie Hurley presented a review of 1921 5<sup>th</sup> Avenue which was given a 30 day extension by the City Commission at the October 10, 2017 meeting at the time Resolution B-2179 was adopted regarding demolition of structures. The 30 day extension period expired on November 9, 2017. The owner obtained a building permit to install new siding on November 3, 2017.

Douglas Neu, property owner, addressed the city commission and discussed the plan for repair. Vegetation has been cleared and siding permit has been pulled. Mr. Neu stated that he will need about 4 more months to complete all of the repairs to bring the property up to code.

Commissioner Dedeke moved to give a 90 day extension for 1921 5<sup>th</sup> Avenue. Commissioner Preisinger seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

#### **Bids, Contracts and Agreements:**

**Consider Design Contract with Wilson & Company Inc. for 14<sup>th</sup> & Pawnee Culvert Repair Project** – City Manager Paul Kramer gave a brief update on the condition of the property and the steps the City has taken to try and get federal assistance from the Bureau of Prisons to alleviate the flooding problems. After speaking with local prison officials Mr. Kramer stated that he also spoke to the offices of Senator Pat Roberts and Representative Jenkins and the City was unable to get any funding. Public Works Director Mike McDonald presented for consideration a contract with Wilson & Company for the design of the 14<sup>th</sup> & Pawnee Culvert Repair Project in the amount of \$33,900.00.

Commissioner Preisinger moved to accept the design contract with Wilson & Company for the design of the 14<sup>th</sup> & Pawnee Culvert Repair Project in the amount of \$33,900.00. Commissioner Weakley seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

**Consider Design Contract with Water Resources Solutions, LLC for the 16<sup>th</sup> Terrace & Thornton Phase 1 Detention Project** – City Manager Paul Kramer updated the Commission on this project and explained that this project will need to be accomplished in phases. Public Works Director Mike McDonald presented for consideration a contract with Water Resources Solutions, LLC for the 16<sup>th</sup> Terrace & Thornton Phase I Detention Project in the amount of \$38,665.00.

Commissioner Dedeke moved to approve the design contract submitted by Water Resources Solutions, LLC. For the 16<sup>th</sup> Terrace & Thornton Phase 1 Detention Project in an amount not to exceed \$38,665.00. Commissioner Raney seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

**Consider Bids for the Planters II Bedroom, Bathroom, and Linen Closet Door Project** – City Manager Paul Kramer presented for consideration a bid of \$184,245.00 from BKM Construction LLC. Bids were opened on November 2, 2017 at the Leavenworth Housing Authority office. There was only one other bid submitted by Julius Kaaz Construction. That bid was not read as the bid did not contain all required documents.

Commissioner Dedeke moved to approve the bid for the removal and replacement of the bedroom, bathroom and linen closet doors at Planters II by BKM Construction in an amount not to exceed \$184,245.00. Commissioner Weakley seconded the motion and was unanimously approved. The Mayor declared the motion carried 5-0.

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## CITY OF LEAVENWORTH

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**TO:** CITY COMMISSIONERS  
**FROM:** MARK PREISINGER, MAYOR  
**SUBJECT:** CITY APPOINTMENTS  
**DATE:** FEBRUARY 13, 2018

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I move to recommend the following appointments:

**Convention and Tourism Committee:**

- Reappoint Wendy Scheidt from Main Street and Mary B. Stephenson from the Leavenworth Historical Society to terms ending January 1, 2021

**Parks and Community Activities Advisory Board:**

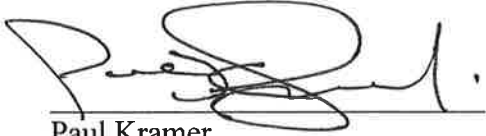
- Reappoint Jim Mathis to a terms ending January 15, 2021

**Solid Waste Management Committee for Leavenworth County:**

- Appoint Steve King Solid Waste Forman City of Leavenworth

**Policy Report**  
City Commission Budget Work Sessions and Goal Setting  
February 13, 2018

Prepared by:



Paul Kramer  
City Manager

**Subject:**

The City Commission meets annually over two or three days to review, modify and provide staff with direction on the final draft of the budget. Prior to the budget process, the City Commission has traditionally set aside a half-day to consider the Commission Goals, which while not an exhaustive list of items to be pursued does help guide resource allocation and staff direction for the following year. Setting dates for budget hearings and goal setting is a necessary action in the budget formation process.

**Action Requested:**

Based on the budget schedule, it is recommended that the City Commission select time during the week of July 9-13 to convene budget work sessions. Going on previous years, it would be 1-5 p.m. on Wednesday, July 11 and Thursday, July 12, with Friday, July 13 to be reserved if needed.

The annual goal-setting session is a more flexible part of the process, as it is generally scheduled for one afternoon. I would offer Wednesday, April 4 from 1-5 as a first option.

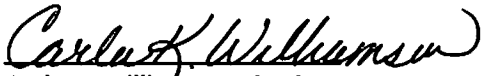
The items are put forward for general discussion.



**POLICY REPORT  
RESOLUTION B-2187  
SETTING THE MAXIMUM AMOUNT ALLOWED FOR THE  
2018 ASPHALT OVERLAY- GENERAL IMPROVEMENT PROJECT**

**FEBRUARY 13, 2018**

Prepared by:



Carla K. Williamson, CMC  
City Clerk

Reviewed by:



Paul Kramer  
City Manager

**ISSUE:**

The issue before the City Commission is to consider a resolution relating to the City's 2018 Asphalt Overlay - General Improvement Project in the maximum amount of \$1,818,504.00. This amount is set by Charter Ordinance 56 which authorizes the City to issue and sell its general obligation bonds in an amount equal to 28% of the amount of revenue produced for the tax year one year preceding the year of bond issuance by the City of Leavenworth's tax mill levies as certified by the County Clerk, Leavenworth County Kansas. This will be the first of several actions relating to the 2018 temporary note issuance.

<b>2018 GI Bonds</b>	
Taxes Levied 2018	\$6,494,659
<b>28% authorized to Sell Bonds</b>	<b>\$1,818,504</b>

**ACTION REQUIRED:**

Approve or deny Resolution B-2187 setting the maximum amount for the 2018 Asphalt Overlay- General Improvement Project.

**ATTACHMENTS:**

Resolution B-2187

## **RESOLUTION NO. B-2187**

**WHEREAS**, the City of Leavenworth, Kansas (the “City”) pursuant to its Charter Ordinance No. 56, which provided certain substitute and additional provisions to K.S.A. 13-1024a, is authorized to issue and sell its general obligation bonds in an amount equal to 28% of the amount of revenue produced for the tax year one year preceding the year of bond issuance by the City of Leavenworth’s tax mill levies as certified by the County Clerk, Leavenworth County, Kansas, in any one year for certain public improvements.

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

**Section 1.** That the 2018 asphalt overlay project (the “Project”) is authorized in an amount not to exceed \$1,818,504.00 and the Project Costs are to be paid as provided in K.S.A. 13-1024a and Charter Ordinance No. 56 of the City.

**Section 2.** That City staff be and they are hereby directed to proceed to prepare plans and specifications for the undertaking of the Project, including the funding thereof, as provided by the laws of the State of Kansas.

**Section 3.** That the Project found advisable in Section 1 hereof be, and the same is hereby, authorized and ordered to be done in accordance with plans and specifications and therefore to be prepared in accordance with Section 2 hereof.

**Section 4.** The City both reasonably expects and intends to finance the costs of the Project from the proceeds of general obligation bonds of the City. The City does hereby express its official intent to reimburse any such pre-issuance original expenditures (as defined in Treas. Reg. 1.150-2(c)) made by it on or after the date which is 60 days before the date of this Resolution from the proceeds of such bonds in the estimated maximum principal amount of \$1,818,504.00. The City will issue such bonds for such purposes and make the reimbursements within eighteen (18) months after the date the expenditure to be reimbursed was paid or, if later, eighteen (18) months after the date on which the property resulting from the expenditure was placed in service. Provided, that, in any event, the City must make the reimbursement allocation within three (3) years after the date the expenditure was paid. This Resolution, as the expression of the governing body's official intent regarding the matters described herein, will be available for public inspection in the City Clerk's office at City Hall during regular business hours of the City.

**Section 5.** That this resolution shall be effective upon passage.

**PASSED AND APPROVED** this 13<sup>th</sup> day of February 2018.

CITY OF LEAVENWORTH, KANSAS

{Seal}

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Mark Preisinger, Mayor

ATTEST:

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Carla Williamson, CMC, City Clerk

**POLICY REPORT NO.  
RESOLUTION SUBMITTING SEMAP CERTIFICATION  
FEBRUARY 13, 2018**

**PREPARED BY:**



Patrick Tooley, Section 8 Coordinator  
Leavenworth Housing Authority

**REVIEWED BY:**



Paul Kramer, Executive Director

**APPROVED BY:**



Paul Kramer  
City Manager

**ISSUE:**

Consider a resolution submitting the Section Eight Management Assessment Program (SEMAP) Certification to the U.S. Department of Housing & Urban Development for the operation of the Housing Choice Voucher (Section 8) program.

**SEMAP:**

The Section 8 program is scored under the Section Eight Management Assessment Program (SEMAP). This assessment is an annual process and is submitted electronically after your approval. The certification is attached.

**COMMISSION ACTION:**

Motion to adopt the attached resolution submitting the SEMAP certification to HUD.

**RESOLUTION NO. B-2188**

**BE IT RESOLVED BY THE LEAVENWORTH HOUSING AUTHORITY BOARD, CITY OF LEAVENWORTH, KANSAS, AS FOLLOWS:**

**SECTION 1:** The Section Eight Management Assessment Program (SEMAP) Certification for the period ending December 31, 2017 is hereby approved and is authorized to be sent to the Office of Public Housing, US Department of Housing and Urban Development (HUD).

**PASSED AND APPROVED** this 13<sup>th</sup> day of February, 2018.

\_\_\_\_\_  
Mark Preisinger, Mayor

{Seal}

ATTEST:

\_\_\_\_\_  
Carla K. Williamson, CMC, City Clerk



Patrick Tooley  
(MAT977)  
PIC Main

Assessment  
Profile

Reports

Submission

List

Summary

Certification

Profile

Comments

Field Office: 7APH KANSAS CITY HUB OFFICE  
Housing Agency: KS068 LEAVENWORTH  
PHA Fiscal Year End: 12/31/2017

SEMAP

Logoff

OMB Approval No. 2577-0215

## SEMAP CERTIFICATION (Page 1)

Public reporting burden for this collection of information is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This collection of information is required by 24 CFR sec 985.10<sup>1</sup> which requires a Public Housing Agency (PHA) administering a Section 8 tenant-based assistance program to submit an annual SEMAP Certification within 60 days after the end of its fiscal year. The information from the PHA concerns the performance of the PHA and provides assurance that there is no evidence of seriously deficient performance. HUD uses the information and other data to assess PHA management capabilities and deficiencies, and to assign an overall performance rating to the PHA. Responses are mandatory and the information collected does not lend itself to confidentiality.

### Check here if the PHA expends less than \$300,000 a year in federal awards

Indicators 1 - 7 will not be rated if the PHA expends less than \$300,000 a year in Federal awards and its Section 8 programs are not audited for compliance with regulations by an independent auditor. A PHA that expends less than \$300,000 in Federal awards in a year must still complete the certification for these indicators.

#### Performance Indicators

#### 1 Selection from Waiting List (24 CFR 982.54(d)(1) and 982.204(a))

a. The HA has written policies in its administrative plan for selecting applicants from the waiting list.

PHA Response  Yes  No

b. The PHA's quality control samples of applicants reaching the top of the waiting list and admissions show that at least 98% of the families in the samples were selected from the waiting list for admission in accordance with the PHA's policies and met the selection criteria that determined their places on the waiting list and their order of selection.

PHA Response  Yes  No

#### 2 Reasonable Rent (24 CFR 982.4, 982.54(d)(15), 982.158(f)(7) and 982.507)

a. The PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units (i) at the time of initial leasing, (ii) before any increase in the rent to owner, and (iii) at the HAP contract anniversary if there is a 5 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. The PHA's method takes into consideration the location, size, type, quality, and age of the program unit and of similar unassisted units and any amenities, housing services, maintenance or utilities provided by the owners.

PHA Response  Yes  No

b. The PHA's quality control sample of tenant files for which a determination of reasonable rent was required to show that the PHA followed its written method to determine reasonable rent and documented its determination that the rent to owner is reasonable as required for (check one):

**PHA Response**  **At least 98% of units sampled**  **80 to 97% of units sampled**  
 **Less than 80% of units sampled**

### 3 Determination of Adjusted Income (24 CFR part 5, subpart F and 24 CFR 982.516)

The PHA's quality control sample of tenant files show that at the time of admission and reexamination, the PHA properly obtained third party verification of adjusted income or documented why third party verification was not available; used the verified information in determining adjusted income; properly attributed allowances for expenses; and, where the family is responsible for utilities under the lease, the PHA used the appropriate utility allowances for the unit leased in determining the gross rent for (check one):

**PHA Response**  **At least 90% of files sampled**  **80 to 89% of files sampled**  
 **Less than 80% of files sampled**

### 4 Utility Allowance Schedule (24 CFR 982.517)

The PHA maintains an up-to-date utility schedule. The PHA reviewed utility rate data that it obtained within the last 12 months, and adjusted its utility allowance schedule if there has been a change of 10% or more in a utility rate since the last time the utility allowance schedule was revised.

**PHA Response**  **Yes**  **No**

### 5 HQS Quality Control (24 CFR 982.405(b))

The PHA supervisor (or other qualified person) reinspected a sample of units during the PHA fiscal year, which met the minimum sample size required by HUD (see 24 CFR 985.2), for quality control of HQS inspections. The PHA supervisor's reinspected sample was drawn from recently completed HQS inspections and represents a cross section of neighborhoods and the work of cross section of inspectors.

**PHA Response**  **Yes**  **No**

### 6 HQS Enforcement (24 CFR 982.404)

The PHA's quality control sample of case files with failed HQS inspections shows that, for all cases sampled, any cited life-threatening HQS deficiencies were corrected within 24 hours from the inspection and, all other cited HQS deficiencies were corrected within no more than 30 calendar days from the inspection or any PHA-approved extension, or, if HQS deficiencies were not corrected within the required time frame, the PHA stopped housing assistance payments beginning no later than the first of the month following the correction period, or took prompt and vigorous action to enforce the family obligations for (check one):

**PHA Response**  **At least 98% of cases sampled**  **Less than 98% of cases sampled**

### 7 Expanding Housing Opportunities.

(24 CFR 982.54(d)(5), 982.153(b)(3) and (b)(4), 982.301(a) and 983.301(b)(4) and (b)(12))

Applies only to PHAs with jurisdiction in metropolitan FMR areas

Check here if not applicable

a. The PHA has a written policy to encourage participation by owners of units outside areas of poverty or minority concentration which clearly delineates areas in its jurisdiction that the PHA considers areas of poverty or minority concentration, and which includes actions the PHA will take to encourage owner participation.

**PHA Response**  **Yes**  **No**

b. The PHA has documentation that shows that it took actions indicated in its written policy to encourage participation by owners outside areas of poverty and minority concentration.

**PHA Response**  **Yes**  **No**

c. The PHA has prepared maps that show various areas, both within and neighboring its jurisdiction, with housing opportunities outside areas of poverty and minority concentration; the PHA has assembled information about job opportunities, schools and services in these areas; and the PHA uses the maps and related information when briefing voucher holders.

**PHA Response**  Yes  No

d. The PHA's information packet for certificate and voucher holders contains either a list of owners who are willing to lease, or properties available for lease, under the voucher program, or a list of other organizations that will help families find units and the list includes properties or organizations that operate outside areas of poverty or minority concentration.

**PHA Response**  Yes  No

e. The PHA's information packet includes an explanation of how portability works and includes a list of neighboring PHAs with the name, address and telephone number of a portability contact person at each.

**PHA Response**  Yes  No

f. The PHA has analyzed whether voucher holders have experienced difficulties in finding housing outside areas of poverty or minority concentration and, where such difficulties were found, the PHA has considered whether it is appropriate to seek approval of exception payment standard amounts in any part of its jurisdiction and has sought HUD approval when necessary.

**PHA Response**  Yes  No

Page 1 of 2

[Go to Comments](#)





Patrick Tooley  
(MAT977)  
PIC Main

Assessment  
Profile

Reports

Submission

List

Summary

Certification

Profile

Comments

Field Office: **7APH KANSAS CITY HUB OFFICE**  
 Housing Agency: **KS068 LEAVENWORTH**  
 PHA Fiscal Year End: **12/31/2017**

SEMAP

Logoff

## SEMAP CERTIFICATION (Page 2)

### Performance Indicators

#### 8 Payment Standards(24 CFR 982.503)

The PHA has adopted current payment standards for the voucher program by unit size for each FMR area in the PHA jurisdiction and, if applicable, for each PHA-designated part of an FMR area, which do not exceed 110 percent of the current applicable FMR and which are not less than 90 percent of the current FMR (unless a lower percent is approved by HUD). (24 CFR 982.503)

PHA Response  Yes  No

FMR Area Name Kansas City, MO-KS

No records have been entered.

Enter current FMRs and payment standards (PS)

0-BR FMR	<u>568</u>	1-BR FMR	<u>713</u>	2-BR FMR	<u>869</u>	3-BR FMR	<u>1181</u>	4-BR FMR	<u>1340</u>
PS	<u>540</u>	PS	<u>678</u>	PS	<u>826</u>	PS	<u>1122</u>	PS	<u>1273</u>

Save Add

If the PHA has jurisdiction in more than one FMR area, and/or if the PHA has established separate payment standards for a PHA-designated part of an FMR area, add similar FMR and payment standard comparisons for each FMR area and designated area.

#### 9 Timely Annual Reexaminations(24 CFR 5.617)

The PHA completes a reexamination for each participating family at least every 12 months.(24 CFR 5.617)

PHA Response  Yes  No

#### 10 Correct Tenant Rent Calculations(24 CFR 982, Subpart K)

The PHA correctly calculates tenant rent in the rental certificate program and the family rent to owner in the rental voucher program (24 CFR 982,Subpart K)

PHA Response  Yes  No

#### 11 Pre-Contract HQS Inspections(24 CFR 982.305)

Each newly leased unit passes HQS inspection before the beginning date of the assisted lease and HAP contract.(24 CFR 982.305)

PHA Response  Yes  No

#### 12 Continuing HQS Inspections(24 CFR 982.405(a))

The PHA inspects each unit under contract as required (24 CFR 982.405(a))

PHA Response  Yes  No

#### 13 Lease-Up

The PHA executes assistance contracts on behalf of eligible families for the number of units that has been under budget for at least one year. The PHA executes assistance contracts on behalf of eligible families for the number of units that has been under budget for at least one year

PHA Response  Yes  No

#### 14 Family Self-Sufficiency (24 CFR 984.105 and 984.305)

14a. Family Self-Sufficiency Enrollment. The PHA has enrolled families in FSS as required. Applies only to PHAs required to administer an FSS program.

Check here if not applicable

a. Number of mandatory FSS slots (Count units funded under the FY 1992 FSS incentive awards and in FY 1993 and later through 10/20/1998. Exclude units funded in connection with Section 8 and Section 23 project-based contract terminations; public housing demolition, disposition and replacement; HUD multifamily property sales; prepaid or terminated mortgages

under section 236 or section 221(d)(3); and Section 8 renewal funding. Subtract the number of families that successfully completed their contracts on or after 10/21/1998.)

Or, Number of mandatory FSS slots under HUD-approved exception (If not applicable, leave blank)

Three empty rectangular input boxes for data entry.

b. Number of FSS families currently enrolled

c. Portability: If you are the initial PHA, enter the number of families currently enrolled in your FSS program, but who have moved under portability and whose Section 8 assistance is administered by another PHA

Percent of FSS slots filled (b+c divided by a) (This is a nonenterable field. The system will calculate the percent when the user saves the page)

14b. Percent of FSS Participants with Escrow Account Balances. The PHA has made progress in supporting family self-sufficiency as measured by the percent of currently enrolled FSS families with escrow account balances. (24 CFR 984.305)

Applies only to PHAs required to administer an FSS program

Check here if not applicable

PHA Response  Yes  No

Portability: If you are the initial PHA, enter the number of families with FSS escrow accounts currently enrolled in your FSS program, but who have moved under portability and whose Section 8 assistance is administered by another PHA

One empty rectangular input box for data entry.

**15 Deconcentration Bonus**

The PHA is submitting with this certification data which show that :

(1) Half or more of all Section 8 families with children assisted by the PHA in its principal operating area resided in low poverty census tracts at the end of the last PHA FY;

(2) The percent of Section 8 mover families with children who moved to low poverty census tracts in the PHA's principal operating area during the last PHA FY is atleast two percentage points higher than the percent of all Section 8 families with children who resided in low poverty census tracts at the end of the last PHA FY; or

(3) The percent of Section 8 mover families with children who moved to low poverty census tracts in the PHA's principal operating area over the last two PHA FY is at least two percentage points higher than the percent of all Section 8 families with children who resided in low poverty census tracts at the end of the second to last PHA FY.

PHA Response  Yes  No

Deconcentration Addendum

[Go to Comments](#)

[Back to Page 1](#)

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**POLICY REPORT NO. P&R 01-18**  
*City of Leavenworth, Kansas*  
**Parks & Recreation Department**  
**Parks Mow Contract**


**February 13, 2018**

**PREPARED BY:**

  
Brian Bailey  
Parks Superintendent

**REVIEWED BY:**

  
Steve Grant  
Director of Parks and Recreation

  
Paul Kramer  
City Manager

**ISSUE:**

The issue is to review the bids received for the mowing of various parks and other City owned properties.

**BACKGROUND:**

The City of Leavenworth Parks Department utilizes contractual mowing to assist with the mowing responsibilities of the department. Many of the areas utilized by this contract are small City owned properties such as intersections and rights-of-way, as well as various parks. This contract is for three years, with the option to renew for a two year price negotiated extension. The last contract expired at the end of the 2017 season and was not renewed for the one year extension due to poor performance and communication. The contract is broken down into two separate groups. These groups can be awarded to a single contractor or split between contractors based on bids received with a maximum number of mowing's set at 26 for the season. With that in mind, a bid proposal package was developed and we advertised for bids.

On February 2, 2018 at 2:00pm bids were opened. We received a total of five bids as follows:

<b>Bidder</b>	<b>Address (City/State)</b>	<b>Total Bid / Year</b>
Superior Lawn Care & Snow Removal	Leavenworth, KS	\$44,128.50
Jake's Lawn & Landscape	Rushville, MO	\$71,370.00
Sense of Pride Lawn & Landscape	Easton, KS	\$77,480.00
Ground FX Lawn and Landscape	Leavenworth, KS	\$82,680.00
Affordable Lawn & Cemetery Care	Leavenworth, KS	\$104,390.00

**RECOMMENDATION:**

Staff recommends the low bid of Superior Lawn & Snow Removal in the amount of \$44,128.50 per season.

**BUDGET IMPACT:**

There is \$53,000 allocated in the 2018 Park Budget for lawn and landscape services. If the maximum number of mowing's at 26 is met, this contract will be under allotted budgeted amount.

**ATTACHMENTS:**

Superior Lawn & Snow Removal Bid Sheets

**SECTION II  
BID AND AWARD**

Contractors may bid on one Area (Boulevards, Bridges, Right-of-Ways, Parking Lots, Parks and Municipal Buildings), all Areas, or any combination thereof.

<u>Item</u>	<u>Work Descriptions</u>	<u>Estimated # of Cycles</u>	<u>Cost per Cycle/Area</u>	<u>Extended Totals</u>
1.	<b>Boulevards, Bridges, Right-Of-Ways, and Parking Lots:</b>			
	Mowing and Trimming	26	\$ <u>521.75</u> /cycle	\$ <u>13,565.50</u>
2.	<b>Parks &amp; Municipal Buildings:</b>			
	Mowing and Trimming	26	\$ <u>1175.50</u> /cycle	\$ <u>30,563</u>

Total One Year Contract Amount \$ 44,128.50

(x 3 years)  
Three year Contract Amount \$ 132,385.50

Bidder/Contractor has examined and carefully studied the bidding documents and attachments, and acknowledges receipt of the following addenda:

Addendum No: 8.4.2 \_\_\_\_\_

Dated: 1-29-18 \_\_\_\_\_

Exhibit A (cont)

Contractor:

Mowing Cycle Maintenance Report

Cycle # N/A

Mowing and Trimming

Parks & Municipal Buildings	Acres	Notes	Cycle Cost	Date Started	Date Completed	Performance, Comments, or Damages
Fire Station # 1	7.0		175			
Library	.7		17.50			
Stubby Park & Vacant Lot	4.8		120			
Southside Park	4.1		102.50			
South Esplanade Park	5	Steep Hill	125.00			
Fire Station #2	.42		10.50			
Kane Park	.3		7.5			
Jefferson Park	1.5		37.50			
4 <sup>th</sup> Street Arborway	3.6	3 Maps	90.00			
Gazebo Park	.3		7.5			
David Brewer Park	7.5		187.50			
North Esplanade	3.3		82.50			
Bob Dougherty Park	4.5	Key Needed	112.50			
Riverfront Park Campground	4		160.00			
<b>Total</b>	<b>47.02</b>		<b>1175.50</b>			
Additional Comments:						
City of Leavenworth Approval:					Date:	

Exhibit A

Contractor:

Mowing Cycle Maintenance Report

Cycle # N/A

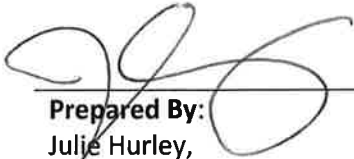
Mowing and Trimming

Boulevards, Bridges, Right-of-Ways, and Parking Lots:	Acres	Notes	Cycle Cost	Date Started	Date Completed	Performance, Comments, or Damages
Reilly Parkway	0.4		10			
Tonganoxie Drive Walkway	0.2		5			
Green Acres	.33		8.25			
10 <sup>th</sup> Avenue Parkway	1.8		45.00			
10 <sup>th</sup> & Spruce Intersection	1.1		27.50			
2nd Street & Old Park Shop	2.7		<del>10</del> 67.50			
Grand & Ironmoulders	0.7		17.50			
Lawrence Avenue Parkway	1.5		37.50			
Spruce Street Walkway	0.8		20.00			
Broadway and Cherokee	0.2		5			
Parking Lot # 1	.06		<del>1</del> 1.5			
Parking Lot # 2	0.4		10			
Parking Lot # 3	.03		0.75			
Parking Lot # 4	.06		1.50			
Parking Lot # 5	.11		2.75			
Parking Lot # 6	.18		4.50			
Parking Lot # 7	.09		2.25			
Parking Lot # 8	.04		1.00			
Parking Lot # 9	.05		1.25			
Bridge # 1, Broadway St	.01		0.25			
Bridge # 2, 4 <sup>th</sup> Street	.07		1.75			
Spruce & Lawrence Ave.	.44		11.00			
20 <sup>th</sup> Street, Maps # 1-18	9.6	18 Maps	240.00			
<b>Total</b>	<b>20.8</b>		<b>521.25</b>			
Additional Comments: <i>Total Acres is 20.87 not 20.8</i>						
City of Leavenworth Approval:						Date:

**POLICY REPORT**

**Consider Bids for Code Enforcement SUV**

**FEBRUARY 13, 2018**



**Prepared By:**  
Julie Hurley,  
City Planner



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

**ISSUE**

The Code Enforcement division is requesting to purchase one 2018 Chevy Equinox from Ed Bozarth Chevrolet in the amount of \$23,437.

**BACKGROUND**

The three Code Enforcement Officers are each assigned a vehicle to be used on normal patrol and inspection activities. The oldest vehicle is a 2001 Ford Ranger with approximately 82,000 miles. Over \$5,000 has been spent in repairs and maintenance on the vehicle since 2013, making continued use of the vehicle cost prohibitive. The down time of the vehicle needed for repairs and maintenance has become more frequent, impacting the ability of the Code Enforcement Officer to effectively complete their work.

\$28,000 was included in the 2018 CIP for the replacement of the vehicle.

Bids were solicited for a small SUV with extended warranty and sent directly to all local car dealerships. Two responses were received; Henry Martens Chevrolet and Ed Bozarth Chevrolet, results as shown:

<b>Bidder</b>	<b>Address (City/State)</b>	<b>Bid Cost</b>	<b>Extended Warranty</b>	<b>Total Bid</b>
Ed Bozarth	Topeka, KS	\$20,787.00	\$2,650.00	\$23,437.00
Henry Martens	Leavenworth, KS	\$22,411.00	\$1,973.00	\$24,384.00

**POLICY**

The City Commission approved purchasing policy allows for local firms whose bids are within 1% of an out of town vendor to be awarded the bid if they agree to match the low bid. The bid from the local bidder, Henry Martens Chevrolet exceeds the 1% value by \$703.16 and is not eligible to use the local preference clause.



**RECOMMENDED ACTION**

Approve the purchase of one 2018 Chevy Equinox from Ed Bozarth Chevrolet at a total cost not to exceed \$23,437.

**City of Leavenworth  
Bid Tabulation**

**Project or Purchase:** Community Development 2018 or Newer SUV  
**Bid Opening Date:** January 30, 2018  
**Bid Opening Time:** 2:00 pm

<b>Bidder</b>	<b>Address (City/State)</b>	<b>Bid Cost</b>	<b>Extended Warranty</b>	<b>Total Bid</b>
Ed Bozarth	Topeka, KS	\$20,787.00	\$2,650.00	\$23,437.00
Henry Martens	Leavenworth, KS	\$22,411.00	\$1,973.00	\$24,384.00

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



POLICY REPORT PWD NO. 18-01


CONSIDER APPROVAL OF DESIGN SERVICE AGREEMENT  
WITH BG CONSULTANTS FOR THE 2018 SIDEWALK PROJECT  
City Project No. 2018-878  
February 13, 2018

Prepared by:



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

Reviewed by:



Paul Kramer,  
City Manager

**ISSUE:**

Consider approval of design services agreement with BG Consultants, Inc. for the 2018 Sidewalk Project.

**BACKGROUND:**

In late 2016, the engineering department sent out RFPs to various engineering firms to solicit interest in performing the design engineering for the City's sidewalk program. The review committee received several proposals from qualified companies and selected two firms based on the KDOT "Qualifications Based Selection" (QBS) process for an interview. BG Consultants was selected to provide the design services for the 2017 Sidewalk Program. Provided the consultant performs to an acceptable standard, the City has the ability to contract with BG Consultants for four(4) additional project designs before another round of RFPs. This contract would be the second year of sidewalk design work for the City.

BG Consultants does have past experience working with the City on other projects.

Staff expects the attached design contract will provide up to two years of sidewalk work. The additional year of design will allow the sidewalks to be constructed earlier in the construction season and provide more time for any necessary utility relocation.

The locations identified below are from the 2018 – 2021 Sidewalk Plan that was reviewed by the commission at the February 6, 2018 Study Session.

Part A Locations:

- 10<sup>th</sup> Street – Olive Street to Cherokee Street (repair)
- Congress Street – 2<sup>nd</sup> Ave. to 5<sup>th</sup> Ave. (new, north side)
- Grand Ave. – Vilas Street to Sherman Street (new, west side)
- Marion Street – Grand Ave. to 10<sup>th</sup> Ave. (new, south side)
- 20<sup>th</sup> Street – Spruce Street to Dakota Street (repair, west side)
- 2<sup>nd</sup> Ave. – Pennsylvania Street to Thornton Street (new/replacement, west side)

Part B Locations:

- Dakota Street – 8<sup>th</sup> Street to Broadway (new/replacement, south side)
- Broadway – Dakota Street to Kiowa Street (new/replacement, west side)
- Kiowa Street - 8<sup>th</sup> Street to Broadway (new/replacement, north side)
- 8<sup>th</sup> Street - Dakota Street to Kiowa Street (new/replacement, east side)

The Part B locations are a part of an incentive package to the developer for the North Broadway School renovation project. This portion of the design will be completed first to allow for an expedited construction schedule in an effort to meet the construction schedule of the developer.

**RECOMMENDATION:**

Staff recommends that the Commission approve the agreement for design engineering services with BG Consultants for the 2018 Sidewalk Project in an amount not to exceed \$49,602.00.

**ATTACHMENTS:**

BG Consultants Scope/Design Contract



**AGREEMENT  
CONSULTANT-CLIENT**

**THIS AGREEMENT** made and entered into by and between BG CONSULTANTS, INC., party of the first part, (hereinafter called the CONSULTANT), and Leavenworth, Kansas, party of the second part, (hereinafter called the CLIENT).

WITNESSETH:

WHEREAS, the CLIENT is authorized and empowered to contract with the CONSULTANT for the purpose of obtaining Services for the following improvement:

2018 Sidewalk Project  
\_\_\_\_\_  
Leavenworth, Kansas  
\_\_\_\_\_  
\_\_\_\_\_

WHEREAS, the CONSULTANT is licensed in accordance with the laws of the State of Kansas and is qualified to perform the Professional Services desired by the CLIENT now therefore:

IT IS AGREED by and between the two parties aforesaid as follows:

**SECTION 1 – DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this contract, and other forms of any defined words shall have a meaning parallel thereto.

- 1.1 “Additional Services” means any Services requested by the CLIENT which are not covered by Exhibit 1 of this Agreement.
- 1.2 “Agreement” means this contract and includes change orders issued in writing.
- 1.3 “CLIENT” or “Client” means the agency, business or person identified on page 1 as “CLIENT” and is responsible for ordering and payment for work on this project.
- 1.4 “CONSULTANT” or “Consultant” means the company identified on page 1. CONSULTANT shall employ for the Services rendered, engineers, architects and surveyors licensed, as applicable, by the Kansas State Board of Technical Professions.
- 1.5 “Contract Documents” means those documents so identified in the Agreement for this Project, including Engineering, Architectural and/or Survey documents under this Agreement. Terms defined in General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.
- 1.6 “Engineering Documents” or “Architectural Documents” or “Survey Documents” means plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums or correspondence related to the work described in Exhibit 1 attached hereto.

- 1.7 “Consulting Services” or “Engineering Services” or “Architectural Services” or “Survey Services” means the professional services, labor, materials, supplies, testing and other acts or duties required of the CONSULTANT under this Agreement, together with Additional Services as CLIENT may request and evidenced by a supplemental agreement pursuant to the terms of this Agreement.
- 1.8 “Services” is a description of the required work as shown in **Exhibit 1**.
- 1.9 “Subsurface Borings and Testing” means borings, probings and subsurface explorations, laboratory tests and inspection of samples, materials and equipment; and appropriate professional interpretations of all the foregoing.

## SECTION 2 – RESPONSIBILITIES OF CONSULTANT

2.1 **SCOPE OF SERVICES:** The CONSULTANT shall furnish and perform the various Professional Services of the Project to which this Agreement applies, as specifically provided in **Exhibit 1** for the completion of the Project.

### 2.2 GENERAL DUTIES AND RESPONSIBILITIES

2.2.1. **Personnel:** The CONSULTANT shall assign qualified personnel to perform professional Services concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal point of contact on this Project.

Name: Jason Hoskinson, P.E., PTOE  
 Address: 1405 Wakarusa Drive  
Lawrence, KS 66049  
 Phone: 785-749-4474

2.2.2. **Standard of Care:** In the performance of professional Services, CONSULTANT will use that level of care and skill ordinarily exercised by reputable members of CONSULTANT’s profession currently practicing in the same locality under similar conditions. No other representation, guarantee or warranty, express or implied, is included or intended in this agreement or in any communication (oral or written) report, opinion, document or instrument of service.

2.2.3. **Independent Contractor:** The CONSULTANT is an independent contractor and as such is not an employee of the Client.

2.2.4. **Insurance:** CONSULTANT will maintain insurance for this Agreement in the following types: (i) worker’s compensation insurance as required by applicable law, (ii) comprehensive general liability insurance (CGL), (iii) automobile liability insurance and (iv) Professional liability insurance.

2.2.5. **Subsurface Borings and Material Testing:** If tests additional to those provided in Exhibit 1 are necessary for design, the CONSULTANT shall prepare a request for the necessary additional borings and procure at least two proposals, including cost, from Geotechnical firms who engage in providing Subsurface Borings and Testing Services. The CONSULTANT will provide this information to the Client and the Client will contract directly with the Geotechnical firm. The CONSULTANT will not charge an add-on percentage for the Geotechnical firm’s work. The Client will pay the Geotechnical firm separately from this Agreement.

- 2.2.6. **Service by and Payment to Others:** Any work authorized in writing by the Client and performed by a third party, other than the CONSULTANT or their subconsultants in connection with the proposed Project, shall be contracted for and paid for by the Client directly to the third party or parties. Fees for extra work shall be subject to negotiation between the CLIENT and the third party. Fees shall be approved by the CLIENT prior to the execution of any extra work. Although the CONSULTANT may assist the CLIENT in procuring such Services of third parties. Where any design services are provided by persons or entities not under CONSULTANT's direct control, CONSULTANT's role shall be limited to its evaluation of the general conformance with the design intent and the interface with CONSULTANT's design and portion of the project. Except to the extent it is actually aware of a deficiency, error, or omission in such design by others, CONSULTANT shall have no responsibility for such design and may rely upon its adequacy, accuracy, and completeness in all respects.
- 2.2.7. **Subcontracting of Service:** The CONSULTANT shall not subcontract or assign any of the architectural, engineering, surveying or consulting Services to be performed under this Agreement without first obtaining the approval of the Client regarding the Services to be subcontracted or assigned and the firm or person proposed to perform the Services. Neither the CLIENT nor the CONSULTANT shall assign any rights or duties under this Agreement without the prior consent of the other party.
- 2.2.8. **Endorsement:** The CONSULTANT shall sign and seal final plans, specifications, estimates and data furnished by the CONSULTANT according to Kansas Statutes and Rules and Regulations.
- 2.2.9. **Force Majeure:** Should performance of Services by CONSULTANT be affected by causes beyond its reasonable control, Force Majeure results. Force Majeure includes, but is not restricted to, acts of God; acts of a legislative, administrative or judicial entity; acts of contractors other than contractors engaged directly by CONSULTANT; fires; floods; labor disturbances; epidemics; and unusually severe weather. CONSULTANT will be granted a time extension and the parties will negotiate an equitable adjustment to the price of any affected Work Order, where appropriate, based upon the effect of the Force Majeure on performance by CONSULTANT.
- 2.2.10. **Inspection of Documents:** The CONSULTANT shall maintain Project records for inspection by the CLIENT during the contract period and for three (3) years from the date of final payment.

### SECTION 3 – CLIENT RESPONSIBILITIES

#### 3.1 GENERAL DUTIES AND RESPONSIBILITIES

- 3.1.1. **Communication:** The CLIENT shall provide to the Consultant information and criteria regarding the CLIENT's requirement for the Project; examine and respond in a timely manner to the Consultant's submissions and give notice to the Consultant whenever the CLIENT observes or otherwise becomes aware of any defect in the Services. The CLIENT represents that all information they provide is accurate. Our review and use of the information will be to the standard of care and any delays or additional costs due to inaccurate information will be the responsibility of the CLIENT.
- 3.1.2. **Access:** The CLIENT will provide access agreements for the Consultant to enter public and private property when necessary.

- 3.1.3. **Duties:** The CLIENT shall furnish and perform the various duties and Services in all phases of the Project which are outlined and designated in Exhibit 1 as the CLIENT's responsibility.
- 3.1.4. **Program and Budget:** The CLIENT shall provide full information stating the CLIENT's objectives, schedule, budget with reasonable contingencies and necessary design criteria so that Consultant is able to fully understand the project requirements.
- 3.1.5. **Testing:** Any additional tests required to supplement the Scope of Services or tests required by law shall be furnished by the CLIENT.
- 3.1.6. **Legal, Insurance, Audit:** The CLIENT shall furnish all legal, accounting and insurance counseling Services as may be necessary at any time for the Project. The CLIENT shall furnish all bond forms required for the Project.
- 3.1.7. **Project Representative:** The CLIENT will assign the person indicated below to represent the CLIENT in coordinating this Project with the CONSULTANT, with authority to transmit instructions and define policies and decisions of the CLIENT.

Name: Mike Hooper, Deputy Director of Public Works  
 Address: 100 N. 5<sup>th</sup> Street  
Leavenworth, KS 66048  
 Phone: 913-684-0396

**SECTION 4 – PAYMENT**

4.1 COMPENSATION

- 4.1.1. **Maximum Total Fee and Expense:** The CLIENT agrees to pay the CONSULTANT a fee based on the actual hours expended on the Project at the rates indicated in the attached Fee Schedule; Exhibit 2 and the actual reimbursable expenses permitted under this Agreement and incurred on the Project, but not to exceed a maximum fee of forty two thousand and NO/100 Dollars (\$42,000.00) for PART A LOCATIONS (City Sidewalk Program) and seven thousand six hundred two and NO/100 Dollars (\$7,602.00) for PART B LOCATIONS (Broadway School Renovation). This fee is based on the scope of Services outlined in Exhibit 1 of this Agreement and the Estimated Project Schedule in Exhibit 2. Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.
- 4.1.2. **Hourly Rate:** Any Additional Services which are not set forth in this Agreement will be charged on the basis of the hourly rate schedule attached hereto as Exhibit 2, and reimbursable expenses not contemplated in this Agreement will be charged at actual cost ~~plus ten (10) percent~~. No Additional Services or costs shall be incurred without proper written authorization of the CLIENT.
- 4.1.3. **Annual Rate Adjustment:** The payment amounts listed in this Agreement are based on the work being performed within one year of the contract date. Because of natural time delays that may be encountered in the administration and work to be performed for the project, each value will be increased at the rate of 3%, compounded annually, beginning after one year from the date of the contract and ending when that item is approved for billing.
- 4.1.4. **Reimbursable Expenses:** An estimate of reimbursable expenses ~~plus ten (10) percent~~ shall be included in the total maximum fee. Reimbursable expenses include, but are not limited to,

expenses of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; expenses of printing and reproductions; postage; expenses of renderings and models requested by the CLIENT and other costs as authorized by the CLIENT. Reimbursable expenses will not include overhead costs or additional insurance premiums.

- 4.1.5. **Sales Tax:** Compensation as provided for herein is exclusive of any sales, use or similar tax imposed by taxing jurisdictions on any amount of compensation, fees or Services. Should such taxes be imposed, the CLIENT shall reimburse the CONSULTANT in addition to the contractual amounts provided. The CLIENT shall provide tax exempt number, if required, and if requested by the CONSULTANT.
- 4.1.6. **Billing:** CONSULTANT shall bill the CLIENT monthly for services and reimbursable expenses according to **Exhibit 2**. The bill submitted by CONSULTANT shall itemize the services and reimbursable expenses for which payment is requested, notwithstanding any claim for interest or penalty claimed in a CONSULTANT's invoice. The CLIENT agrees to pay within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.
- 4.1.7. **Timing of Services:** CONSULTANT will perform the Services according to Exhibit 2. However, if during their performance, for reasons beyond the control of the CONSULTANT, delays occur, the parties agree that they will negotiate in writing an equitable adjustment of time and compensation, taking in to consideration the impact of such delays.
- 4.1.8. **Change in Scope:** For modifications in authorized scope of services or project scope and/or modifications of drawings and/or specifications previously accepted by the CLIENT, when requested by the CLIENT and through no fault of the CONSULTANT, the CONSULTANT shall be compensated for time and expense required to incorporate such modifications at CONSULTANT's standard hourly rates per Exhibit 2. Provided, however, that any increase in contract price or contract time must be requested by the CONSULTANT and must be approved through a written supplemental agreement prior to performing such services. CONSULTANT shall correct or revise errors or deficiencies in its designs, drawings or specifications without additional compensation when due to CONSULTANT's negligence, error or omission.
- 4.1.9. **Additional Services:** The CONSULTANT shall provide, with the CLIENT's concurrence, Services in addition to those listed in Exhibit 1 when such Services are requested in writing by the CLIENT. Prior to providing Additional Services, the CONSULTANT will submit a proposal outlining the Additional Services to be provided, estimation of total hours and a maximum fee based upon the hourly fee schedule attached hereto as Exhibit 2. Payment to the CONSULTANT, as compensation for these Additional Services, shall be in accordance with the attached hourly rate schedule attached as Exhibit 2. Reimbursable expenses incurred in conjunction with Additional Services shall be paid separately and those reimbursable expenses shall be paid at cost. Records of reimbursable expenses and expenses pertaining to Additional Services and Services performed on an hourly basis shall be made available to the CLIENT if so requested in writing.
- 4.1.10. **Supplemental Agreement:** This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by written amendment signed by both parties. The contract price and contract time may only be changed by a written supplemental agreement approved by the CLIENT, unless it is the result of an emergency situation, in which case the CLIENT may give verbal, e-mail or facsimile approval which shall be the same as written and approved supplemental agreement.



## SECTION 5 – MUTUAL PROVISIONS

### 5.1 TERMINATION

- 5.1.1. **Notice:** The CLIENT reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of the CONSULTANT, by providing written notice of such termination to the CONSULTANT. Such notice will be with Twenty Four (24) hour's notice.

The CONSULTANT reserves the right to terminate this Agreement based on any material breach by the CLIENT.

Upon receipt of such notice from CLIENT, the CONSULTANT shall, at CLIENT's option as contained in the notice; Immediately cease all Services and meet with CLIENT to determine what Services shall be required of the CONSULTANT in order to bring the Project to a reasonable termination in accordance with the request of the CLIENT. The CONSULTANT shall also provide to the CLIENT digital and/or mylar copies of drawings and documents completed or partially completed at the date of termination. The CONSULTANT is entitled to terminate this agreement by providing thirty (30) days written notice.

- 5.1.2. **Compensation for Convenience Termination:** If CLIENT shall terminate for its convenience, as herein provided, CLIENT shall compensate CONSULTANT for all Services completed to date prior to receipt of the termination notice.
- 5.1.3. **Compensation for Default Termination:** If the CLIENT shall terminate for cause or default on the part of the CONSULTANT, the CLIENT shall compensate the CONSULTANT for the reasonable cost of Services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
- 5.1.4. **Incomplete Documents:** Neither the CONSULTANT, nor its subconsultant, shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this section, the CONSULTANT having been deprived of the opportunity to complete such documents and certify them as ready for construction and/or complete.

### 5.2 DISPUTE RESOLUTION

- 5.2.1. If a claim, dispute or controversy arises out of or relates to the interpretation, application, enforcement or performance of Services under this Agreement, CONSULTANT and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of CONSULTANT and CLIENT. If such negotiations are unsuccessful, CONSULTANT and CLIENT agree to attempt to settle the dispute by good faith mediation. If the dispute cannot be settled through mediation, and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in Kansas. Except as otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.

### 5.3 OWNERSHIP OF INSTRUMENTS OF SERVICE

- 5.3.1. Reports, drawings, plans or other documents (or copies) furnished to CONSULTANT by the CLIENT shall, at CLIENT's written request, be returned upon completion of the Services hereunder; provided, however that CONSULTANT may retain one (1) copy of all such documents. Reports, drawings, plans, documents, software, field notes and work product (or copies thereof) in any form prepared or furnished by CONSULTANT under this Agreement

are instruments of service. Exclusive ownership, copyright and title to all instruments of service remain with CONSULTANT. CLIENT is hereby granted a License to Use instruments of service with use limited to use on this project. The instruments of service are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the work or on any other project. The instruments of service are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the work or on any other project.

#### 5.4 INDEMNIFY AND HOLD HARMLESS

- 5.4.1. CLIENT shall indemnify and save CONSULTANT, its officers and employees harmless from and against any liability, claim, judgment, demand or cause of action arising out of or relating to: (i) CLIENT's breach of this Agreement; (ii) the negligent acts or omissions of CLIENT or its employees, contractors or agents; (iii) site access or damages to any surface or subterranean structures or any damage necessary for site access.
- 5.4.2. In addition, where the Services include preparation of plans and specifications and/or construction observation activities for CLIENT, CLIENT agrees to have its construction contractors agree in writing to indemnify and save harmless CONSULTANT from and against loss, damage, injury, or liability attributable to personal injury or property damage arising out of or resulting from such contractors' performance or nonperformance of their work. The CLIENT will cause the contractor to name BG Consultants, Inc. (CONSULTANT) as additional insured on the contractor's General Liability Policy.
- 5.4.3. CONSULTANT shall indemnify and hold CLIENT and its employees and officials from loss to the extent caused or incurred by the negligence, errors or omissions of the CONSULTANT, its officers or employees in performance of Services pursuant to this Agreement.

#### 5.5 ENTIRE AGREEMENT

- 5.5.1. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

#### 5.6 APPLICABLE LAW

- 5.6.1. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with laws of the State of Kansas.

#### 5.7 ASSIGNMENT OF AGREEMENT

- 5.7.1. This Agreement shall not be assigned or transferred by either the CONSULTANT or the CLIENT without the written consent of the other.

#### 5.8 NO THIRD PARTY BENEFICIARIES

- 5.8.1. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

#### 5.9 LIMITATION OF LIABILITY

- 5.9.1. CLIENT's exclusive remedy for any alleged breach of standard of care hereunder shall be to require CONSULTANT to re-perform any defective Services. Notwithstanding any other

provision of this Agreement, the total liability of CONSULTANT, its officers, directors and employees for liabilities, claims, judgments, demands and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to the total compensation actually paid to CONSULTANT for the Services. All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after completion of the Services.

5.9.2. CLIENT agrees that any claim for damages filed against CONSULTANT by CLIENT or any contractor or subcontractor hired directly or indirectly by CLIENT will be filed solely against CONSULTANT or its successors or assigns and that no individual person shall be made personally liable for damages in whole or in part.

5.9.3. CONSULTANT and CLIENT shall not be responsible to each other for any special, incidental, indirect or consequential damages (including lost profits) incurred by either CONSULTANT or CLIENT or for which either party may be liable to any third party, which damages have been or are occasioned by Services performed or reports prepared or other work performed hereunder.

#### 5.10 COMPLIANCE WITH LAWS

5.10.1 CONSULTANT shall abide by known applicable federal, state and local laws, ordinances and regulations applicable to this Project until the Consulting Services required by this Agreement are completed consistent with the Professional Standard of Care. CONSULTANT shall secure occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.

#### 5.11 TITLES, SUBHEADS AND CAPITALIZATION

5.11.1 Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

#### 5.12 SEVERABILITY CLAUSE

5.12.1. Should any provision of this Agreement be determined to be void, invalid or unenforceable or illegal for whatever reason, such provisions shall be null and void; provided, however that the remaining provisions of this Agreement shall be unaffected hereby and shall continue to be valid and enforceable.

#### 5.13 FIELD REPRESENTATION

5.13.1. Unless otherwise expressly agreed to in writing, CONSULTANT shall not be responsible for the safety or direction of the means and methods at the contractor's project site or their employees or agents, and the presence of CONSULTANT at the project site will not relieve the contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If necessary, CLIENT will advise any contractors that Consultant's Services are so limited. CONSULTANT will not assume the role of "prime contractor", "constructor", "controlling employer", "supervisor" or their equivalents, unless the scope of such Services are expressly agreed to in writing.

#### 5.14 HAZARDOUS MATERIALS

5.14.1. The CONSULTANT and the CONSULTANT's subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal or exposure of persons to hazardous materials in any form at the Project site.

5.15 AFFIRMATIVE ACTION

5.15.1. The CONSULTANT agrees to comply with the provisions of K.S.A. 44-1030 in the Kansas Acts Against Discrimination.

5.16 SPECIAL PROVISIONS

5.16.1. Special Provisions may be attached and become a part of this agreement as **Exhibit 3**.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CONSULTANT:**

**CLIENT:**

**BG Consultants, Inc.**

**Leavenworth, Kansas**

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

END OF CONSULTANT-CLIENT AGREEMENT

## EXHIBIT 1

### SCOPE OF SERVICES

The Scope of Services described in this Exhibit is for the engineering design of and preparation of construction plans and special provisions for the 2018 Sidewalk Improvements program in Leavenworth, Kansas, hereinafter referred to as "PROJECT". The PROJECT includes sidewalk improvements at the following locations:

#### **PART A LOCATIONS (City Sidewalk Plan):**

- a. 10<sup>th</sup> Street – Olive Street to Cherokee Street (±1,750 ft.)(repair existing).
- b. North and South sides of Congress Street – 2<sup>nd</sup> Avenue to 5<sup>th</sup> Avenue (±1,100 ft.)(new sidewalk).
- c. West side of Grand Avenue – Vilas Street to Sherman Street (±950 ft.)(new sidewalk).
- d. South side of Marion Street – Grand Avenue to 10<sup>th</sup> Avenue (±675 ft.)(new sidewalk).
- e. West side of 20<sup>th</sup> Street – Spruce Street to Dakota Street (±5,450 ft.)(repair existing).
- f. West side of 2<sup>nd</sup> Avenue – Pennsylvania Street to Thornton Street (±1,800 ft.)(new sidewalk).

#### **PART B LOCATIONS (Broadway School Renovation):**

- g. South side of Dakota Street – 8<sup>th</sup> Street to Broadway Street (±375 ft.)(new sidewalk).
- h. West side of Broadway Street – Dakota Street Kiowa Street (±300 ft.)(new sidewalk).
- i. North side of Kiowa Street – 8<sup>th</sup> Street to Broadway Street (±375 ft.)(new sidewalk).
- j. East side of 8<sup>th</sup> Street – Dakota Street Kiowa Street (±300 ft.)(new sidewalk).

### **A. SURVEY AND DESIGN PHASE SERVICES**

For the PROJECT's Survey and Design Phase, CONSULTANT will:

#### **1. SURVEY PHASE**

- a. Receive any available information from CLIENT applicable to the PROJECT. CLIENT to provide CONSULTANT with citywide GIS data and LIDAR ground surface information in AutoCAD DWG format for use as the base design file.
- b. Perform partial topographic survey of the PROJECT to supplement citywide GIS data. Topographic survey will only be performed at site locations categorized as "new sidewalk" in PART A LOCATIONS and PART B LOCATIONS and will only be performed on the side of the street where the new sidewalk will be located. Where performed, topographic survey will locate physical features in the apparent right-of-way of the PROJECT location, establish horizontal and vertical control, locate above ground topographic features and estimate the approximate location of known below ground features.
- c. CLIENT will provide GIS data in AutoCAD of locations for sidewalk repair needs at site locations categorized as "repair existing" in PART A LOCATIONS and PART B LOCATIONS.
- d. Obtain information from utility companies having facilities within the PROJECT limits. CONSULTANT will contact ONE CALL to request utility companies locate existing utility infrastructure within the area to be surveyed. To the extent feasible, utility locations will be included in the survey data.

#### **2. DESIGN PHASE**

- a. Provide engineering design of sidewalk improvements for the PROJECT. Pedestrian infrastructure design will reference the Public Rights-of-Way Accessibility Guidelines (PROWAG) published by the U.S. Access Board and the KDOT Standard Specifications for State Road and Bridge Construction, 2015 Edition.
- b. Design permanent traffic engineering improvements for pavement marking and signing.

- c. Prepare temporary traffic control plan sheets and details to facilitate construction of PROJECT. A location specific temporary traffic control plan will be developed for the 4<sup>th</sup> Street (K-7) project location to be used in acquiring the KDOT permit.
- d. Compute design plan quantities for bid items. PROJECT quantities will be categorized separately for each location.
- e. Construction plans for PROJECT will prepared on 24"x36" plan sheets. The following sheets are anticipated for the construction plans:
  - 1. Title Sheet
  - 2. General Notes, Summary of Quantities, and Project Control
  - 3. Improvement Plan Sheet(s)
  - 4. Pavement and Sidewalk Details
  - 5. Storm Water Pollution Prevention Plan
  - 6. Permanent Signing and Pavement Marking Details
  - 7. Temporary Traffic Control Details (non-KDOT routes)
  - 8. Temporary Traffic Control Details (4<sup>th</sup> Street (K-7))
- f. Provide CLIENT with an opinion of probable construction cost with each submittal.
- g. Submit to the CLIENT for review and comment, the construction plans and opinion of probable construction cost at the following stages: Preliminary Check (60% complete), Final Check (98% complete).
- h. Prepare project specific Special Provisions for items of work included in the PROJECT which are not specified in the City of Leavenworth's Construction Specifications or the KDOT Standard Specifications for State Road and Bridge Construction, 2015 Edition.
- i. Provide utility companies having infrastructure within the PROJECT area a set of utility plans for their use in determining the need for utility infrastructure relocations.
- j. Prepare applications, exhibits, drawings, and specifications necessary to obtain known required permits. Applications will be prepared for the CLIENT's execution and submittal. Any fees associated with applying for and/or obtaining permits will be the CLIENT's responsibility. Assist CLIENT in obtaining permit approvals by furnishing additional information about the Project design. Anticipated permits required for the project are:
  - 1. KDHE Notice of Intent (NOI).
- k. For up to two (2) properties, provide CLIENT with a right-of-way/easement map and legal description of right-of-way/easement needed for construction of the PROJECT.

### 3. MEETINGS

- a. Attend up to two (2) progress meetings with CLIENT to review progress and discuss the design of the PROJECT.
- b. Attend up to two (2) neighborhood meetings in the City of Leavenworth to discuss the PROJECT impacts with adjacent properties. Provide presentation materials for each meeting.
- c. Attend one (1) utility coordination meeting in the City of Leavenworth.
- d. Attend one (1) City Commission meeting in the City of Leavenworth.

### 4. FINAL DELIVERABLES

- a. Prepare final signed and sealed construction plans and special provisions for PROJECT. CONSULTANT will provide CLIENT up to five (5) paper copies and one electronic copy (PDF) of the final deliverables.
- b. Provide CLIENT with an opinion of probable construction cost.

## **5. EXCLUSIONS**

- a. The following services are specifically excluded from this project.
  - i. Environmental Assessment or Environmental Impact Statement services concerning the National Environmental Policy Act.
  - ii. Acquiring ownership and encumbrances reports.
  - iii. Geotechnical engineering.
  - iv. Potholing or excavating buried utilities.
  - v. Design of traffic signal modifications.
  - vi. Design of utility relocations.
  - vii. Design of storm sewer system improvements.

### **B. BID PHASE SERVICES**

For the PROJECT's Bid Phase, the CONSULTANT will:

- a. Address questions from prospective bidders regarding the bid documents. Issue addenda, if necessary, prior to the bid letting.

### **C. CONSTRUCTION PHASE SERVICES**

Construction Phase Services are specifically excluded from this AGREEMENT. CONSULTANT may provide CLIENT with Construction Phase Services by separate agreement.

**END OF EXHIBIT 1**

**EXHIBIT 2**  
**COST AND SCHEDULE**

**A. ENGINEERING FEE**

1. For **PART A LOCATIONS (City Sidewalk Plan)**, CONSULTANT will provide services in Exhibit 1, Items A and B for a fee based on the actual hours expended on the PROJECT at the Standard Hourly Rates included in Exhibit 2, but not to exceed **forty two thousand and NO/100 Dollars (\$42,000.00)**. CLIENT will be invoiced in accordance with Section 4 of this AGREEMENT.

a. Survey	\$ 11,800.00
b. Design	\$ 24,140.00
c. Property Acquisition Doc.'s	\$ 929.00
d. Meetings	\$ 3,729.00
e. Bid Phase	\$ 982.00
f. <u>Reimbursable Expenses</u>	<u>\$ 420.00</u>
<b>TOTAL</b>	<b>\$ 42,000.00</b>

2. For **PART B LOCATIONS (Broadway School Renovation)**, CONSULTANT will provide services in Exhibit 1, Items A and B for a fee based on the actual hours expended on the PROJECT at the Standard Hourly Rates included in Exhibit 2, but not to exceed **seven thousand six hundred two and NO/100 Dollars (\$7,602.00)**. CLIENT will be invoiced in accordance with Section 4 of this AGREEMENT.

a. Survey	\$ 2,451.00
b. Design	\$ 5,151.00
c. Property Acquisition Doc.'s	\$ 0.00
d. Meetings	\$ 0.00
e. Bid Phase	\$ 0.00
f. <u>Reimbursable Expenses</u>	<u>\$ 0.00</u>
<b>TOTAL</b>	<b>\$ 7,602.00</b>

**B. ESTIMATED PROJECT SCHEDULE**

1. CONSULTANT will perform services in an effort to meet CLIENT scheduling goals. The estimated project schedule below is based on the scope of services described in Exhibit 1. The completion of tasks may also be contingent upon governmental agency reviews, utility relocations, and property acquisitions which are beyond CONSULTANT's control and could delay the performance of services beyond the estimated completion date(s).

CONSULTANT will begin performing services on PART B LOCATIONS (Broadway School Renovation) first in an effort to expedite preparation of construction plans for the PART B LOCATION improvements. CLIENT may choose to bid PART B LOCATION improvements separately from, or earlier than, PART A LOCATION improvements.

<b>Estimated Project Schedule</b>	
<b>Task</b>	<b>Estimated Completion Date</b>
Notice to Proceed/Kick-off Meeting	January 1, 2018
Survey Phase	February 2018
Preliminary Check (±60% design completion)	March 2018
Final Check (98% design completion)	April 2018
Design Complete and Ready for Bid Letting	April/May 2018
Bid Letting	May 2018
Construction	Summer 2018



## 2018 BG CONSULTANTS STANDARD HOURLY RATES

<u>POSITION</u>	<u>STANDARD PER HOUR 2018</u>
PRINCIPAL	\$204.00
PROJECT ENGINEER IV	\$186.00
PROJECT ENGINEER III	\$163.00
PROJECT ENGINEER II	\$151.00
PROJECT ENGINEER I	\$128.00
SENIOR DESIGN ENGINEER	\$151.00
DESIGN ENGINEER	\$119.00
ASSISTANT DESIGN ENGINEER	\$103.00
ARCHITECT	\$195.00
PROJECT ARCHITECT	\$151.00
DESIGN ARCHITECT	\$115.00
ASSISTANT ARCHITECT	\$93.00
TECHNICIAN II	\$113.00
TECHNICIAN I	\$95.00
SENIOR CONSTRUCTION OBSERVER	\$110.00
CERTIFIED CONSTRUCTION OBSERVER	\$98.00
CONSTRUCTION OBSERVER	\$88.00
SENIOR PROJECT SURVEYOR	\$185.00
PROJECT SURVEYOR	\$136.00
ASSISTANT PROJECT SURVEYOR	\$84.00
FIELD SUPERVISOR	\$107.00
SURVEYOR II	\$77.00
SURVEYOR I	\$65.00
CAD SYSTEM AND OPERATOR	\$105.00
CLERICAL	\$59.00

### HOURLY RATE NOTES:

1. The hourly rates shown above are effective for services through December 31<sup>st</sup> of the year this AGREEMENT is executed. Hourly rates are subject to revision annually.
2. For any Federal Wage and Hour Law non-exempt personnel, overtime will be billed at 1.5 times the hourly rates shown.
3. Expert Witness and Depositions will be charged at 1.5 times the hourly rates shown.


**END OF EXHIBIT 2**


**EXHIBIT 3**  
**SPECIAL PROVISIONS**


Not Used.

**END OF EXHIBIT 3**

**POLICY REPORT NO. 18-10**  
**Bid Approval – Water Pollution Control Division**  
**Landfill Services**  
**February 13, 2018**

Prepared by:   
Chuck Staples  
WPC Superintendent

Reviewed by:   
Michael G. McDonald  
Public Works Director

  
Paul Kramer  
City Manager

**Issue:**

Consider approval of contract for landfill services for dewatered sludge.

**Background:**

Bids for landfill services for the disposal of dewatered sludge were obtained January 25, 2018.

**Bids received:**

Hamm, Inc.	\$21 per ton
Waste Management	\$40 per ton

The City has hauled the following tonnage to Hamm's Landfill the past three years:

2015 = 4,193 tons  
2016 = 3,850 tons  
2017 = 4,315 tons

Budget for landfill services for 2018 is \$72,000. This budget was completed before staff was aware there would be a price increase in 2018 and that volume of sludge would increase significantly in 2017.

Water Pollution Control is expecting to haul 4,900 tons of dewatered sludge to the landfill in 2018 at a cost of \$102,900.

**Options/Alternatives:** The City Commission can accept the low bid as recommended by City Staff, or can ask the staff to re-bid.

**Staff Recommendation:**

The Staff recommends the City Commission approve a contract for landfill services for the disposal of dewatered sludge with Hamm's Landfill in an amount not to exceed \$102,900.

**Attachments:**

Bid Tabulation – 2018 WPC Landfill Services for Dewatered Sludge



**City of Leavenworth  
Specifications  
For  
Landfill Services for Dewatered Sludge  
Disposal Site Only**

**The City of Leavenworth desires disposal services for dewatered wastewater treatment plant sludge:**

**Provide Services as follows:**

- 1. Provider must be licensed by KDHE for disposal of sludge.**
- 2. Approximately 5000 ton per year will be delivered to the disposal site by the City.**
- 3. An average of 25-30 ton per day will be delivered.**
- 4. Bill the City monthly for tons received.**

**The Land fill accepts deliveries Monday thru Saturday from 7:00 A.M to 3:00 P.M.**

**This contract will be effective January 1, 2018 through January 1, 2020.**

**The contract will include 4 additional 1-year extensions to be reviewed for possible approval by the Leavenworth City Commission after review of any contract issues and evaluation of any necessary rate increases.**

**A sludge analysis report performed by Pace Analytical Services on August 24, 2016 is included as part of the bid packet. Delivered sludge will meet the KDHE requirements of passing the "paint filter test". August of 2016 WPC stopped stabilizing their sludge with lime.**

**Leavenworth, Kansas  
Landfill Services for Dewatered sludge  
Disposal Site Only  
62WW-27-08**

**Bidder's Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**City/State/Zip Code:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_ **Fax Number:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_

**Landfill Prices per ton:** \_\_\_\_\_

**Landfill Hours of Operation:**

**Monday – Friday** \_\_\_\_\_ **a.m.** - \_\_\_\_\_ **p.m.**

**Saturday:** \_\_\_\_\_ **a.m.** - \_\_\_\_\_ **p.m.**

**Sunday:** \_\_\_\_\_ **a.m.** - \_\_\_\_\_ **p.m.**

**Price must include any and all charges. This includes, but is not limited to fuel or travel surcharges, overtime rate, etc.**

**Typed Name and Title:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**POLICY REPORT  
FIRST CONSIDERATION ORDINANCE  
TELECOMMUNICATIONS CONTRACT FRANCHISE AGREEMENT**

**FEBRUARY 13, 2018**

  
Carla K. Williamson, CMC City Clerk

  
Paul Kramer, City Manager

**ISSUE:**

Consider the renewal of the Telecommunications Contract Franchise Agreement with Southwestern Bell Telephone Company dba AT&T Kansas.

**BACKGROUND:**

On October 23, 2007 the City of Leavenworth and Southwestern Bell Telephone Company dba AT&T Kansas entered into a Contract Franchise Agreement via Ordinance as required by Kansas Statute K.S.A. 12-2001 et. seq. The contract began January 1, 2008 and per the terms of the agreement could be renewed but could not exceed ten (10) years.

On August 1, 2017 the City gave notice of the intent to negotiate a new Contract Franchise Agreement however, we were unable to complete the negotiations prior to December 31, 2017. Pursuant to the current Ordinance No. 7750 Section 12(b), AT&T Kansas sent a letter acknowledging the engagement in good faith, of the negotiation of a new contract franchise agreement extending the agreement to June 30, 2018 to allow both parties time of complete negotiations.

The proposed agreement has been reviewed by the City Attorney and City Staff. There are no substantive changes to the agreement. The following are some of the highlights of the agreement:

- Southwestern Bell Telephone Company dba AT&T Kansas will continue to remit to the City a franchise fee of 5% of Gross Receipts as is currently in place
- Southwestern Bell Telephone Company dba AT&T Kansas will pay a one-time application fee of \$1,000.00 to cover the cost of reviewing and approving the agreement
- Southwestern Bell Telephone Company dba AT&T Kansas 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

- Contact shall end on December 31, 2021 and will automatically renew for eight (8) additional two (2) year terms unless either party notifies the other of its intent to terminate (this is a change from a prior 10 year agreement)

**ACTION:**

Place on first consideration Ordinance a Telecommunications Contract Franchise Agreement with Southwestern Bell Telephone Company DBA AT&T Kansas.

**ATTACHMENTS:**

- Proposed Ordinance Franchise Agreement
- Letter dated August 1, 2017 - Notice of intent to negotiate a new contract
- Agreement extending agreement
- Ordinance 7750 dated October 23, 2007



*(Published in the Leavenworth Times on March 2, 2018)*

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

**AN ORDINANCE GRANTING TO SOUTHWESTERN BELL TELEPHONE COMPANY D/B/A AT&T KANSAS, A CONTRACT FRANCHISE FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES IN THE CITY OF LEAVENWORTH, KANSAS AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE.**

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

**SECTION 1. DEFINITIONS.**

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

- a. "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, and lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.
- b. "Access line count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.
- c. "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 2016 Supp. 12-2001(c)(2), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.
- d. "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.
- e. "City" - means the City of Leavenworth, Kansas.
- f. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications services within the City.

- g. "Facilities" - means telephone and telecommunications lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunications services.
- h. "Grantee" - means Southwestern Bell Telephone Company d/b/a AT&T Kansas, an electing carrier and telecommunications service provider providing local exchange service and/or operating Facilities within the City. References to Grantee shall also include, as appropriate, any and all successors and assigns.
- i. "Gross Receipts" - shall mean only those receipts collected from within the corporate boundaries of the City and that are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee's Facilities. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002 would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.
- j. "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the State Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.
- k. "Public right-of-way" - means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.
- l. "Telecommunication local exchange services provider" – means a local exchange carrier as defined in subsection (h) of K.S.A. 2016 Supp. 66-1,187 and amendments thereto, and/or a telecommunications carrier as defined in subsection (m) of K.S.A. 2016 Supp. 66-1, 187 and amendments thereto, which does, or in good faith intends to, provide local exchange service. The term shall not include an interexchange carrier or competitive access provider that does not provide local exchange service, or any wireless communication services provider.
- m. "Telecommunications services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

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

- a. Subject to the provisions of K.S.A. 2016 Supp. 12-2001 and amendments thereto, there is hereby granted to Grantee this nonexclusive Contract franchise to provide telecommunications services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.
  
- b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way. This Contract franchise does not:
  - (1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
  
  - (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or,
  
  - (3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on property or facilities owned or controlled by the City or a third-party.
  
- c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).
  
- d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.
  
- e. Access to the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

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

- a. Pursuant to K.S.A. 2016 Supp. 17-1902 and amendments thereto, and subject to the provisions of this Contract franchise, Grantee has the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

- b. Grantee's use of the Public right-of-way shall be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way.
- c. City shall, pursuant to Section 13 of this Contract franchise, provide reasonable advanced notice of the consideration and/or adoption of any rule, regulation, policies, resolutions and ordinances relating to the construction in or use of the Public right-of-way, inasmuch as such adoption affects Grantee's use of the Public right-of-way.
- d. If requested by the City, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, Grantee shall remove, relocate or adjust its Facilities within the Public right-of-way at no cost to the City, providing such request similarly binds all users of such public right-of-way. Such removal, relocation, or adjustment shall be completed as soon as reasonably possible within the time set forth in any written request by the City for such relocation or adjustment, provided that the City shall provide Grantee with a minimum of one hundred eighty (180) days advance written notice to comply with any such removal, relocation or adjustment. Grantee shall designate one (1) person within its organization by his/her employment position to whom relocation notices shall be sent and with whom rests the responsibility to facilitate all necessary communications within Grantee's various areas.
- e. When the City requests removal, relocation or adjustment of Grantee's Facilities within the Public right-of-way for construction or maintenance activities related to improvements that are, in whole or in part, for private benefit, the City shall require, as a condition of its approval of any request from any private party or parties for alteration of the Public right-of-way, that such private party or parties reimburse Grantee for the cost of removal, relocation or adjustment, in an amount equal to the percentage of the private benefit received. Grantee shall not be obligated to commence the removal, relocation or adjustment until receipt of funds for the costs from such private party or parties. For purposes of this paragraph, a mixed purpose public/private project shall be subject to a presumption of a private benefit of no less than 50 percent. Further, Grantee shall have no liability for delays caused by a private party's failure to reimburse costs. Grantee understands, however, that the City has no obligation to collect such reimbursement.
- f. Grantee shall participate in the Kansas One Call utility location program.

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

- a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access line fee in the following calendar year; provided, such Access line fee shall not exceed the maximum Access line fee allowed by Kansas law. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back; provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.

- b. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 2016 Supp. 12-2001 (m) and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 2016 Supp. 12-2001 and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.
- c. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the month for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.
- d. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City a certified statement showing the manner in which the franchise fee was calculated.
- e. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 2016 Supp. 12-2001, and amendments thereto. Subject to any limitations of Kansas Statute, Grantee's payment obligations shall survive the expiration or termination of this Contract franchise.
- f. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.
- g. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of \$1,000.00. The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.
- h. The franchise fee required herein pursuant to K.S.A. 2016 Supp. 12-2001(j), shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 2016 Supp. 12-2001 and K.S.A. 2016 Supp.17-1902 and amendments thereto. The franchise fee shall in no way be deemed a tax of any kind.
- i. Grantee shall remit an access line (franchise) fee or a gross receipts (franchise) fee to the City on those access lines that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a contract franchise ordinance. Such Access line (franchise) fee or Gross Receipts (franchise) fee shall be in the same amount or percentage as the franchise fee set forth in subsection 4 a. hereinabove.

**SECTION 5. ANNEXATION OR RENUMBERING STREETS**

The City agrees to provide Grantee with notification in the event that it annexes property into the corporate boundaries of the City that would require Grantee to collect and pay a franchise fee on access lines or gross receipts which prior to the annexation of the property Grantee was not required to pay a franchise fee. The City agrees to provide Grantee with notification in the event the City renumbers or renames any streets that would require Grantee to collect and pay a franchise fee on access lines or gross receipts which prior to the renumbering or renaming of the streets Grantee would not have been required

to pay a franchise fee. The City agrees that in the event the City does not provide Grantee with notice of an annexation or renumbering and/or renaming of the streets, Grantee is not liable to the City for payment of franchise fees on the annexation or renumbered and/or renamed streets prior to the City providing notice to Grantee of such.

#### **SECTION 6. INDEMNITY AND HOLD HARMLESS.**

- a. It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et. seq., and amendments thereto, it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct.

The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

- b. Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Grantee, any agent, officer, director, representative, employee or subcontractor of Grantee, while installing, repairing or maintaining Facilities in the Public right-of-way.
- c. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity. Notwithstanding the foregoing, nothing herein shall in any way obligate Grantee for the negligence of any other third party or any portion of any harm caused by the same.
- d. Grantee or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's or the City's activities in the Public right-of-way.

#### **SECTION 7. INSURANCE REQUIREMENT AND PERFORMANCE BOND**

- a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with insurers rated at least A-VII by AM Best and that are eligible or permitted to do business in the state of Kansas. Grantee shall provide the following insurance:
  - (1) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit for bodily injury of \$1,000,000 each accident, by disease policy limits and by disease each employee.

- (2) Commercial general liability, written on Insurance Services Office (ISO) policy form CG 00 01 or its equivalent, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claim made basis, with a limit of Two Million Dollars (\$2,000,000) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.
- b. As an alternative to the requirements of subsection (a), Grantee may self-insure and, as such, Grantee has the ability to provide coverage in an of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate, to protect the City from and against all claims by any person for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred as respects this Contract franchise. In the event Grantee elects to self-insure its obligation to include City as an additional insured, the following provisions shall apply:
    - (1) City shall promptly and no later than thirty (30) days after notice thereof provide Grantee with written notice of any claim, demand, lawsuit or the like, for which it seeks coverage pursuant to the section and provide Grantee with copies of any demands, notices, summonses or legal papers received in connection with such claim, demand, lawsuit or the like;
    - (2) City shall not settle any such claim, demand, lawsuit or the like without the prior written consent of Grantee; and,
    - (3) City shall fully cooperate with Grantee in the defense of the claim, demand, lawsuit or the like.
  - c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, 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. Grantee shall timely notify the City if the insurance is cancelled or non-renewed and not replaced.
  - d. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of Fifty Thousand Dollars (\$50,000), payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The required performance bond must be, issued by a surety company authorized to transact business in the state of Kansas, and satisfactory to the City Attorney in form and substance.

**SECTION 8. REVOCATION AND TERMINATION.**

- a. In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures:

- (1) Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice, pursuant to Section 12 of the Contract franchise, upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise;
  - (2) If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided, pursuant to Section 12 of this Contract franchise, reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter.
  - (3) Upon any determination by the City Council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Leavenworth County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.
- b. Nothing herein shall prevent the City or Grantee from invoking any other remedy that may otherwise exist at law.

#### **SECTION 9. RESERVATION OF RIGHTS.**

- a. The City and Grantee hereby acknowledge that the City, in accordance with 47 U.S.C. § 253, may not prohibit or have the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunication service. To the extent permitted by law, the City specifically reserves its right and authority as a public entity with responsibilities towards its citizens, to participate to the full allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.
- b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers and other authority established pursuant to the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of: the laws of the State of Kansas or applicable federal laws and regulations as the same may be amended; under the Constitution of the State of Kansas; nor, any of its rights and powers under or by virtue of present or future ordinances of the City.



- d. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of the Contract franchise or any present or future laws, non-franchise ordinances and/or rulings that may be the basis for parties entering into this Contract franchise.

**SECTION 10. FAILURE TO ENFORCE.**

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

**SECTION 11. TERM AND TERMINATION DATE.**

- a. This Contract franchise shall be effective for a term beginning on the effective date of this Contract franchise as established by Section 16 herein, and ending on December 31, 2021. Thereafter, this Contract franchise will automatically renew for up to eight (8) additional two (2) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least ninety (90) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.
- b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.
- c. If any clause, sentence, section, or provision of K.S.A. 2016 Supp. 12-2001 and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.
- d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.
- e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

**SECTION 12. MOST FAVORED NATION**

Pursuant to K.S.A. 2016 Supp. 12-2001 and K.S.A. 2016 Supp. 17-1902 and amendments thereto, City represents and warrants that all benefits, terms and conditions in this Contract franchise and relative to Grantee’s deployment of network Facilities and services in the City are and, during the term of this Contract franchise, will continue to be no less favorable to Grantee in the same or similar circumstances than those currently being offered to or that may be offered and agreed to by City and any other local exchange carrier, telecommunications carrier, network based broadband or video services provider, competitive infrastructure provider or Internet Protocol services provider, regardless of the form or nature of the agreement with any such other carrier or provider, and that the City shall treat Grantee in a competitively neutral, non-discriminatory manner.

**SECTION 13. POINT OF CONTACT AND NOTICES**

All notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, First Class Postage Prepaid, Certified Mail, return receipt requested; or overnight delivery by a nationally recognized courier. All written notices shall be deemed delivered upon actual receipt or refusal of delivery.

**The City:**

The City of Leavenworth  
100 N. 5th St  
Leavenworth, Kansas 66603  
Attn: City Clerk

**Grantee:**

Office of the President  
Southwestern Bell Telephone Company  
d/b/a AT&T Kansas  
220 SE 6th St., Room 500  
Topeka, KS. 66603

or to replacement addresses that may be later designated in writing.

**SECTION 14. TRANSFER AND ASSIGNMENT.**

This Contract franchise is granted solely to Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to: a wholly owned parent or subsidiary; between wholly owned subsidiaries; or, to an entity with which Grantee is under common ownership or control, upon written notice to the City. City and Grantee acknowledge that said City consent shall only be with regard to the transfer or assignment of this Contract franchise and that, in accordance with Kansas law, the City does not have the authority to require City approval of transfers of ownership or control of the business or assets of Grantee. In the event of any transfer or assignment of either this Contract franchise or Grantee’s business or assets, Grantee shall: timely notify the City of the successor entity; provide a point of contact for the successor entity; and advise the City of the effective date of the transfer or assignment.

**SECTION 15. CONFIDENTIALITY.**

Information provided to the City pursuant to the terms of this Contract Franchise and/or K.S.A. 2016 Supp. 12-2001 and amendments thereto, shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and K.S.A. 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney’s fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

**SECTION 16. ACCEPTANCE OF TERMS.**

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

**SECTION 17. PAYMENT OF PUBLICATION COSTS.**

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

**SECTION 18. SEVERABILITY.**

If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

**SECTION 19. FORCE MAJEURE.**

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

**SECTION 20. REPEAL.**

City Ordinance No. 7750, a contract franchise issued to Southwestern Bell Telephone Co. d/b/a AT & T Kansas is hereby repealed.

PASSED AND APPROVED by the City Commission of the City of Leavenworth Kansas this 27<sup>th</sup> day of February, 2018.

\_\_\_\_\_  
Mark Preisinger, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Carla K. Williamson CMC, City Clerk

\_\_\_\_\_  
, City Attorney



August 1, 2017

Office of the President  
Southwestern Bell Telephone Company d/b/a AT&T Kansas  
220 SE 6<sup>th</sup> St., Room 500  
Topeka KS 66603

Reference: City of Leavenworth / Ordinance 7750

Pursuant to Section 1 of the City of Leavenworth Ordinance 7750 between the City of Leavenworth and Southwestern Bell Telephone Company d/b/a AT&T Kansas, said Ordinance shall not exceed ten (10) years from the effective date of the Contract Franchise.

The Contract Franchise is set to expire on December 31, 2017. The City of Leavenworth is giving notice of the intent to negotiate a new Contract Franchise agreement to go into effect at the end of the ten (10) year term of Ordinance 7750.

Please have a representative contact me at 913-684-0335 to discuss the process of a new agreement. Thank you for your attention to this matter.

Sincerely

Carla K. Williamson, CMC  
City Clerk  
City of Leavenworth  
913-684-0335  
[cwilliamson@firstcity.org](mailto:cwilliamson@firstcity.org)

cc: Paul Kramer, City Manager  
Tom Dawson, City Attorney

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature <input checked="" type="checkbox"/> <i>Terri Hastings</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to:		B. Received by (Printed Name) <i>Terri Hastings</i>	
Office of the President Southwestern Bell Telephone Co d/b/a AT&T KS 220 SE 6 <sup>th</sup> St., Room 500 Topeka, KS 66603		C. Date of Delivery	
2. Article Number (Transfer from service label)		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input checked="" type="checkbox"/> No	
3. Service Type		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.			
PS Form 3811, February 2004		Domestic Return Receipt	
		91 7199 9991 7037 7012 6047	



**Bruce A. Ney**  
AVP – Senior Legal Counsel

**AT&T Kansas**  
816 Congress Avenue  
Suite 1100  
Austin, Texas 78701

T: 512.457.2311  
F: 512.870.3420  
bruce.ney@att.com

December 7, 2017

Ms. Carla K. Williamson  
City Clerk  
City of Leavenworth  
1005 N. 5<sup>th</sup> Street  
Leavenworth, KS 66048

Re: City of Leavenworth Ordinance No. 7750 – Franchise Agreement Negotiations

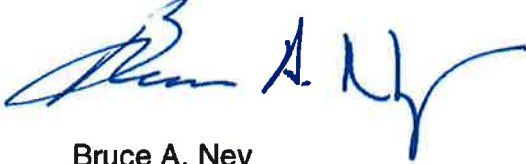
Dear Ms. Williamson:

This letter will confirm our conversation of Tuesday, December 5, 2017 concerning the negotiation of a new contract franchise agreement between the City of Leavenworth (hereinafter the “City”) and Southwestern Bell Telephone Company d/b/a AT&T Kansas (hereinafter “AT&T Kansas”). As you know, on August 1, 2017, the City provided AT&T Kansas with written notice of its intent to negotiate a new contract franchise agreement to become effective at the expiration of Ordinance No. 7750 on December 31, 2017. Since that time the City and AT&T Kansas have been engaged in good faith, negotiation of a new contract franchise agreement.

Pursuant to the City’s Ordinance No. 7750, Section 12(b), AT&T Kansas hereby requests the City agree to a mutual extension of Ordinance No. 7750 from December 31, 2017 to June 30, 2018, to allow the parties time to conclude the negotiation and adoption of a mutually agreeable new contract franchise agreement. If this is agreeable to the City, in compliance with Ordinance No. 7750, Section 12(b), please have an authorized representative of the City indicate the City’s concurrence below and return a copy of the same to me.

If you or anyone associated with the City have any questions or concerns regarding AT&T Kansas' request, please do not hesitate to contact me at your convenience so we may discuss the matter.


Sincerely,



Bruce A. Ney  
AVP - Senior Legal Counsel

Agreed and Accepted:

CITY OF LEAVENWORTH, KANSAS

By:   
Nancy D. Bauder

Title: Mayor

Date: 12-12-2017



## Carla Williamson

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**From:** BANKSON, AMANDA N (Legal) <aw080w@att.com>  
**Sent:** Thursday, December 07, 2017 2:41 PM  
**To:** Carla Williamson  
**Cc:** NEY, BRUCE A (Legal)  
**Subject:** Leavenworth Franchise Agreement  
**Attachments:** Leavenworth Extension Letter Final.pdf

**Importance:** High

Ms. Williamson,

Attached is confirmation of the City of Leavenworth and AT&T Kansas to be engaged in in good faith, negotiation of a new contract franchise agreement. Please have an authorized representative of the City indicate the City's concurrence and return a copy to Mr. Bruce A. Ney. Thank you for your time.

*Thank You*

*Amanda Bankson*

AT&T Texas  
Assistant to AVP - Senior Legal Counsel  
Timothy Pickering, Bruce Ney, Trey Lamair, and Michelle Bourianoff  
816 Congress Ave.  
Suite 1100  
Austin, TX. 78701  
Desk: (512) 457-2321  
Fax: (512)870-3520

**\*\*\*NOTICE\*\*\***

This e-mail message is confidential and intended only for the named recipient(s) above. As indicated above, this message contains information that is privileged, attorney work product or exempt from disclosure under applicable law. If you have received this message in error, or are not the named recipient(s), please immediately notify the sender at (512) 457.2322 and delete this e-mail message from your computer.

ORDINANCE NO. 7750

A CONTRACT FRANCHISE ORDINANCE GRANTED TO SOUTHWESTERN BELL TELEPHONE COMPANY, A TELECOMMUNICATIONS LOCAL EXCHANGE SERVICE PROVIDER PROVIDING LOCAL EXCHANGE SERVICE WITHIN THE CITY OF LEAVENWORTH KANSAS AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE.

WHEREAS, the City of Leavenworth, Kansas ("City"), a municipal corporation, duly organized and existing under the laws of the State of Kansas, has the right under statute to grant a non-exclusive contract franchise to a telecommunications local exchange service provider to construct, operate and maintain telecommunications facilities in the City; and

WHEREAS, Southwestern Bell Telephone Company d/b/a AT&T Kansas, a (telecommunications local exchange service provider) desires to operate a telecommunications local exchange 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 contract franchise to be granted by the City in accordance to K.S.A. 12-2001 et. seq., as amended (the "Franchise Ordinance Act"); and

WHEREAS, pursuant to the Franchise Ordinance Act, the proposed franchise ordinance was prepared for first reading at its regular meeting to be held on October 9, 2007, with amendments, if appropriate and second reading to be on October 23, 2007; and

WHEREAS, the City Commission directed a copy of the proposed franchise ordinance be filed in the office of the City Clerk.

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

SECTION 1. TERM

Pursuant to the Franchise Ordinance Act, a contract franchise ordinance ("Contract franchise") is hereby granted to Southwestern Bell Telephone Company d/b/a AT&T Kansas (sometimes referred to herein as "Telecommunications local exchange service provider") a telecommunications local exchange service provider providing local exchange service within the City, subject to applicable law and the provisions contained hereafter. The initial term of this Contract franchise shall be for a period of two (2) years beginning January 1, 2008, and ending December 31, 2009. Thereafter, this Contract franchise will automatically renew for additional one (1) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least ninety (90) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract franchise and not as a new Contract franchise or amendment. Pursuant to the Franchise Ordinance Act, under no circumstances shall this Contract franchise exceed ten (10) years from the effective date of the Contract franchise. Compensation for said Contract franchise shall be established pursuant to Section 5 of this Contract franchise.

Amendments under this Section, if any, shall be made by Contract franchise shall be made by the written consent of the City and the Telecommunications local exchange service provider and pursuant to the Franchise Ordinance Act and applicable law. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this Contract franchise.

SECTION 2. DEFINITIONS.

For the purposes of this Ordinance, and to the extent not in conflict with the Franchise Ordinance Act, the following words and phrases shall have the following meaning:

a. "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations serviced by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.

b. "Access line count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.



- c. "Access line fee" - means a fee determined by the City, up to a maximum as set out in the Franchise Ordinance Act and amendments thereto, to be used by Telecommunications local exchange service provider in calculating the amount of access line remittance.
- d. "Access line remittance" - means the amount to be paid by Telecommunications local exchange service provider to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Telecommunications local exchange service provider within the City for each month in that calendar quarter.
- e. "City" - means the City of Leavenworth, Kansas.
- f. "Contract franchise" – means this Ordinance granting the right, privilege and franchise to Telecommunications local exchange service provider to provide telecommunications services within the City.
- g. "Facilities – means telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunication services.
- h. "Gross Receipts" - shall mean only those receipts collected from within the corporate boundaries of the City enacting the franchise and which are derived from the following: ( 1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by a Telecommunications local exchange service provider to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Telecommunications local exchange service provider offers additional services of a wholly local nature which if in existence on or before July 1, 2002 would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.
- i. "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the Kansas Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.
- j. "Public right-of-way" - means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.
- k. "Telecommunications local exchange service provider" means Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T Kansas) a "local exchange carrier" as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, and a "telecommunications carrier" as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto, which does, or in good faith intends to, provide local exchange service within the City. The term telecommunications local exchange service provider does not include an interexchange carrier that does not provide local exchange service, competitive access provider that does not provide local exchange service or any wireless telecommunications local exchange service provider.
- l. "Telecommunication services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

### SECTION 3. GRANT OF CONTRACT FRANCHISE.

a. There is hereby granted to Telecommunications local exchange service provider this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying Telecommunication services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.

b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise.

This Contract franchise does not

1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;

(2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property.

(3) Excuse Telecommunications local exchange service provider from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.

c. As a condition of this Contract franchise, Telecommunications local exchange service provider is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC) subject to Telecommunications local exchange service provider's right to challenge in good faith such requirements as established by the FCC, KCC or other City ordinance. Telecommunications local exchange service provider shall also comply with all applicable laws, statutes and/or ordinances, subject to Telecommunications local exchange service provider's right to challenge in good faith such laws, statutes and/or ordinances provided that any such local ordinance complies with, and is not in conflict with, K.S.A. 17-1901, et. seq., as amended (the "Right of Way Act"). Telecommunications local exchange service provider shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property), except that Telecommunications local exchange service provider shall not be required to comply with any City ordinance that conflicts with the Right of Way Act.

Nothing herein contained shall be construed as giving Telecommunications local exchange service provider any exclusive privileges, nor shall it affect any prior or existing rights of Telecommunications local exchange service provider to maintain a telecommunications system or provide Telecommunications services within the City.

d. Telecommunications local exchange service provider shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Telecommunications local exchange service provider shall not knowingly allow the use of its telecommunications Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Telecommunications local exchange service provider the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Telecommunications local exchange service provider agrees that this Contract franchise does not permit it to provide video services in Kansas without payment of fees or otherwise complying with KSA 12-2023, as amended (Kansas Video Services Act), and without complying with applicable FCC regulations. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

#### SECTION 4. USE OF PUBLIC RIGHT-OF-WAY.

a. This Section 4 (Use of Public Right-of Way) shall at all times be subject to and not in conflict with the Right of Way Act. Subject to the provisions of this Contract franchise that are not in conflict with the Right of Way Act, Telecommunications local exchange service provider shall have the right to construct, maintain and operate it Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

b. Telecommunications local exchange service provider's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Telecommunications local exchange service provider shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to, the City's Ordinance for Managing the Use and Occupancy of Public Right-of-way.

C. Telecommunications local exchange service provider shall participate in the Kansas One Call utility location program.

## SECTION 5. COMPENSATION TO THE CITY.

a. Compensation for the City's made pursuant to this Contract franchise pursuant to the Franchise Ordinance Act shall be paid on a monthly basis without invoice or reminder from the City and paid not later than forty-five (45) days after the end of the remittal period. For the first year of this contract franchise ordinance, said compensation shall be a sum equal to five percent (5%) of gross receipts. Thereafter, compensation for each calendar year of the remaining term of the contract franchise ordinance shall continue to be based on a sum equal to five percent (5%) of gross receipts; unless the City notifies Telecommunications local exchange service provider prior to ninety days (90) before the end of the calendar year that it intends to increase or decrease the percentage of gross receipts for the following calendar year or that it intends to switch to an access line fee for the following calendar year. In the event City elects compensation based on an access line fee, nothing herein precludes City from switching back to a gross receipts fee provided City notifies Telecommunications local exchange service provider prior to ninety days (90) before the end of the calendar year that it intends to elect a gross receipts fee for the following calendar year. Any increased access line fee or gross receipt fee shall be in compliance with the public notification procedures set forth in subsections (l) and (m) of the Franchise Ordinance Act.

b. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in the Franchise Ordinance Act.

c. The City shall have the right to examine, upon written notice to Telecommunications local exchange service provider no more than once per calendar year, those records necessary to verify the correctness of the compensation paid pursuant to this Contract franchise.

d. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Telecommunications local exchange service provider shall pay to the City a one-time application fee of \$1,000.00. The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.

e. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under the Franchise Ordinance Act or the Right of Way Act. The franchise fee shall in no way be deemed a tax of any kind.

f. Telecommunications local exchange service provider shall remit a franchise fee to the City on those Access line fee or gross receipts fee that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect an access line fee or gross receipts fee from the reseller telecommunications local exchange service provider and shall not require the reseller to enter a contract franchise ordinance pursuant to K.S.A. 12-2001 (d).

g. The City agrees that pursuant to the Franchise Ordinance Act that the franchise fee imposed under this contract franchise ordinance must be assessed in a competitively neutral manner, may not unduly impair competition, must be nondiscriminatory and must comply with state and federal law.

## SECTION 6. ANNEXATION OR RENUMBERING STREETS

The City agrees to provide Telecommunications local exchange service provider with notification in the event that it annexes property into the corporate boundaries of the City that would require Telecommunications local exchange service provider to collect and pay a franchise fee on access lines or gross receipts which prior to the annexation of the property Telecommunications local exchange service provider was not required to pay a franchise fee. The City agrees to provide Telecommunications local exchange service provider with notification in the event the City renumbers or renames any streets that would require Telecommunications local exchange service provider to collect and pay a franchise fee on access lines or gross receipts which prior to the renumbering or renaming of the streets Telecommunications local exchange service provider would not have been required to pay a franchise fee. The City agrees that in the event the City does not provide Telecommunications local exchange service provider with notice of an annexation or renumbering and/or renaming of the streets, Telecommunications local exchange service provider is not liable to the City for payment of franchise fees on the annexation or renumbered and/or renamed streets prior to the City providing notice to Telecommunications local exchange service provider of such.

## SECTION 7. INDEMNITY AND HOLD HARMLESS.

Subject to, not in conflict with K.S.A. 66-1801 et seq. , as amended (Kansas Underground Utility Damage Preventive Act), it shall be the responsibility of Telecommunications local exchange service provider to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Telecommunications local exchange service provider fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such party is responsible for the harm or damage by its negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Telecommunications local exchange service provider 's Facilities.

Telecommunications local exchange service provider shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Telecommunications local exchange service provider , any agent, officer, director, representative, employee, affiliate or subcontractor of Telecommunications local exchange service provider , or its respective officers, agents, employees directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

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

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

The provisions of this Section 7 (Indemnity and Hold Harmless) shall at all times be subject to and not conflict with K.S.A. 17-1902(q), as amended.

## SECTION 8. PERFORMANCE BOND

a. During the term of this Contract franchise, Telecommunications local exchange service provider shall obtain and maintain as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of \$ 50,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of facilities located in the Public right-of-way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and reasonably satisfactory to the City Attorney in form and substance.

## SECTION 9. REVOCATION AND TERMINATION.

In case of failure on the part of Telecommunications local exchange service provider to comply with any of the material provisions of this Contract franchise, or if Telecommunications local exchange service provider should do or cause to be done any act or thing prohibited by or in violation of the material terms of this Contract franchise, Telecommunications local exchange service provider shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Telecommunications local exchange service provider, setting forth in detail the neglect or failure complained of, and Telecommunications local exchange service provider shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Commission present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Telecommunications local exchange service provider due process, Telecommunications local exchange service provider shall first be provided reasonable notice of the date, time and location of the City Commission's consideration, and shall have the right to address the City Commission regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Commission to revoke and terminate this Contract franchise, Telecommunications local

exchange service provider shall have thirty (30) days to appeal such decision to the District Court of Leavenworth County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Telecommunications local exchange service provider has instituted such an appeal. If Telecommunications local exchange service provider does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Telecommunications local exchange service provider to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Telecommunications local exchange service provider of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Telecommunications local exchange service provider is due to any cause or delay beyond the control of Telecommunications local exchange service provider or to bona fide legal proceedings.

#### SECTION 10. RESERVATION OF RIGHTS.

a. The City specifically reserves its right and authority as a customer of Telecommunications local exchange service provider and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Telecommunications local exchange service provider's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Telecommunications local exchange service provider's property in good repair.

b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

c. In granting its consent hereunder, Telecommunications local exchange service provider does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

d. In entering into this Contract franchise, neither the City's nor Telecommunications local exchange service provider's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Telecommunications local exchange service provider waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Telecommunications local exchange service provider may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of this Contract franchise ordinance or any present or future laws, ordinances, and/or rulings which may be the basis for the City and Telecommunications local exchange service provider entering into this contract franchise ordinance.

#### SECTION 11. FAILURE TO ENFORCE.

The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this contract franchise ordinance shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.

#### SECTION 12. TERM AND DATE.

a. Telecommunications local exchange service provider has entered into this contract franchise ordinance as required by the City and Franchise Ordinance Act. If any clause, sentence, section, or provision of the Franchise Ordinance Act, and amendments thereto, shall be held to be invalid by a court of competent jurisdiction, either the City or Telecommunications local exchange service provider may elect to terminate the entire Contract franchise ordinance. In the event a court of competent jurisdiction invalidates the Franchise Ordinance Act, and amendments thereto, if Telecommunications local exchange service provider is required by law to enter into a contract franchise ordinance with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise ordinance.

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

#### SECTION 13. POINT OF CONTACT AND NOTICES

Emergency notice by Telecommunications local exchange service provider to the City may be made by telephone to the City Clerk or the Public Works Director. Any required or permitted notice under this contract franchise ordinance shall be in writing. Notice upon the City shall be delivered to the city clerk by first class United States mail, Certified Mail, return receipt requested or by personal delivery. Notice upon Telecommunications local exchange service provider shall be delivered by first class United States mail or by personal delivery to:

Southwestern Bell Telephone Company  
Director-External Affairs  
1640 Fairchild Avenue, First Floor  
Manhattan, Kansas 66502

with a copy to  
Southwestern Bell Telephone Company  
General Attorney  
220 SE 6<sup>th</sup> Street, Room 515  
Topeka, Kansas 66603-3596

SECTION 14. CONFIDENTIALITY.

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

SECTION 15. ACCEPTANCE OF TERMS.

This Contract franchise ordinance is made under and in conformity with the laws of the State of Kansas. No such Contract franchise ordinance shall be effective until the ordinance granting the same has been adopted as provided by the laws of the State of Kansas

SECTION 16. PAYMENT OF COSTS.

In accordance with statute, Telecommunications local exchange service provider shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

SECTION 17. FORCE MAJEURE.

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

SECTION 18. REPEAL.

Telecommunications local exchange service provider's prior contract franchise ordinance, as adopted by City Ordinance Nos. 7597 and 7599, are hereby repealed.

PASSED by the Governing Body of the City of Leavenworth this 23 day of October, 2007.

\_\_\_\_\_  
Larry Dedeke, Mayor

ATTEST:

\_\_\_\_\_  
Karen J. Logan, City Clerk

First Publication Date: October 25, 2007

Second Publication Date: November 1, 2007

**POLICY REPORT  
FIRST CONSIDERATION  
ORDINANCE TO REPEAL ARTICLE VII OF CHAPTER 14  
RELATED TO PROFESSIONAL WRESTLING MATCHES**

**FEBRUARY 13, 2018**

  
Carla K. Williamson, CMC City Clerk

  
Paul Kramer, City Manager

**ISSUE:**

First Consideration Ordinance to repeal Article VII of Chapter 14 of the City Code of Ordinances related to Professional Wrestling Matches.

**BACKGROUND:**

At the February 6, 2018 Study Session the City Commission reviewed the City Code of Ordinances Chapter 14 - Amusements and Entertainment, Article VII - Professional Wrestling Matches.

The following items were discussed at the February 6, 2018 Study Session.

- The ordinance restricts the issuance of a license to: *“bona fide patriotic, benevolent, fraternal or religious organization, or local unit thereof, which organization has been in existence and has held meetings at regular intervals during the entire year immediately preceding the application for a license.”*
- As the Ordinance is written, anyone holding such a match anywhere within the City, regardless of it being held on private or public property, is required to obtain a license. The license fee is \$100.00.
- Staff contacted Adam Roorbach, Boxing Commissioner for the Kansas Department of Commerce Athletic Commission. The Athletic Commission oversees boxing, kickboxing, mixed martial arts and wrestling in the State of Kansas. Mr. Roorbach was not aware of any other Cities in the State of Kansas that regulate the events in addition to those of the State.

There was a consensus by the City Commission to begin the process of repealing Article VII of Chapter 14 of the City Code of Ordinances related to Professional Wrestling Matches.

**ACTION:**

Consensus by the Governing Body to place on First Consideration.

**ATTACHMENTS:**

- Current Ordinance
- Draft Ordinance

*(Summary Publish in the Leavenworth Times on March 2, 2018)*

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

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF LEAVENWORTH, KANSAS, CHAPTER 14 AMUSEMENTS AND ENTERTAINMENT; REPEALING ARTICLE VII PROFESSIONAL WRESTLING MATCHES.**

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

**Section 1.** That the Code of Ordinances, City of Leavenworth, Kansas, Chapter 14, Amusements and Entertainment, Article VII, Professional Wrestling Matches, be repealed.

**Section 2.** That all and Sections 14-186 through 14-204 repealed herein and all other sections in conflict herewith are hereby repealed.

**Section 3.** That this Ordinance shall take effect and be in force from and after its passage and publication as provided by law.

Passed by the Leavenworth City Commission on this 27th day of February, 2018.

\_\_\_\_\_  
Mark Preisinger, Mayor

(SEAL)

ATTEST:

\_\_\_\_\_  
Carla K. Williamson, City Clerk, CMC



## Chapter 14 Amusements and Entertainment

- **ARTICLE VII. - PROFESSIONAL WRESTLING MATCHES**

- **DIVISION 1. - GENERALLY**

- **Sec. 14-186. - Penalty for violation of article.**

A person violating any provision of this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not to exceed \$500.00 or confined in jail for a period not exceeding six months, or be both so fined and confined.

- **Sec. 14-187. - Conduct of match; physician to be in attendance.**

The participants as well as the conduct of any professional wrestling match must abide by the duly passed ordinances and regulations of the city, governing public events and other wise, and in addition must abide by the rules of the applicable professional society governing wrestling matches. Further, each match must be attended by a physician licensed to practice medicine in the state or person trained to provide emergency medical assistance certified by the state.

- **Secs. 14-188—14-200. - Reserved.**

- **DIVISION 2. - LICENSE**

- **Sec. 14-201. - Required.**

No professional wrestling match shall be held within the city unless a license is obtained according to the procedures set forth in this division.

- **Sec. 14-202. - Restricted to patriotic, fraternal or religious organizations.**

A license to hold a professional wrestling match shall only be issued to a bona fide patriotic, benevolent, fraternal or religious organization, or local unit thereof, which organization has been in existence and has held meetings at regular intervals during the entire year immediately preceding the application for a license under this division.

- **Sec. 14-203. - Certificate of insurance to be filed.**

Before the license to hold a professional wrestling match shall be issued, the applicant shall file with the city clerk a certificate of insurance issued by a company authorized to do business in the state and approved by the city attorney indicating liability insurance in the amount of not less than \$500,000.00, with the city named as an additional named insured.

- **Sec. 14-204. - Application for license; fee.**

An application for a license under this division along with a license fee as prescribed in appendix F shall be made to the city clerk on a form prepared by the city clerk. From and after April 1, 1983, the application must be submitted at least 30 days before the scheduled event and approved by the governing body.

**POLICY REPORT  
FIRST CONSIDERATION  
CHARTER ORDINANCE TO REPEAL CHARTER ORDINANCE NO 6  
RELATED TO HOLDING OF GOVERNMENT OFFICES BY CITY COMMISSIONERS**

**FEBRUARY 13, 2018**

  
Carla K. Williamson, CMC City Clerk

  
Paul Kramer, City Manager

**ISSUE:**

First Consideration Ordinance to repeal Charter Ordinance No. 6 relating to the holding of Government offices by City Commissioners in Leavenworth.

**BACKGROUND:**

On October 21, 1969 the Governing Body of the City of Leavenworth passed Charter Ordinance No. 6. *"A charter ordinance relating to the holding of government offices by city commissioners in Leavenworth, Kansas, and exempting the city from the provisions of K.S.A. 13-1802 and providing substitute and additional provisions on the same subject."*

K.S.A. 13-1802 has since been repealed by the State of Kansas.

The statute stated:

*"No member of the board of commissioners [of a city of the first class], or the mayor, shall hold any office of profit or trust under the laws of any state or the United States, or hold any county or other city office; nor shall the mayor or any commissioner ever be elected or appointed to any office created by, or the compensation of which was increased or fixed by, the board of commissioners, while he or she was a member thereof, until after the expiration of at least two years after he or she has ceased to be a member of said board."*

The City of Leavenworth substituted the following language:

*"no member of the city commission shall hold governmental office of profit under the laws of any state or United States while he is a member of the commission or until after the expiration of at least one year after he has ceased to be a member of said commission."*

At the February 6, 2018 Study Session the City Commission reviewed Charter Ordinance No. 6 and there was a consensus to repeal the Charter Ordinance.

Charter Ordinances require publication once each week for two consecutive weeks in the city newspaper and will take effect 61 days after final publication unless a sufficient petition for a referendum is filed as provided by state statute.

**ACTION:**

Consensus by the Governing Body to place on First Consideration.

**ATTACHMENTS:**

- Charter Ordinance No. 6
- Draft Charter Ordinance to Repeal Charter Ordinance No. 6

**CHARTER ORDINANCE NO. \_\_\_\_\_**

**A CHARTER ORDINANCE OF THE CITY OF LEAVENWORTH,  
KANSAS, REPEALING CHARTER ORDINANCE NO. 6.**

**WHEREAS**, the City of Leavenworth, Kansas adopted Charter Ordinance No. 6 pursuant to the provisions of Section 5(c) of Article 12 of the Constitution of the State of Kansas related to the holding of government office by City Commissioners in Leavenworth Kansas, and exempting the City from the provision of K.S.A. 13-1802; and

**WHEREAS**, Section 5(c) (4) of Article 12 of the Constitution of the State of Kansas provides that a Charter Ordinance may be repealed by charter ordinance.

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

SECTION 1. That pursuant to the provisions of Section 5(c) of Article Twelve (12) of the Constitution of the State of Kansas, the City of Leavenworth, Kansas, does hereby repeal Charter Ordinance No. 6.

SECTION 2. This Charter Ordinance shall be published once a week for two (2) consecutive weeks in the official city newspaper.

SECTION 3. This Charter Ordinance shall take effect sixty-one (61) days after its final publication, unless a sufficient petition for a referendum is filed and a referendum held on this Charter Ordinance as provided in Article 12, Section 5, Subsection (c) (3) of the Constitution of the State of Kansas, in which case this Charter Ordinance shall become effective if approved by a majority of the electors voting thereon.

Passed and approved by the Governing Body, not less than two-thirds of the members elect voting in favor thereof, the 27<sup>th</sup> day of February 2018.

\_\_\_\_\_  
Mark Preisinger, Mayor

{SEAL}

ATTEST:

\_\_\_\_\_  
City Clerk Carla K. Williamson, CMC

Published: The Leavenworth Times

First Publication Date: March 2, 2018

Second Publication Date: March 9, 2018

NO. 6. - COMMISSIONERS HOLDING OTHER GOVERNMENT OFFICES<sup>[8]</sup>

Charter Ordinance No. 6

A charter ordinance relating to the holding of government offices by city commissioners in Leavenworth, Kansas, and exempting the city from the provisions of K.S.A. 13-1802 and providing substitute and additional provisions on the same subject.

Be it ordained by the governing body of the City of Leavenworth, Kansas:

Section 1. That pursuant to the provisions of Section 5(c) of Article 12 of the Constitution of the State of Kansas, the City of Leavenworth, Kansas, hereby elects that K.S.A. 13-1802 shall not apply to said city and provides the following substitute and additional provisions on the same subject; "no member of the city commission shall hold governmental office of profit under the laws of any state or United States while he is a member of the commission or until after the expiration of at least one year after he has ceased to be a member of said commission."

Section 2. That this ordinance shall be published once each week for two consecutive weeks in the official city newspaper.

Section 3. This is a charter ordinance and shall take effect 61 days after final publication, unless a sufficient petition for a referendum is filed and a referendum held on the ordinance as provided in Article 12, Section 5, Subdivision (c)(3), of the Constitution of Kansas, in which case the ordinance shall become effective if approved by the majority of the electors voting thereon.

Passed by the governing body of not less than two-thirds of the members-elect voting in favor thereof, this 21st day of October, 1969.

/s/

Ray H. Miller, Mayor

ATTEST:

/s/

Marguerite B. Strange, City Clerk

Passed and Approved: October 21, 1969