



REQUEST FOR COMMISSION ACTION
CITY OF INDEPENDENCE
September 24, 2020

Department Safety & Code Enforcement

Director Approval David Cowan

AGENDA ITEM Consider a temporary use agreement for 113 E. Myrtle Street.

SUMMARY RECOMMENDATION City staff recommends approving a temporary use agreement for the VFW.

BACKGROUND The City of Independence is doing ADA improvements at the VFW. Originally the VFW planned to install a metal ramp on the new sidewalk that is being installed by the City. The plans for the ramp have now changed and several businesses are donating material and labor to pay for Graham Construction to construct the ramp while installing the new sidewalk and ADA ramp.

BUDGET IMPACT There is no budget impact for approving this temporary use agreement.

SUGGESTED MOTION I move to approve the temporary use agreement for the sidewalk at 113 E. Main.

SUPPORTING DOCUMENTS Temporary Use Agreement

AGREEMENT FOR TEMPORARY USE OF RIGHT-OF-WAY

This Agreement is entered into between the **City of Independence, Kansas**, hereafter City, and **Dewlin-Dix Post No. 1186 Veterans of Foreign Wars**, hereafter Owner.

Whereas, Owner owns the following described real estate:

The West 4.2 feet of Lot 2 and all of Lot 3, Block 43, Original City of Independence, Montgomery County, Kansas (commonly known as 113 East Myrtle Street, Independence, Kansas)

And Whereas, City owns or controls the right-of-way for sidewalks and streets on the North side of Owner=s real estate.

And Whereas, Owner is in the process of adding a concrete handicap accessible ramp and railing to a North entryway on its real estate and desires to enter into an agreement with City for the temporary use of City=s right-of-way.

Now Therefore, in consideration of the mutual covenants and agreements hereinafter contained, the parties agree to the following:

1. **Owner=s Use of Right-of-Way:** Owner shall have permission to use City=s right-of-way on a temporary basis in the following manner:

a. Owner may construct a concrete rampway with railing immediately adjacent to an entryway in the general vicinity of the Northwest corner of its building located on its real estate.

2. **Conditions:** Owner shall comply with the following conditions:

a. Owner must obtain approval from the City as to its site plan and building specifications.

b. All improvements requested in the preceding paragraph shall be at the sole expense of Owner.

c. Owner shall comply with all applicable City ordinances.

3. **Term:** This agreement shall be for a term of one year and shall thereafter automatically renew on an annual basis until notice of termination is given as hereinafter provided.

4. **Termination:** Either party may terminate this agreement for any reason upon thirty (30) days= written notice to the other. In the event Owner violates the terms and conditions of this agreement, the City may terminate this agreement upon ten (10) days= written notice to Owner.

5. **Duty Upon Termination:** Upon termination of this agreement for any reason, City, at its sole option, may notify and require Owner to restore the right-of-way to its original condition. Upon receiving such notice, Owner shall have thirty (30) days within which to restore the right-of-way to its original condition. Any improvements remaining after expiration of such period shall become the property of City without compensation to Owner or, at City=s sole option, the City may restore the right-of-way to its original condition and Owner shall reimburse the City for the cost of restoration.

6. **Maintenance:** Owner shall maintain the right-of-way in good condition, free of accumulation of trash and debris including snow removal. In the event it is necessary for the City to repair or maintain the right-of-way, the City shall have the authority to make such repairs or maintenance as may be required. The City=s maintenance shall be deemed to include repairs or improvements to utilities performed either by the City or an independent utility company. In the event of such repairs or improvements, regardless of the entity making the repairs or improvements, neither the City nor the party making the repairs or improvements shall have any obligation to Owner to restore the right-of-way to its prior condition or to compensate Owner for damage to improvements made by Owner on the right-of-way.

7. **Indemnification:** Owner shall indemnify and hold harmless the City from any and all claims arising in any way from the use of the above described right-of-way by Owner, its agents and employees, or its customers and invitees.

8. **Insurance:** Owner shall secure and maintain continuously in force a policy of comprehensive general liability insurance with policy limits of at least \$500,000 per occurrence and shall name the City as an additional insured.

9. **Binding Effect:** This agreement shall constitute a covenant running with the land and shall be binding upon the heirs, successors and assigns of the parties hereto.

CITY OF INDEPENDENCE, KANSAS

By: _____
Leonhard Caflish, Mayor

ATTEST:

David W. Schwenker, City Clerk

**DEWLIN-DIX POST NO. 1186
VETERANS OF FOREIGN WARS**

By: _____
Ryan York, Commander

STATE OF KANSAS)
) SS:
MONTGOMERY COUNTY)

BE IT REMEMBERED, That on this _____ day of _____, 2020, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared **Leonhard Caffish**, Mayor, and **David W. Schwenker**, City Clerk, of the **City of Independence, Kansas**, who are personally known to me to be the same persons who executed the above and foregoing instrument of writing on behalf of the City of Independence, and such persons acknowledged the execution of the same to be the act and deed of said **City of Independence, Kansas**.

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

NOTARY PUBLIC

My commission expires:

STATE OF KANSAS)
) SS:
MONTGOMERY COUNTY)

BE IT REMEMBERED, That on this _____ day of _____, 2020, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared **Ryan York**, Commander of **Dewlin-Dix Post No. 1186 Veterans of Foreign Wars**, and who is personally known to me to be the same person who executed the above and foregoing instrument of writing on behalf of said Post, and such person acknowledged the execution of the same to be the act and deed of said Post.

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

NOTARY PUBLIC

My commission expires: