

**CITY COMMISSION MEETING
Winfield, Kansas**

DATE: Monday, October 07, 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, September 16, 2019

STAFF PRESENTATIONS AND PROMOTIONS

-Oath of Office

-Police Officers

Kelly Bogner

-Police Department Promotions

Chad Gordon

BUSINESS FROM THE FLOOR

-Citizens to be heard

NEW BUSINESS

Ordinances & Resolutions

Bill No. 1978 – A Resolution – Accepting and authorizing the filing of a certain permanent easement necessary to provide right-of-way for installation, construction, maintenance, repair, and removal of the utilities and the necessary appurtenances therefore, in, over, under, and across real estate in the Northeast Quarter of Section 27, Township 32 South of Range 4 East of the 6th P.M., Cowley County, Kansas.

OTHER BUSINESS

-Consider a Kansas Department of Commerce Incentive Agreement.

ADJOURNMENT

-Next Commission work session 4:00 Thursday, October 17, 2019.

-Next regular meeting 5:30 p.m. Monday, October 21, 2019.

CITY COMMISSION MEETING MINUTES
Winfield, Kansas
September 16, 2019

The Board of City Commissioners met in regular session, Monday, September 16, 2019 at 5:30 p.m. in the City Commission-Community Council Meeting Room, City Hall; Mayor Ronald E. Hutto presiding. Commissioners Gregory N. Thompson and Phillip R. Jarvis were also present. Also in attendance were Taggart Wall, City Manager; Brenda Peters, City Clerk, and William E. Muret, City Attorney. Other staff members present were Patrick Steward, Director of Public Improvements; Gary Mangus, Assistant to the City Manager and Shawn Mugler, Sanitation Superintendent.

City Clerk Peters called roll.

Commissioner Jarvis moved that the minutes of the September 3, 2019 meeting be approved. Commissioner Thompson seconded the motion. With all Commissioners voting aye, motion carried.

PROCLAMATION

Mayor Hutto presented a proclamation to Sanitation Superintendent Mugler proclaiming the week of September 30, 2019 as Fall Beautification week.

BUSINESS FROM THE FLOOR

Shirley Jester, 3601 Lakeshore Dr. appeared to address concerns about trimming issues at Quail Hollow Dr.

NEW BUSINESS

Bill No. 1975 – A Resolution – Determining the existence of certain nuisances at 720 E 19th Ave. in the City of Winfield, Kansas, and authorizing further action pursuant to the City Code of said City. Director of Public Improvements Steward explains to the Commissioners that this Resolution is to consider determining nuisances on the property at 720 E 19th Ave. This declaration would allow the City to give one more notice and then enforce the clean-up of the property. Upon motion by Commissioner Thompson, seconded by Commissioner Jarvis all Commissioners voting aye, Bill No. 1975 was adopted and numbered Resolution No. 5919.

Bill No. 1976 – A Resolution – Determining the existence of certain nuisances at 1706 Menor St. in the City of Winfield, Kansas, and authorizing further action pursuant to the City Code of said City. Director of Public Improvements Steward explains that this Resolution is to consider determining nuisances on the property at 1706 Menor St. There is a substantial amount of junk, trash, weeds and brush to be cleaned up, and there has been no response from the owner. Upon motion by Commissioner Hutto, seconded by Commissioner Jarvis all Commissioners voting aye, Bill No. 1976 was adopted and numbered Resolution No. 6019.

Bill No. 1977 – A Resolution – Authorizing an Outdoor Community Event and Temporary Entertainment District Application. Assistant to the City Manager Mangus explains that this will authorize the Winfield Arts and Humanities Council to allow Kansas Farm Winery to serve free samples and sell unopened containers of their domestic wines during Art in the Park on October 5,

2019. Upon motion by Commissioner Jarvis, seconded by Commissioner Hutto all Commissioners voting aye, Bill No. 1977 was adopted and numbered Resolution No. 6119.

OTHER BUSINESS

ADJOURNMENT

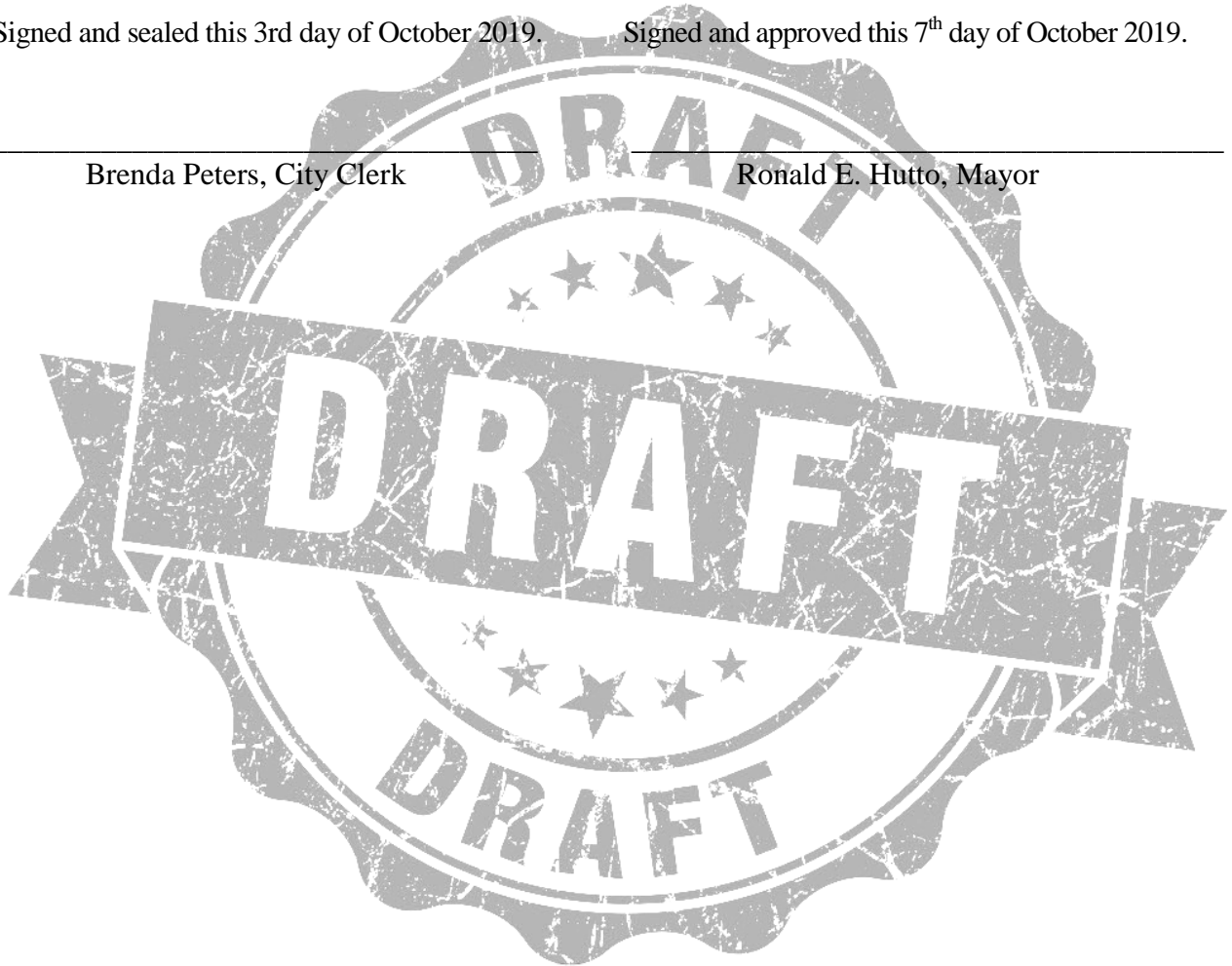
Upon motion by Commissioner Jarvis, seconded by Commissioner Thompson, all Commissioners voting aye, the meeting adjourned at 5:40 p.m.

Signed and sealed this 3rd day of October 2019.

Signed and approved this 7th day of October 2019.

Brenda Peters, City Clerk

Ronald E. Hutto, Mayor





Request for Commission Action

Date: 10/1/19

Requestor: Patrick Steward

Action Requested:

Accept an easement for a future sanitary sewer main.

Analysis:

Angela and Michael Norton have purchased a parcel of ground south of the current Health Center Pharmacy. As part of their agreement with the seller, the parties agreed on granting an easement to allow for a future sanitary sewer to be installed across the adjacent parcel to serve the subject property. This resolution provides acceptance of the easement.

Fiscal Impact:

None.

Attachments:

Site Map
Resolution

A RESOLUTION

ACCEPTING and authorizing the filing of a certain permanent easement necessary to provide right-of-way for installation, construction, maintenance, repair, and removal of the utilities and the necessary appurtenances therefore, in, over, under, and across real estate in the Northeast Quarter of Section 27, Township 32 South of Range 4 East of the 6th P.M., Cowley County, Kansas.

WHEREAS, it was necessary to acquire a certain permanent easement to provide right-of-way for installation, construction, maintenance, repair, and removal of the utilities and the necessary appurtenances in Cowley County, Kansas; and,

WHEREAS, said easement has been successfully negotiated.

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 accept a certain permanent easement in Cowley County, Kansas, granted by Raymond C. Smith and Carol A. Smith, owner in Cowley County, Kansas, necessary to provide right-of-way for the purpose of installation, construction, maintenance, repair, and removal of the utilities and the necessary appurtenances therefore, in, over, under, and across the real estate described as follows:

A tract in the Northeast Quarter of Section 27, Township 32 South, Range 4 East of the 6th P.M., described as: Beginning at a point 141.00 feet East of the intersection of the center line of Wheat Road and Central Avenue in Winfield; thence Ease on the centerline of Central Avenue on an assumed bearing of North 90 deg. East, 152.00 feet; thence North 0 deg. 53 min. West, parallel with the centerline of Wheat Road, 150.00 feet; thence North 90 deg. East, 60.00 feet; thence North 0 deg. 53 min. West, 123.33 feet; thence North 90 deg. West, 109.00 feet, more or less to a pint 273.33 feet North and 244.00 feet East of the center of Central Avenue and Wheat Road; thence North 49 deg. 08 min. 46 sec. West, 144.47 feet to a point 141.00 feet East and 363.62 feet North of the center of Central Avenue and Wheat Road; thence South 0 deg. 53 min. East, 363.62 feet to the point of beginning, Cowley County, Kansas.

Section 2. The Clerk of the City of Winfield, Kansas shall record said easement with the Register of Deeds of Cowley County, Kansas.

Section 3. This resolution shall be in full force and effect from and after its adoption.

ADOPTED this 7th day of October 2019.

(SEAL)

Ronald E. Hutto, Mayor

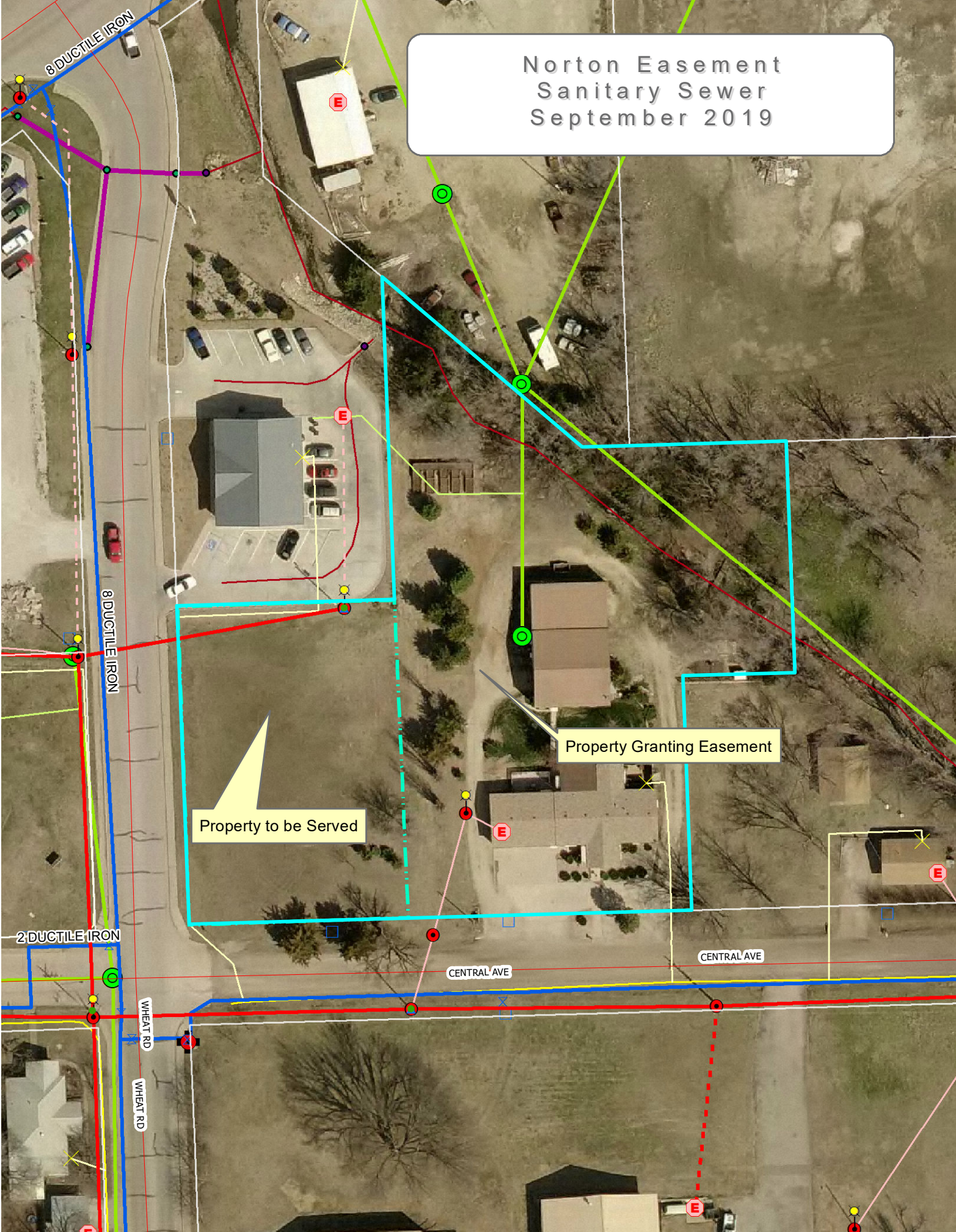
ATTEST:

Brenda Peters, City Clerk

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

Approved for Commission action: _____
Taggart Wall, City Manager

Norton Easement
Sanitary Sewer
September 2019



EASEMENT AND RIGHT OF WAY AGREEMENT

This agreement made this 27th day of ~~September~~, 2019, between Raymond C. Smith and Carol A. Smith, party of the first part, hereinafter referred to as "Smith" and Health Center Pharmacy, Inc. and the City of Winfield, parties of the second part, hereinafter referred to as "Health Center" and the "City of Winfield".

The parties, for and in consideration of the exchange and transfer of right of way for the purpose of laying sewer line(s), and ingress and egress for the purpose of maintaining said sewer line(s) across land owned by Smith, and in consideration of the covenants contained herein agree:

1. Smith owns certain real estate in Cowley County, Kansas, hereinafter referred to as "Parcel 1", said parcel being directly adjacent to Parcel 2 referred to below, with said Parcel 2 being currently under contract for sale from Smith to Health Center. Parcel 1 is described as:

A Tract in the Northeast Quarter of Section 27, Township 32 South, Range 4 East of the 6th P.M., described as: Beginning at a point 141.00 feet East of the intersection of the center line of Wheat Road and Central Avenue in Winfield; thence East on the centerline of Central Avenue on an assumed bearing of North 90 deg. East, 152.00 feet; thence North 0 deg. 53 min. West, parallel with the centerline of Wheat Road, 150.00 feet; thence North 90 deg. East, 60.00 feet; thence North 0 deg. 53 min. West, 123.33 feet; thence North 90 deg. West, 109.00 feet, more or less to a point 273.33 feet North and 244.00 East of the center of Central Avenue and Wheat Road; thence North 49 deg. 08 min. 46 sec. West, 144.47 of a point 141.00 feet East and 363.62 feet North of the center of Central Avenue and Wheat Road; thence South 0 deg. 53 min. East, 363.62 feet to the point of beginning, Cowley County, Kansas.

2. Health Center is purchasing the adjacent property from Smith, hereinafter referred to as "Parcel 2" and described as:

A tract in the Northeast Quarter of Section 27, Township 32 South, Range 4 East of the 6th P.M., Cowley County, Kansas, described as follows: Beginning at the center of the intersection of Wheat Road and Central Avenue in Winfield, Kansas; thence East on the center line of Central Avenue 141 feet, thence North parallel with the center line of Wheat Road, 195 feet, thence West parallel with the center line of Central Avenue, 141 feet to the center line of Wheat Road, thence South to the center line of Wheat Road, 195 feet to the point of beginning.

3. Parcel 2 does not have a sewer source, and in order to obtain sewer service Health Center will need to run sewer line(s) over and through Parcel 1 to Parcel 2. Smith

agrees to grant an easement and right of way to either Health Center or to the City of Winfield over and upon Parcel 1 for the purpose of Health Center or the City of Winfield placing sewer line(s), and an easement for ingress and egress to maintain said sewer line(s).

4. Smith deeds, transfers and conveys to Health Center and the City of Winfield a permanent easement for the purpose of running sewer line(s) in and across Parcel 1, and ingress and egress to Parcel 1 in order to be able to maintain said sewer line(s).

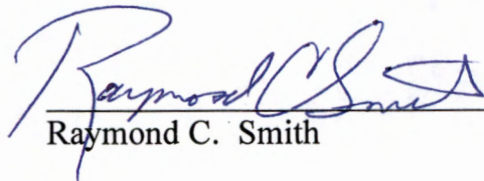
To have and to hold the granted premises to the said party of the second part their heirs and assigns.

The easement and right-of-way shall be used solely for sewer lines by parties by Health Center or by the City of Winfield. Health Center or City of Winfield shall be responsible for the construction, maintenance, and improvements to the sewer line(s). Health Center shall have the right to use such sewer line(s), and parties of the first part shall not take any action to block said sewer line(s) or the sewer running through said lines. Upon completion of construction operations, Health Center or City of Winfield shall restore the disturbed areas as near as practically possible to the condition which existed prior to commencement of operations.

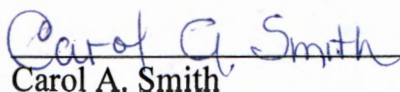
This easement and right-of-way shall run with the land and shall be binding on the parties to this agreement, their respective heirs, successors and assigns.

Parties of the First Part

Raymond C. and Carol A. Smith



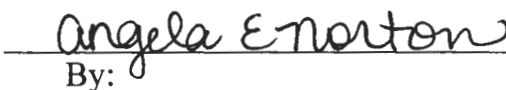
Raymond C. Smith




Carol A. Smith

Parties of the Second Part

Health Center Pharmacy, Inc.



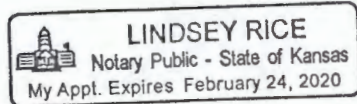
By: 

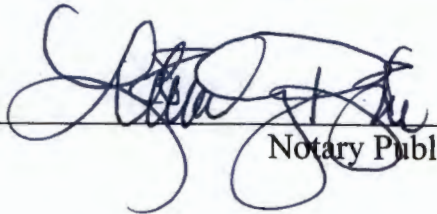
City of Winfield

By:

STATE OF KANSAS, COWLEY COUNTY, ss:

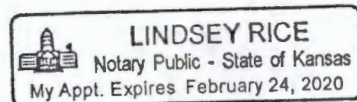
The foregoing instrument was acknowledged before me this 27th day of September, 2019
by Raymond C. Smith and Carol A. Smith.

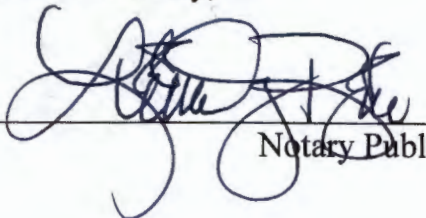



Notary Public

STATE OF KANSAS, COWLEY COUNTY, ss:

The foregoing instrument was acknowledged before me this 27th day of September, 2019 by Angela E. Norton for Health Center Pharmacy, Inc.




Notary Public

STATE OF KANSAS, COWLEY COUNTY, ss:

The foregoing instrument was acknowledged before me this _____ day of _____, 2019 by _____ for The City of Winfield.

Notary Public

Date: September 1, 2019

KANSAS DEPARTMENT OF COMMERCE

INCENTIVE AGREEMENT

This Agreement is entered into between the **Kansas Department of Commerce** (hereinafter referred to as “Commerce”), and **City of Winfield** (hereinafter referred to as “Winfield”).

WHEREAS, the Secretary has determined that funding for Winfield would benefit the Kansas economy providing infrastructure for a housing project (the Project) in Winfield, Kansas to provide housing for workers, specifically for the workforce serving employers General Electric and Rubbermaid in the Winfield, Kansas area.

NOW, THEREFORE, the parties agree as follows:

- I. **TERM.** The term of this Agreement shall be from September 1, 2019 (Commencement Date) through August 31, 2024 (End Date). There shall be five (5) Anniversary Dates which shall start one year after the Commencement Date. Winfield shall have a duty to provide annual reports, as set forth in Section IV, through August 31, 2024. The Agreement may be extended by the parties.
- II. **PURPOSE.** The purpose of this Agreement is to address a unique economic opportunity whereby Commerce provides certain Incentive Funds to Winfield to be used solely for the purposes of providing infrastructure funding for the housing project.
- III. **GRANT FUNDS.**
 - A. In consideration of the covenants and obligations of Winfield, Commerce agrees to provide Incentive Funds in an amount not to exceed \$40,000. These funds will be disbursed following execution of this Agreement.
- IV. **COVENANTS OF WINFIELD.** In consideration of the Incentive Funds referenced in Section III, Winfield shall provide and satisfy the covenants set forth in this Agreement. This includes, but is not limited to, the following:
 - A. **Housing Requirement.** Winfield will provide infrastructure funding to support the construction of housing, within the city limits of Winfield, KS, over the period of this agreement which runs through August 31, 2024.
 - B. **Progress Reports.** Winfield shall provide an annual report to Commerce that includes, but is not limited to, a summary of the progress of the project, the number of units built, number of units occupied, number of total occupants, and if the occupants are new to Winfield.

These reports are due within thirty (30) days of the end of each Anniversary Date beginning with Year 1 and continuing for the term of this Agreement. The reports shall be in a format satisfactory to Commerce.

V. DEFAULT. Commerce, in its discretion, may declare Winfield in default under this Agreement upon the occurrence of any of the following:

- A. Winfield fails to apply the Incentive Funds for the purposes as generally set forth in Section II of this Agreement without the prior written consent of Commerce.
- B. Winfield fails to timely provide the reports and documents required under Section IV of this Agreement.
- C. Winfield fails to meet 95% of the Requirements in IV. A. of the Agreement.
- D. Winfield otherwise fails to satisfy, in any manner, any of the other obligations as set forth in this Agreement.

In the event of a default under this section, Commerce shall provide Winfield with thirty (30) days written notice of default and an opportunity to cure such default. If the default has not been resolved within thirty (30) days of the initial notice of default, then Commerce, at its option, may terminate this Agreement and seek other remedies as provided herein.

VII. REPAYMENT.

- A. This Agreement is entered into based on Winfield's promise to provide infrastructure funding to support the construction of housing, in the city limits of Winfield, over the 5 year period of this Agreement. Performance shall be reviewed on an annual basis over the five (5) Anniversary Dates set forth in the Agreement. If the company fails to comply with any covenants or other terms of this Agreement, Commerce, at its discretion, may require repayment of part or all of the funds.
- B. All repayment amounts are due 30 days after notice of failure to meet the requirements, following the opportunity to cure as provided in Section V, is provided to Winfield. In no event shall the total cumulative repayment amount(s) due under this Agreement exceed \$40,000.

VIII. NOTICES. All notices, demands, requests, approvals, reports, instructions, or other communications which may be required or desired to be given by either party shall be in writing.

- A. Notices to Commerce shall be addressed as follows:

Kansas Department of Commerce
Attn: Wade Wiebe

1000 SW Jackson, Suite 100
Topeka, Kansas 66612-1354

A. Notices to Winfield shall be addressed as follows:

Gus Collins
Director of Utilities
200 E 9th Avenue
Winfield, KS 67156

- IX. INDEPENDENT CONTRACTOR.** All parties hereto, in the performance of this Agreement, will be acting separately in their respective legal capacities and not as agents, employees, partners, joint venturers in a joint venture, or as associates of one another. Employees or agents of one party shall not be named or construed to be the employees or agents of the other party for any purpose whatsoever.
- X. SEVERABILITY.** The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.
- XI. ASSIGNMENT.** This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon Commerce, the Employer and their respective permitted successors and assigns provided that this Agreement may not be assigned by the Employer without the express written consent of Commerce.
- XII. TERMINATION FOR CONVENIENCE.** If such action is determined by the Secretary to be in the best interests of Commerce, this Agreement may be terminated by Commerce on thirty (30) days written notice and without cost or penalty. Termination shall be effective as of the date specified in the notice.
- XIII. WAIVER.** In the event of breach of Agreement, or any provision thereof, the failure of Commerce to exercise any of its rights or remedies under this Agreement shall not be construed as a waiver of any such provision of the Agreement breached or as acquiescence in the breach. The remedies herein reserved shall be cumulative and additional to any other remedies at law or in equity.
- XIV. MODIFICATIONS.** There shall be no modifications to this Agreement unless approved by Commerce and Winfield and executed in writing.
- XV. CONTRACTUAL PROVISIONS ATTACHMENT (DA-146a).** The provisions found in the Contractual Provisions Attachment A (Form DA-146a), which is attached hereto and executed by the parties to this Agreement, are hereby incorporated in this Agreement and made a part hereof.

XVI. GOVERNING LAW. This Agreement shall be governed and construed in according with the laws of the State of Kansas.

KANSAS DEPARTMENT OF COMMERCE

1000 SW Jackson, Suite 100
Topeka, Kansas 66612-1354
Phone: (785) 296-5298
FEIN: 48-1124839

David C. Toland, Secretary

Date: _____

CITY OF WINFIELD

200 E 9th Avenue
Winfield, KS 67156
Phone: (620) 212-5607
FEIN:

Name and Title

Date: _____

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.
6. **Acceptance of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority to Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility for Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, *et seq.*
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.