

**CITY COMMISSION MEETING
Winfield, Kansas**

DATE: Monday, May 20, 2019
TIME: 5:30 p.m.
PLACE: City Commission – Community Council Room – First Floor – City Building

AGENDA

CALL TO ORDERMayor Ronald E. Hutto
ROLL CALL.....City Clerk, Brenda Peters
MINUTES OF PRECEDING MEETING.....Monday, May 06, 2019

PROCLAMATION

-Proclaiming June 7, 2019 as National Gun Violence Awareness Day

BUSINESS FROM THE FLOOR

-Citizens to be heard

NEW BUSINESS

Ordinances & Resolutions

Bill No. 1932 – An Ordinance – Granting to SQF, LLC, (SQF), its successors and assigns, a Telecommunications Franchise and prescribing the terms of said grant and relating thereto.

Bill No. 1933 – A Resolution – Authorizing and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute a contract for Project No. _____ for the construction of a sanitary sewer lift station between the City of Winfield, Kansas and Wildcat Construction Company Inc.

Bill No. 1934 – A Resolution – Country Club Villas Special Assessments

OTHER BUSINESS

ADJOURNMENT

-Next Commission work session 4:00 p.m. Thursday, May 30, 2019.
-Next regular meeting 5:30 p.m. Monday, June 03, 2019.

CITY COMMISSION MEETING MINUTES
Winfield, Kansas
May 6, 2019

The Board of City Commissioners met in regular session, Monday, May 06, 2019 at 5:30 p.m. in the City Commission-Community Council Meeting Room, City Hall; Mayor Ronald E. Hutto presiding. Commissioners Phillip R. Jarvis and Gregory N. Thompson were also present. Also in attendance were Brenda Peters, Interim City Manager; Carina Anderson, Deputy City Clerk and William E. Muret, City Attorney. Other staff members present were Gary Mangus, Assistant to the City Manager; and Patrick Steward, Director of Public Improvements.

Deputy City Clerk Anderson called roll. All Commissioners present.

Commissioner Thompson moved that the minutes of the April 15, 2019 meeting be approved. Commissioner Jarvis seconded the motion. With all Commissioners voting aye, motion carried.

BUSINESS FROM THE FLOOR

-Michael Rozel, 3616 Meadowlark Lane, appeared to request information about insurance loss history and insurance loss runs for the last 10 years, in accordance with the Kansas Open Records Act.

-Robert (Bob) Tyler, 2201 Cabrillo Dr, appeared to question the size of the Public Safety Facility.

-Chris Tyler, 120 E 9th Ave, appeared to express his concern about the plans for the Public Safety Facility, and concern about difficulties with working with the City on updating a building in the City.

NEW BUSINESS

Bill No. 1930 – A Resolution – Authorizing the Mayor and City Clerk of the City of Winfield, Kansas, to execute a Quit Claim Deed between the City of Winfield, Kansas, and Judith K. Briles regarding the transfer of real property in Andrews Addition, Winfield, Kansas. Director of Public Improvements Steward explains that this resolution allows the City to accept the donation of a parcel of land that is surrounded by City owned property. Upon motion by Commissioner Jarvis, seconded by Commissioner Thompson all Commissioners voting aye, Bill No. 1930 was adopted and numbered Resolution No. 2719.

Bill No. 1931 – A Resolution – Authorizing an Outdoor Community Event and Temporary Entertainment District Application (Island Park Productions) Assistant to the City Manager Mangus explains this Resolution would approve an application for outdoor events on May 30; June 13 and 20; and July 18 and 25, 2019 in conjunction with their Concert Series. June 20 and July 25, 2019 are scheduled Rain Dates ONLY for the June 13 and July 18 concerts. Upon motion by Commissioner Thompson, seconded by Commissioner Jarvis all Commissioners voting aye, Bill No. 1931 was adopted and numbered Resolution No. 2819.

OTHER BUSINESS

-Consider CMB Application for Playa Linda, 711 Main St (Noel Lopez)

City Clerk Peters presented a CMB license application for Playa Linda, 711 Main St, for Commission consideration. The inspection of the premises by the Fire Department is still pending. Commissioner Jarvis made a motion to approve the CMB license for Noel Lopez, Playa Linda, subject to inspection by the Fire Marshal. Mayor Thompson seconded the motion. With both Commissioners voting aye, motion carried.

ADJOURNMENT

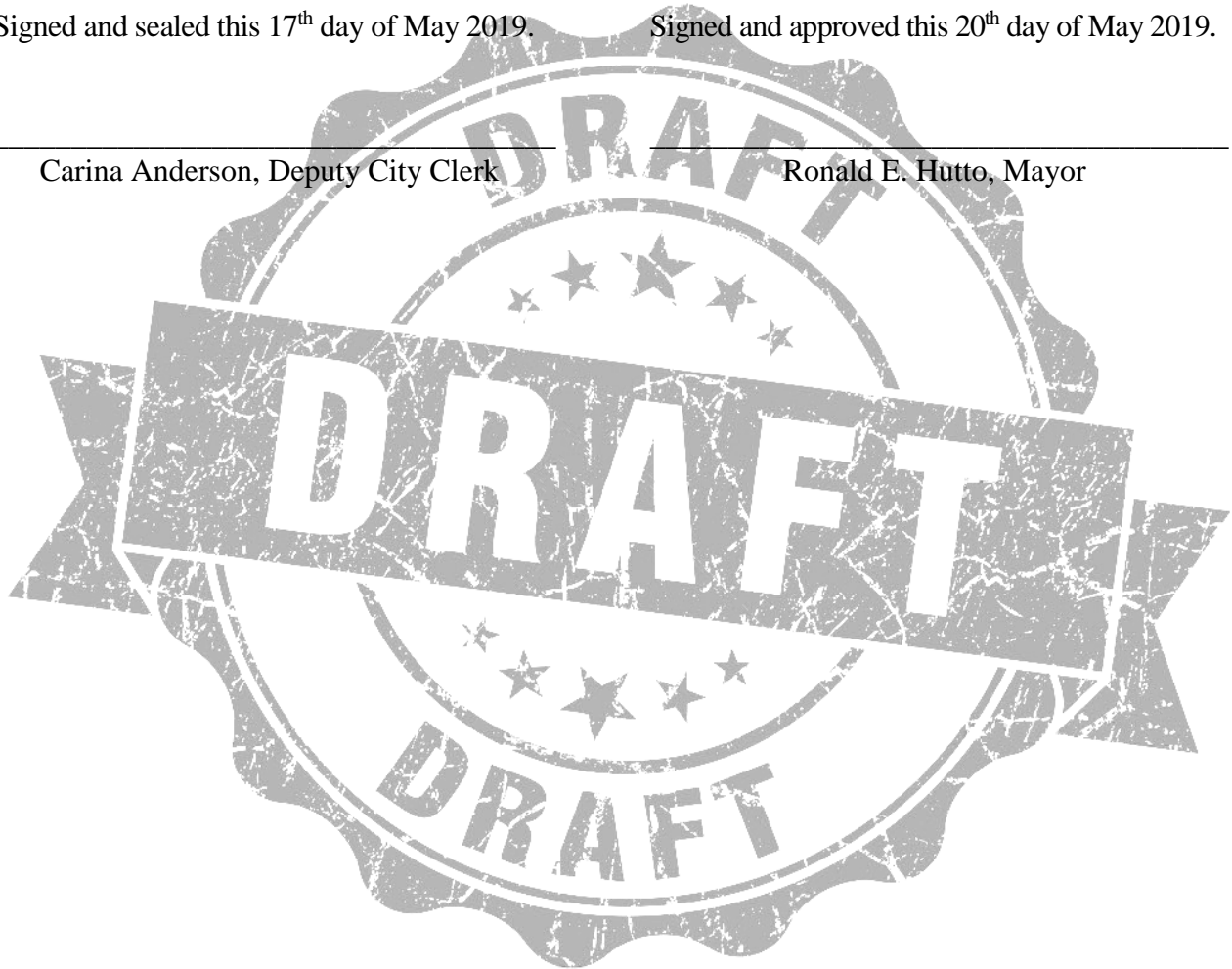
Upon motion by Commissioner Thompson, seconded by Commissioner Jarvis, all Commissioners voting aye, the meeting adjourned at 6:05 p.m.

Signed and sealed this 17th day of May 2019.

Signed and approved this 20th day of May 2019.

Carina Anderson, Deputy City Clerk

Ronald E. Hutto, Mayor



PROCLAMATION

WHEREAS, every day, 100 Americans are killed by gun violence and on average there are nearly 13,000 gun related homicides every year; and

WHEREAS, Americans are 25 times more likely to be killed with guns than people in other high-income countries; and

WHEREAS, support for the Second Amendment rights of law-abiding citizens goes hand-in-hand with keeping guns away from people with dangerous histories; and

WHEREAS, in January 2013, Hadiya Pendleton, a teenager who marched in President Obama's second inaugural parade and was tragically shot and killed just weeks later, should be now celebrating her 22nd birthday; and

WHEREAS, to help honor Hadiya – and the 100 Americans whose lives are cut short and the countless survivors who are injured by shootings every day – a national coalition of organizations has designated June 7, 2019, the first Friday in June, as the 5th National Gun Violence Awareness Day; and

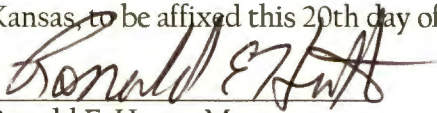
WHEREAS, the idea was inspired by a group of Hadiya's friends, who asked their classmates to commemorate her life by wearing orange; they chose this color because hunters wear orange to announce themselves to other hunters when out in the woods and orange is a color that symbolizes the value of human life; and

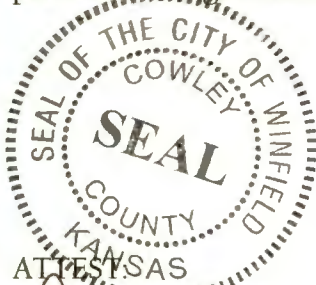
WHEREAS, anyone can join this campaign by pledging to Wear Orange on June 7th, the first Friday in June in 2019, to help raise awareness about gun violence; and

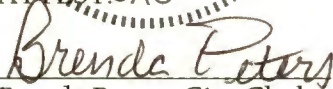
WHEREAS, by wearing orange on June 7, 2019 Americans will raise awareness about gun violence and honor the lives of gun violence victims and survivors; and

NOW, THEREFORE BE IT RESOLVED, that Mayor Ronald E. Hutto of the city of Winfield declares the first Friday in June, June 7, 2019, to be National Gun Violence Awareness Day. I encourage all citizens to support their local communities' efforts to prevent the tragic effects of gun violence and to honor and value human lives.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Winfield, Kansas, to be affixed this 20th day of May 2019.


Ronald E. Hutto, Mayor




Brenda Peters, City Clerk



Request for Commission Action

Date: May 1, 2019

Requestor: Patrick Steward, Dir. Of Public Improvements / City Engineer

Action Requested: Consider entering into a franchise agreement with SQF, Inc. for the installation of two small cell sites within the public right-of-way.

Analysis:

The City received a request for a franchise agreement for SQF to construct two "small cell" sites for wireless infrastructure for US Cellular. The sites proposed are on 8th between Main and Millington, and on College adjacent to SWC. Bill Muret is currently reviewing the proposed agreement and we'll update you at the work session on any changes he recommends.

Fiscal Impact: There is an application fee included within the agreement that the applicant would pay. In addition, the either a percentage of gross sales or a flat right-of-way use fee would be charged each year. We are working to determine an appropriate fee.

Attachments: Proposed Resolution

(First published in the Winfield Daily Courier on Friday, May 10, 2019)

BILL NO. 1932

ORDINANCE NO. 4106

AN ORDINANCE

GRANTING to SQF, LLC, (SQF), its successors and assigns, a Telecommunications Franchise and prescribing the terms of said grant and relating thereto.

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

This Franchise Agreement (“Agreement”) is entered into as of (“Effective Date”) by and between the City of Winfield, a municipal corporation (the “City”), and SQF.

RECITALS

A. SQF is authorized by the Kansas Corporation Commission (hereinafter “KCC”) to provide telecommunications service in the state of Kansas. Such telecommunications service facilities are in public rights-of-way (hereinafter “ROW”), among other locations, in the State of Kansas.

B. SQF seeks to enter the City of Winfield’s (the “City”) ROW, and other real property of the City, to install, maintain and operate telecommunications service Facilities (the “Network”), so that SQF and/or its customers (the “Customers”) may provide data and telecommunications services to the enterprises, residents and visitors of the City and others (the “Services”).

C. Some features of the Network include, without limitation, antenna nodes, poles, equipment cabinets, underground and above ground fiber optic cable, fiber hand holes and enclosures, fiber repeaters and related equipment, and will include other equipment as technology evolves, in a configuration and at locations to be filed and identified through the City permit process (“Facility” or “Facilities”).

D. Certain systems of SQF’s customers which are specific parts or types of the Facilities, a Small Cell Facility as defined in K.S.A. 66-2019, may be located on streetlights, stand-alone poles, and other structures located on or within the Public ROW or City owned property as permitted under this Agreement and will be connected to underground and above ground fiber optic cable, fiber hand holes and enclosures, fiber repeaters, and related equipment.

E. SQF desires to obtain from City as permitted by law, and City is willing to grant SQF as required by law, the right to access the Public ROW to locate, place, attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain the Facilities in a manner consistent with this Agreement.

In consideration of the Recitals set forth above, the terms and conditions of this Agreement and other valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

SECTION 1

INSTALLATION OF THE NETWORK

1.1 Permitted Installation. SQF may at SQF's sole cost and expense and during the term of this Agreement, locate, construct, place, attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain the Facilities subject to the terms and conditions of this Agreement. SQF shall undertake and perform any work authorized by this Agreement in a skillful and workmanlike manner.

1.1.1 Installation Specifications. The installation of the Facilities shall be made in accordance with plans and specifications as may be approved by the City and after obtaining all necessary permits for all work in the ROW and/or on City property. Such approval review shall be made no later than forty-five (45) days from application date, and under exceptional circumstances the time may be extended an additional forty-five (45) days upon agreement of the Parties. The Parties understand and agree that Facilities outside of the Public ROW may require additional easements for underground fiber to connect to Network within Public ROW. Such additional easements shall be located so as not to interfere with the City's use of its property. For each installation of Facilities, SQF shall provide to the City plans, specifications, a construction work breakdown, and anticipated construction timeframes for the installation of Facilities no later than ninety (90) days prior to the planned start of the installation. SQF shall, at the written request of the City, attend a planning session regarding an installation proposed by SQF. The location, depth of the fiber underground, and any other requirements shall be approved in writing by the City prior to construction of the Facilities at that specific location, approval of which shall not be unreasonably withheld, conditioned or delayed. Approval of plans and specifications and the issuance of any permits by the city shall not release SQF from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the plans, specifications and/or permits. SQF shall be responsible for notifying the city and all other relevant parties immediately upon discovery of such omissions and/or errors and with obtaining any amendments for corrected City-approved permits as may be necessary. SQF shall be responsible for all costs associated with the permitting process, including, but not limited to, repairs and replacement of City ROW. Such permits and approval requirements detailed in this section shall not be unreasonably withheld, conditioned or delayed by the City and any conditions or requirements shall be in accordance with federal, state, and local laws.

1.1.2 Temporary Construction. The installation of the Facilities shall be performed in accordance with traffic control plans for temporary construction work that are approved by the City, which approval shall not unreasonably be withheld, conditioned or delayed.

1.1.3 Construction Schedule. If requested by the City, at least ten (10) days prior to the installation of the Facilities, SQF shall deliver to the City a schedule for the proposed work related to the construction of the Facilities, as well as a list of the names of all agents and contractors of SQF's authorized by SQF to access the City ROW and City owned property on SQF's behalf.

1.1.4 Coordination of Work. SQF shall be responsible for coordination of work to avoid any interference with existing utilities, substructures, facilities and/or operations within the City's ROW. SQF shall be the City's point of contact and all communications shall be through SQF. SQF shall be solely responsible for communicating with Kansas One-Call.

1.1.5 Inspection by City. The City shall have commercially reasonable access to inspect any work conducted by SQF during the installation, maintenance and/or repairs of the Facilities.

1.1.6 Other Utility Providers. When necessary, SQF shall coordinate with other utility providers for other needed utility services. SQF and the City will reasonably cooperate with the other utilities providers regarding the location of any meter, pole, and other apparatuses required for each Site.

1.1.7 Existing Utility Poles. SQF may attach its Facilities to an existing utility pole pursuant to a properly executed agreement with the pole owner, provided, however, that any necessary replacement of the pole in order to accommodate the attachment shall be subject to the proper exercise of the City's police powers, and in no instance shall SQF erect a new pole within an existing aerial pole line absent the City's prior authorization.

1.2 Compliance with Laws. This Agreement is subject to the terms and conditions of all applicable federal, state and local Laws and the Parties shall comply with any such Laws in the exercise of their rights and performance of their obligations under this Agreement. "Laws" or "Law" as used in this Agreement means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the City or other governmental entity or agency having joint or several jurisdiction over the Parties' activities under this Agreement or having jurisdiction that is applicable to any aspect of this Agreement that are in force on the Effective Date and as they may be enacted, issued or amended during the term of this Agreement.

1.2.1 Permits. SQF shall obtain any necessary encroachment permits from the City for the installation of the Network and for any other work within the City's ROW or other real property of the City, as required by the Code or State Law at K.S.A. 17-1902(N), as amended.

1.3.3 Compliance with Permits. All work within the City's ROW or other real property of the City shall be performed in strict compliance with all applicable Permits and all applicable regulatory requirements.

1.3.4 Fee Increases. If prior to the second anniversary of the date hereof, the City increases the permitting fees described in the Sections above, and if with respect to all similarly situated franchisee license agreements executed by the City in such 2-year period the franchisee or licensee is subject to a similar fee provision, then SQF will pay to the City the increased fees as if the increased fee schedule had been in effect as of the date hereof upon being billed therefore by the City.

1.4 Placement of SQF Facilities. SQF shall coordinate the placement of its Facilities in the Public ROW in a manner that minimizes adverse impact on public improvements, as reasonably determined by the City Engineer.

1.5 New Streetlight Poles and Existing Streetlight Poles. It is understood that in connection with Small Cell Facilities, SQF may build new stand-alone poles approximating the size of the standard street light or utility poles, including ancillary equipment for connection of antennae located on new stand-alone poles to utilities and fiber optic cable, other such facilities required for the installation of the Facilities which would comply with all encroachment and

building permits, applicable City, state and federal specifications, and Laws (“New Poles”), provided however, that such new pole will not be erected on a City existing sidewalk or cause damage to a City sidewalk. [MH1]

1.5.1 City Use of New Poles. The Parties understand and agree that the City may use any New Poles for City purposes, including but not limited to streetlights and other lighting so long as such use does not interfere with SQF’s use of its Network or Facilities. SQF shall reasonably cooperate with the City when using the New Poles.

1.5.2 City-Owned Lights. Except for the installation of the lights and ancillary equipment on or in the New Poles and/or as set forth in section 1.5.3 below, SQF shall not be responsible for maintenance, repair, or replacement of City-owned lights, light bulbs and equipment or equipment owned by third parties authorized by the City on the New Poles.

1.5.3 Damage to New Poles. If a new Pole falls or is damaged such that there is an imminent threat of harm to persons or property, then the City may cause the New Pole to be removed to the side of the street or a location that City believes reasonably eliminates the right of such imminent threat or harm to persons or property. SQF shall, after written notice from the City that any New Pole has been damaged or removed, cause the New Pole to be repaired or replaced within thirty (30) days after the City’s written notice. In the case of emergency or service effecting upon written notice SQF will repair or replace within two (2) days. The cost to repair and/or replace any New Pole, including the replacement City streetlight, bulb and ancillary equipment shall be paid by SQF; provided, however, that if the new Pole is damaged or destroyed by the City or a third party user that the City has given the right to use the New Pole, then the City and/or its third party user shall pay the cost to repair and/or replace the New Pole. To the extent that SQF seeks reimbursement for a third party either directly or through applicable insurance, the City shall assign SQF any rights the City may have against such third party for such claims.

1.6 Franchise and Permit Fees. SQF is solely responsible for the payment of all lawful franchise and permit fees in connection with SQF’s performance under this Agreement.

[MH2] **1.6.2 Small Cell Facility Permit Fee.** A one-time permit and license fee of \$1,000.00 for each DAS Facility installed within the Public Right of Way of the City shall be paid to the City by SQF. SQF shall pay the Small Cell Facility Permit Fee the 15th day following the month after each DAS Facility is installed within the public ROW.

[MH3] **1.7 Access to the Facilities.**

1.7.1 SQF Access to Facilities for Repair. SQF will be given reasonable access to each of the Facilities in the City ROW or City owned property for the purposes of routine installation, repair, maintenance or removal of Facilities. If any such maintenance activities have the potential to result in an interruption of any City services at the Facility, SQF shall provide the City with a minimum of three (3) days prior written notice of such maintenance activities. Such maintenance activities shall, to the extent feasible, be done with minimal impairment, interruption, or interference to City services.

1.7.2 **City Observation.** SQF shall allow a representative of the City to observe any repair, maintenance or removal work performed at the Facilities.

SECTION 2 TERM AND TERMINATION

2.1 **Term.** This Franchise Agreement shall be effective for an initial term of ten (10) years from the effective date of this ordinance. Thereafter, this franchise will automatically renew for additional one (1) year terms, unless either party notifies the other party of its intent to terminate the franchise at least ninety (90) days prior to the termination of the then current term; provided, however, if SQF does not request termination and is operating hereunder and is not in default of its obligations hereunder, then this franchise shall not be terminated and shall continue from year-to-year as provided herein. The additional term(s) shall be deemed a continuation of this franchise ordinance and not as a new franchise ordinance or amendment.

2.1.1 **90 Day Remedy Period.** If the Agreement is breached by SQF, then-the provisions of Section 8 (Default) shall govern the parties hereto.

2.2 **Termination of Use.** Notwithstanding Section 2.1 above, SQF may terminate its use of any or all of the Network by providing the City with ninety (90) days prior written notice. In the event of any such termination, SQF payment obligations to the City shall terminate simultaneously with the termination of use; provided SQF removes its equipment and restores the Facilities, as set forth in Section 3, below, prior to the termination date.

SECTION 3 REMOVAL AND RELOCATION

3.1 **Removal due to Public Project.** Upon receipt of a written demand from the City pursuant to this Section 3, SQF, at its sole cost and expense, shall remove and relocate any part of the Network, constructed, installed, used and/or maintained by SQF under this Agreement, whenever the City reasonably determines that the removal and/or relocation of any part of the Network is needed for any of the following purposes: (a) due to any work proposed to be done by or on behalf of the City or any other governmental agency, including, but not limited to, any change of grade, alignment or width of any street, sidewalk or other public facility, installation of curbs, gutters or landscaping and installation, construction, maintenance or operation of any underground or aboveground facilities used as sewers, water mains, drains, storm drains, pipes, gas mains, poles, power lines, telephone lines, cable television lines and tracks; (b) because any part of the Network is interfering with or adversely affecting the proper operation of City-owned light poles, traffic signals, or other City facilities or operations; or (c) to protect or preserve the public health and safety. The City shall cooperate with SQF in relocating any portion of the Network removed pursuant to this Section 3.1 in a manner that allows SQF to continue providing service to its customers, including, but not limited to, expediting approval of any necessary permits required for the relocation of that portion of the Network relocated under this Section 3.1. No permitting or other fees may be charged by the City for a removal occurring under this Section.

3.2 **Removal Due to Termination.** No later than 160 days after termination of this Agreement pursuant to the provisions of this Agreement, SQF shall, at its sole cost and expense, remove the Network or the terminated portion thereof and, if such removal disturbs the locations

or adjacent property SQF will restore to its original conditions, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by SQF to the Facility or adjacent property, or as otherwise required by the City. For New Poles, SQF shall install a new streetlight or facility as directed by City's Public Works Director, or his or her designee. Alternatively, SQF shall abandon the Network, or any part thereof, in place and convey it to the City if either the City or SQF elects to do so.

3.3 **Abandonment.** In the event SQF ceases to operate and abandons the Network, or any part thereof, for a period of ninety (90) days or more, SQF shall, at its sole cost and expense and within the time period specified in Section 3.2, vacate and remove the Network or the abandoned part thereof. If such removal disturbs the Facility or adjacent property, SQF shall also, at its sole cost and expense, restore the Facility or adjacent property to its original conditions, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by SQF to the Facility or adjacent property. Alternatively, the City may allow SQF, in the City's sole and absolute discretion, to abandon the Network, or any part thereof, in place and convey it to the City.

3.4 **No Relocation Compensation.** The parties understand and agree that neither the City nor SQF are entitled to compensation for any relocation of its Network that may be required under Section 3.1. SQF is not entitled to relocation assistance or any other compensation or benefits under the Uniform Relocation Assistance Act or any other applicable provision of law upon termination of this Agreement.

SECTION 4 MAINTENANCE AND REPAIR

4.1 **Electricity Use.** SQF shall pay for the electricity and other utilities services it consumes in its operations at the rate charged by the servicing utility company.

4.2 **Maintenance and Repair.** SQF shall, at SQF's sole cost and expense, perform all maintenance and repairs reasonable needed to maintain the Network in good condition and neat and orderly appearance, and in compliance with all applicable Laws. In the event any part of the Network requires replacement because such part cannot be repaired, SQF shall, at SQF's sole cost and expense, replace the irreparable part of the Network. SQF shall not cause rubbish, garbage or debris on or around its Network or the Facilities and shall not permit rubbish, garbage or debris to accumulate on or around in any enclosed areas around the Facilities. If the City gives SQF written notice of a failure by SQF to maintain the Facilities, SQF shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice.

4.3 **Appearance.** SQF shall cooperate with the City on all issues of aesthetics and appearance. SQF shall follow all legally binding City policies, state and local ordinances with respect to aesthetics. This includes, but is not limited to, historic site and/or locations of significant importance. All locations of Small Cell Facilities must be aesthetically approved by the City Engineering Department, in a manner consistent with other approvals within these Restrictions.

4.4 **Repair of ROW.** SQF shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities and utilities, curbs, gutters, sidewalks, landscaping, and all other public or private facilities, to the extent caused by SQF's construction, installation,

maintenance, access, use, repair, replacement, relocation, or removal of the Network in the City's ROW. SQF shall promptly repair such damage and return the City's ROW and any affected adjacent property to a safe and satisfactory condition to the City in accordance with the City's applicable street restoration standards or to the property owner if not the City. SQF's obligations under this Section 4.4 shall survive for one (1) year past the completion of such reparation and restoration work and return of the affected part of the City's ROW by Zayo to the City.

4.5 **Bond.** SQF shall provide a bond in the amount of [MH4] during the construction of the Network to represent the estimated cost of SQF's construction obligations under Sections 3 and 4 of this Agreement, which the City may require SQF to increase from time to time to reflect the reasonable estimated cost of performing such obligations, to secure performance of SQF's obligations under Sections 3 and 4.

SECTION 5 TAXES

5.1 **Taxes.** SQF agrees that it will be solely responsible for the payment of any and all taxes, fees and assessments levied on its ownership, use and maintenance of the Network and this Agreement. Pursuant to Section 79-5a01 *et seq.* of the Kansas Revenue and Taxation Code, the City hereby advises, and SQF recognizes and understands, that SQF's use of the City's ROW, the New Poles, and/or other non-ROW city property and facilities may create a possessory interest subject to real property taxation and that SQF may be subject to, and responsible for, the payment of real property taxes levied on such interest. SQF will cooperate with the Cowley County Appraiser in providing any information necessary for the Appraiser to make a property tax determination. SQF reserves the right to challenge any such assessment, and the City agrees to cooperate with SQF in connection with any such challenge.

SECTION 6 INDEMNIFICATION

6.1 **Indemnity.** SQF shall indemnify, defend, and hold harmless the City, its City commissioners, officers and employees, agents, and contractors, from and against liability, claims, demands, losses, damages, fines, charges, penalties administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense to the extent resulting from activities undertaken by SQF pursuant to this Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the City, its commissioners, officers, employees, agents or contractors or any third party. The City shall promptly notify SQF of any claim, action or proceeding covered by this Section 6.1.

6.2 **Waiver of Claims.** SQF waives all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any portion of the Network, or any loss or degradation of the services provided by the Network resulting from any event or occurrence except for any loss, damage, or injury to any portion of the Network, or any loss or degradation of the services provided by the Network resulting from the negligence or willful misconduct of the City.

6.3 **Limitation of City's Liability.** The City will be liable, if at all, only for the cost of repair to damaged portions of the Facilities arising from the negligence or willful misconduct

of the City, its employees, agents, or contractors. The City, its agents, officers, employees, or contractors, shall not be liable for any damage from any cause whatsoever to the Facilities, specifically including, without limitation, damage, if any, resulting from the City's maintenance operations adjacent to the Facilities or from vandalism or unauthorized use of the Facilities, except to the extent such damage is caused by the negligence or willful misconduct of City, its agents, officers, employees or contractors. The City will in no event be liable for indirect or consequential damages.

6.4 **Limitation of SQF's Liability.** In no event shall SQF be liable for indirect or consequential damages in connection with or arising from this Agreement, or its use of the Network, New Poles, and ROW or other City real property.

SECTION 7 INSURANCE

7.1 **Minimum Insurance Requirements.** SQF shall obtain and maintain at its sole cost and expense for the duration of this Agreement insurance pursuant to the terms and conditions described in this Section.

(a) **Minimum Insurance.** SQF shall at all times during the term of this Agreement, carry, maintain, and keep in full force and effect, insurance as follows:

(i) **General Liability:** A policy or policies of Comprehensive General Liability Insurance, with minimum limits of \$2,000,000 combined single-limit per-occurrence for bodily injury, personal injury, death, loss and property damage resulting from wrongful or negligent acts by SQF. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(ii) **Automobile Liability:** A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 combine single-limit per accident for bodily injury and property damage covering any vehicle utilized by SQF in performing the work covered by this Agreement.

(iii) **Workers' compensation and Employer's Liability:** Workers' compensation limits as required by the Labor Code, and Employer's Liability limits of \$1,000,000 per accident.

(b) **Deductible and Self-Insured Retentions.** Any deductibles or self-insured retentions shall not exceed \$25,000; provided, however, if SQF's insurance policy expressly provides (i) that the insurer is required to pay covered claims with no deduction for all or any part of the SQF's deductible, and (ii) insurer's obligation to pay covered claims is triggered irrespective of whether or not the insured pays the deductible, the SQF's deductible shall not exceed \$100,000 for Comprehensive General Liability Insurance, \$100,000 Comprehensive Vehicle Liability Insurance and \$250,000 for Workers' Compensation and Employer's Liability coverage.

(c) **Other Insurance Provisions.** The policies shall contain, or be endorsed to contain, the following provisions:

(i) General Liability and Automobile Liability Coverage.

(1) The City, and its elected and appointed council members, board members, commissioners, officers and officials (the “Insureds”) shall be named as additional insureds on all required insurance policies, except for Workers’ Compensation and Employer’s Liability policies.

(2) SQF’s insurance coverage shall be primary insurance as respects the Insureds with respect to the matters covered by this Agreement. Any insurance or self-insurance maintained by the Insureds shall be in excess of SQF’s insurance and shall not contribute with it.

(3) Any failure of SQF to comply with reporting provisions of the policies shall not affect coverage provided to the Insureds.

(4) SQF’s insurance shall apply separately to each of the Insureds against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability. Each of the Insureds is subject to all policy terms and conditions and has an obligation, as an Insured, to report claims made against them to the insurance carrier.

(ii) Workers’ Compensation and Employer’s Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Insureds for losses arising from work performed by SQF in the City’s ROW.

(iii) All Coverages. Except for non-payment of premium, each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled or reduced in coverage or limits by the insurer except after thirty (30) days’ prior written notice has been given to the City. If for any reason insurance coverage is canceled or reduced in coverage or in limits, Zayo shall within two (2) business days of notice from the Insurer, notify the City by phone or fax of the changes to or cancellation of the policy and shall confirm such notice via certified mail, return receipt requested.

(d) **Acceptance of Insurers.** Insurance shall be placed with insurers with an A.M. Best rating of no less than A-: VII.

(e) **Verification of Coverage.** SQF shall furnish the City with certificates of insurance required by this Section 7. The certificates for each insurance policy are to be signed by a person, either manually or electronically, authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences.

(f) **Secondary Parties.** In the event SQF hires any subcontractors, independent contractors or agents (“Secondary Parties”) to locate, place, attach, install, operate, use, control, replace, repair or maintain the Network, SQF shall require the Secondary Parties to obtain and maintain insurance commensurate to the work such Secondary Parties perform.

SECTION 8

DEFAULT

8.1 Default.

8.1.1 **Defined.** A “Default” shall be deemed to have occurred under this Agreement if a party fails to cure such within ninety (90) days after written notice specifying such breach, provided that if the breach is of a nature that it cannot be cured within ninety (90) days, a default

shall not have occurred so long as the breaching party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

8.1.2 Remedies. Upon the failure of a party to timely cure any breach after notice thereof from the other party and expiration of the above cure periods, then the non-defaulting party may, subject to the terms of Section 6.3 (Limitation of Liability), terminate this Agreement and pursue all remedies provided for in this Agreement and/or any remedies it may have under applicable law or principles of equity relating to such breach.

8.2 City Termination Right. In addition to the remedies set forth in Section 8.1.2, the City shall have the right to terminate this Agreement if (i) the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the public right of way: or (ii) if SQF's licenses are terminated, revoked, expired, or otherwise abandoned. Such termination rights shall be subject to SQF's rights to just compensation, if any, for any taking of a protected property right.

8.3 No waiver. A waiver by either party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any breach of covenant or other matters subsequently occurring.

8.4 Interest. If SQF fails to make any payment under this Agreement when due, such amounts shall accrue interest from the date such payment is due until paid, including accrued interest, at an annual rate of ten percent (10%) or, if lower, the highest percentage allowed by law.

SECTION 9 INTERFERENCE

9.1 Non-Interference with Non-Public Safety Communications Systems. SQF shall operate the Network in a manner that will not cause interference with City non-public safety communications systems and to the services and facilities of other licensees or lessees of City property located at or near the Facilities that were in operation prior to the installation of the Network or that are in operation prior to any modifications SQF may make to the Network.

9.2 Non-Interference with Public Safety Communications Systems. SQF's Network and Facilities shall not cause interference with public safety communications systems operated by City or any other public agency, regardless of the date such systems or any Facilities cause interference with the City's use of the New Poles for their intended purpose as streetlights, traffic lights, and/or stand-alone light poles.

9.3 Correction of Interference. If such interference with the Facilities described in Sections 9.1 and 9.2 occur, SQF shall, upon receipt of written notice thereof from City, immediately commences commercially reasonable, diligent, efforts to correct or eliminate such interference. If such interference cannot be corrected by SQF to the reasonable satisfaction of City within the cure period set forth for in the City's notice, which notice shall not be less than ninety (90) days, such interference shall be deemed a material breach under this Agreement and City may terminate this Agreement. Interference caused by actions of SQF's Customer(s) remains the responsibility of SQF. If the interference is an emergency or a danger to public health and safety,

the City shall be entitled to require correction in a time period necessary to avoid the emergency or public health and safety issue.

SECTION 10 MISCELLANEOUS PROVISIONS

10.1 **Nonexclusive Use.** SQF acknowledges that this Agreement does not provide SQF with exclusive use of the City's ROW or any municipal facility and that City retains the right to permit other providers of communications services to install equipment or devices in the City's ROW and on municipal facilities. The parties hereto specifically agree that all such franchises issued to telecommunications providers shall be competitively neutral and not unreasonable or discriminatory in nature.

10.2 **Notices.** All notices which shall or may be given pursuant to this Agreement shall be in writing and served by (1) electronic mail; and (2) personally served or transmitted through first class United States mail, or by express mail providing for overnight delivery, postage prepaid, to the following address or such other address of which a party may give written notice:

City: City of Winfield
200 East 9th Street
Winfield, KS 67156
Attention: City Manager

SQF, LLC: SQF, LLC
16 Middle Street, 4th Floor
Portland, ME 04101
Attn: General Counsel

Such notice shall be deemed made when personally delivered; of mailed via first class U.S. Mail, such notice shall be deemed made three (3) calendar days after the date of deposit in the U.S. Mail, if mailed via express/overnight mail, such notice shall be deemed made two (2) calendar days after the date of deposit in a designated overnight delivery mailbox or other like facility. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

10.3 **Sublease/Assignment.** If SQF assigns, sublets, enters into a franchise license or concession agreement, changes ownership of the Network or voting control of SQF, mortgage, encumber, pledge, hypothecate or other transfer (including any transfer by operation of law this Agreement or any interest therein) SQF will provide notice of a transfer within a reasonable time.

10.4 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successor, assigns and transferees.

10.5 **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations, and understandings of the parties, oral or written, relating to the subject matter hereof are merged into and superseded by this Agreement. Any

modification of amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any provisions, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit either party to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the party making the waiver.

10.6 Severability. If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision or provisions shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

10.7 Governing Law. This Agreement shall be interpreted and enforced according to, and the parties' rights and obligations governed by, the domestic law of the State of Kansas or applicable federal law, without regard to laws regarding choice of applicable law. Any proceeding or action to enforce this Agreement, or otherwise directly related to this Agreement shall occur in the state courts located in Cowley County, Kansas.

10.8 Survival of Terms. All of the terms and conditions in this Agreement related to payment, removal due to termination or abandonment, indemnification, limits of City's liability, attorneys' fees and waiver shall survive termination of this agreement.

10.9 Captions and Paragraph Headings. Captions and paragraph headings used herein are for convenience only. They are not a part of this Agreement and shall not be used in construing this Agreement.

10.10 Drafting. The parties agree that this Agreement is the project of joint draftsmanship and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wording or language of any kind shall not be construed against the drafting party.

10.11 Execution in Counterparts. This Agreement may be executed in one or more identical counterparts and all such counterparts together shall constitute a single instrument for the purpose of the effectiveness of this Agreement.

10.12 Authority to Execute This Agreement. Each person or persons executing this Agreement on behalf of a party, warrants and represents that he or she has the full right, power, legal capacity and authority to execute this Agreement on behalf of such party and has the authority to bind such party to the performance of its obligations under this Agreement without the approval or consent of any other person or entity.

10.13 No Warranty by the City. The City makes no representations or warranties regarding the suitability, condition or fitness of the locations for the installation, maintenance or use of the New Poles or the Facilities.

10.14 **Agreement Applicable Only to the Facilities.** This Agreement shall not be construed to permit construction, installation, maintenance or use of Facilities on any property other than the Facilities.

10.15 **No Abrogation of Legal Responsibilities.** The City's execution of this Agreement shall not abrogate, in any way, SQF's responsibility to comply with all permitting requirements or to comply with all Laws with respect to its performance of the activities permitted under this Agreement.

10.16 **Contractual Interpretation.** In the interpretation and application of its rights under this Franchise Agreement, the City will act in a reasonable, non-discriminatory, and competitively neutral manner in compliance with all applicable federal, state, and local laws and regulations.

10.17 **Effective Date of Ordinance.** This Ordinance shall be effective upon its final passage and publication as required by law.

Adopted this 6th day of May, 2019.

ATTEST:

(SEAL)

City of Winfield, Kansas

By: _____
Ronald E. Hutto, Mayor

By: _____
Brenda Peters, City Clerk

SQF, LLC

By: _____
Joshua Broder, President

Approved as to form: _____
William E. Muret, City Attorney

Approved for Commission action: _____
Taggart Wall, City Manager



Request for Commission Action

Date: May 14, 2019

Requestor: Gus Collins, Director of Utilities

Action Requested: Review the bids received on March 26th, for the construction of 4th Ave Lift Station. The action that staff is recommending to City Commission is to award the bid submitted by the initial, low bidder (Wildcat Construction), contingent upon the approval of the change order . The change order is a deduct for the relocation of the trailers.

Analysis: On March 26th, bids were opened for the construction of the 4th Ave. Lift Station. The bids received are as followed:

Engineering Est.	\$291,140.00
Wildcat Construction	\$457,120.00
Tri-Star	\$492,800.00

At a March 28th work session, staff did share with the City Commission the two bids received, exceeding the engineers estimate and that staff was in the process of reviewing options/revisions to reduce the bids.

Staff has discussed a slight change in scope of the original project; however, the construction design remains the same. Staff is recommending that the City participate in the cost of relocating two (2) mobile homes that are in close proximity of the construction site. This will allow the contractor more maneuverability in the construction area. The property owners of the trailer park have been very receptive and cooperative in assisting the City in this endeavor. Again, the revised bid from the low bidder, Wildcat, after expanding the construction zone is \$289,000, which is below the engineers estimate.

If the City Commission approves –

Fiscal Impact: The cost of relocating the trailers is estimated not to exceed \$5,000.

Attachments: Map, depicting the area.

Summary – Staff is recommending approval of the lowest bid by Wildcat Construction, contingent upon execution of a deduct change order in the amount of (\$167,835), revising the contract total to \$289,285.

A RESOLUTION

AUTHORIZING and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute a contract for Project No. _____ for the construction of a sanitary sewer lift station between the City of Winfield, Kansas and Wildcat Construction Company Inc.

WHEREAS, bids for the 4th Avenue Lift Station were requested and accepted; and,

WHEREAS, Wildcat Construction Company Inc., Wichita, Kansas, submitted the apparent lowest proposal;

WHEREAS, the City awards the contract to Wildcat Construction, contingent upon the submission and approval of a change order in the amount of one hundred and sixty-seven thousand, eight hundred and thirty-five dollars and zero cents (\$167,835.00).

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

Section 1. The Mayor and Clerk of the City of Winfield, Kansas are hereby authorized and directed to execute a contract for the amount of two hundred and eighty nine thousand, two hundred eighty five dollars and zero cents (\$289,285.00) for Project No. _____, contingent upon the change order to be provided by Professional Engineering Consultants (PEC) as if fully set forth herein.

Section 2. This resolution shall be in full force and effect from and after its passage and approval.

ADOPTED this 20th day of May, 2019.

(SEAL)

Ronald E. Hutto, Mayor

ATTEST:

Brenda Peters, City Clerk

Approved as to form: _____
William E. Muret, City Attorney

Approved for Commission action: _____
Taggart Wall, City Manager



3219 W. May
P.O. Box 9163
Wichita, KS 67277
316-945-9408 phone
316-942-4012 fax

To:	City of Winfield	Contact:	Patrick
Address:	Winfield City Hall, 200 E. 9th Avenue Winfield, KS 67156	Phone:	(620) 221-5500
		Fax:	(620) 221-5593
Project Name:	Winfield 4th Avenue Lift Station Replacement	Bid Number:	
Project Location:	4th Avenue, W of Adams (Trailer Park), Winfield, KS	Bid Date:	3/26/2019
Addendum #:	1		

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
1	Mobilization	1.00	LS	\$15,000.00	\$15,000.00
2	Lift Station	1.00	LS	\$192,165.00	\$192,165.00
3	Manhole	2.00	EACH	\$10,000.00	\$20,000.00
4	10" Sanitary Sewer	28.00	LF	\$415.00	\$11,620.00
5	4" Force Main	60.00	LF	\$150.00	\$9,000.00
6	Demolition	1.00	LS	\$19,750.00	\$19,750.00
7	Seeding	1.00	LS	\$1,000.00	\$1,000.00
8	Erosion Control	1.00	LS	\$1,000.00	\$1,000.00
9	Site Clearing and Restoration	1.00	LS	\$19,750.00	\$19,750.00

Total Bid Price: \$289,285.00

ACCEPTED: The above prices, specifications and conditions are satisfactory and are hereby accepted. Buyer: _____ Signature: _____ Date of Acceptance: _____	CONFIRMED: Wildcat Construction - Wichita Authorized Signature: _____ Estimator: Larry Farrar (316) 945-9408 larry.farrar@wildcat.net
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SECTION 00 51 00
NOTICE OF AWARDDate of Issuance: May 14, 2019Owner: City of Winfield Owner's Contract No.: _____Engineer: Professional Engineering Consultants, P.A.Engineer's Project No.: 335-15E03-000-0943Project: Winfield 4th Avenue Lift Station Replacement

Contract Name: _____

Bidder: Wildcat Construction Co., Inc.Bidder's Address: 3219 W. May St., Wichita, KS 67213**TO BIDDER:**

You are notified that Owner has accepted your Bid dated March 26, 2019 for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Winfield 4th Avenue Lift Station Replacement

Contractor's Bid Amount: \$ 457,120.00

Proposed Change Order #1 (Pending Contract Execution): \$ -167,835.00

The Contract Price of the awarded Contract is: \$ 289,285.00

3 unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents has been transmitted or made available to Bidder electronically.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Engineer 3 counterparts of the Agreement, fully executed by Bidder.
2. Deliver with the executed Agreement(s) the Contract security [*e.g., performance and payment bonds*] and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.
3. Other conditions precedent: Contract approval is based on the execution of Change Order No. 1.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: _____
Authorized Signature

By: _____

Title: _____

Copy: Engineer

END OF SECTION