

**CITY COMMISSION MEETING  
Winfield, Kansas**

DATE: Monday, July 18, 2022  
TIME: 5:30 p.m.  
PLACE: City Commission – Community Council Room – First Floor – City Building

***AGENDA***

CALL TO ORDER.....Mayor Ronald E. Hutto  
ROLL CALL.....City Clerk, Brenda Peters  
  
MINUTES OF PRECEDING MEETING.....Tuesday, July 05, 2022

**BUSINESS FROM THE FLOOR**

– Citizens to be heard

**NEW BUSINESS**

Ordinances & Resolutions

**Bill No. 2262 – A Resolution** – Authorizing the offering for sale of General Obligation Bonds, Series 2022-A, of the City of Winfield, Kansas.

**Bill No. 2263 – An Ordinance** – Amending Chapter 74, Section 74-226 of the Revised Ordinances of the City of Winfield relating to No Parking on a portion of Cedar Lane Drive and Lakeshore Drive.

**Bill No. 2264 – A Resolution** – of the City of Winfield, Kansas notifying the County Clerk of the intent to a levy a property tax rate exceeding the revenue neutral rate.

**Bill No. 2265 – A Resolution** – Authorizing the City Manager and the City Clerk of the City of Winfield, Kansas to execute an agreement for architectural services with Agora Architecture. for the purpose of providing professional design services for Phase 3 of the Public Safety Facility for the City of Winfield.

**Bill No. 2266 – A Resolution** – Authorizing and directing the Mayor and Clerk of the City of Winfield, Kansas to execute an amendment to an agreement between the City of Winfield, Kansas and Petra Winfield Residences, LLC, for providing the sale, development, and utility improvements for Petra Winfield Residences Planned Unit Development.

**Bill No. 2267 – A Resolution** – Authorizing the City Manager of the City of Winfield, Kansas, to execute and submit with the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) all necessary documents related to the Notice of Funding Opportunity of Natural Gas Distribution Infrastructure Safety and Modernization Grant Program.

**Bill No. 2268 – A Resolution** – Fixing the time and place and providing for notice of a public hearing before the Governing Body of the City of Winfield, Kansas, regarding the condemnation of a certain structure in the City of Winfield, Cowley County, Kansas. (818 Main St)

**Bill No. 2269 – A Resolution** – Fixing the time and place and providing for notice of a public hearing before the Governing Body of the City of Winfield, Kansas, regarding the condemnation of a certain structure in the City of Winfield, Cowley County, Kansas. (315 W 15th)

**Bill No. 2270 – A Resolution** – Fixing the time and place and providing for notice of a public hearing before the Governing Body of the City of Winfield, Kansas, regarding the condemnation of a certain structure in the City of Winfield, Cowley County, Kansas. (1821 Manning)

**Bill No. 2271 – A Resolution** – Fixing the time and place and providing for notice of a public hearing before the Governing Body of the City of Winfield, Kansas, regarding the condemnation of a certain structure in the City of Winfield, Cowley County, Kansas. (1321 John)

**Bill No. 2272 – A Resolution** – Fixing the time and place and providing for notice of a public hearing before the Governing Body of the City of Winfield, Kansas, regarding the condemnation of a certain structure in the City of Winfield, Cowley County, Kansas. (1803 Fuller)

**Bill No. 2273 – A Resolution** – Fixing the time and place and providing for notice of a public hearing before the Governing Body of the City of Winfield, Kansas, regarding the condemnation of a certain structure in the City of Winfield, Cowley County, Kansas. (1602 Fuller)

**Bill No. 2274 – A Resolution** – of the Governing Body of the City of Winfield, Kansas making certain findings of fact as required by K.S.A. 79-251 with respect to a property tax exemption to be granted to S and Y Industries, Inc.

**Bill No. 2275 – An Ordinance** – Exempting certain property in the City of Winfield, Kansas, from ad valorem taxation for economic development purposes pursuant to Article 11, Section 13 of the Kansas Constitution; providing the terms and conditions for ad valorem tax exemption; and describing the property so exempted.

#### **OTHER BUSINESS**

-Consider an Indefeasible Right of Use (IRU) agreement with Kansas Fiber Network, LLC.

#### **ADJOURNMENT**

– Next Commission work session 4:00 p.m. Thursday, July 28, 2022

– Next regular meeting 5:30 p.m. Monday, August 01, 2022

**CITY COMMISSION MEETING MINUTES**  
**Winfield, Kansas**  
**July 5, 2022**

The Board of City Commissioners met in regular session, Tuesday, July 05, 2022 at 5:30 p.m. in the City Commission-Community Council Meeting Room, City Hall; Mayor Ronald E. Hutto presiding. Commissioners Brenda K. Butters and Gregory N. Thompson 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 Community Development; and Gus Collins, Director of Utilities.

Mayor Hutto noted all Commissioners present.

Commissioner Butters moved that the minutes of the June 16, 2022 meeting be approved as presented. Commissioner Thompson seconded the motion. With all Commissioners voting aye, motion carried.

**BUSINESS FROM THE FLOOR**

-Steve Kunkle, 2108 Crestline Dr., appeared to address the Commission about golf carts.

**OTHER BUSINESS**

-Consider Acquisition of 2-Ton Dump Truck. City Manager Wall asked to strike Consider Acquisition of 2-Ton Dump Truck. Commissioner Thompson moved to strike this item from the Agenda, Commissioner Butters seconded the motion. With all Commissioners voting aye, motion carried.

-Executive Session to discuss data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships. Commissioner Thompson moved to recess to Executive Session to discuss data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships exception, K.S.A. 75-4319 (b)(4) for a period not to exceed 20 minutes. Commissioner Butters seconded the motion, with all Commissioners voting aye, motion carried. The open meeting will reconvene in the Community Council Room at 5:56 pm.

Commissioner Thompson moved to recess to Executive Session for an additional 10 minutes. Commissioner Butters seconded the motion, with all Commissioners voting aye, motion carried. The open meeting will reconvene in the Community Council Room at 6:06 pm.

-City Manager Wall announced the State of the City Address to be held on Wednesday July 13, 2022 at 12:00 pm at the Chamber Office.

**ADJOURNMENT**

Upon motion by Commissioner Thompson, seconded by Commissioner Hutto, all Commissioners voting aye, the meeting adjourned at 6:12 p.m.

Signed and sealed this 7<sup>th</sup> day of July 2022.

Signed and approved this 18<sup>th</sup> day of July 2022.

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Brenda Peters, City Clerk

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Ronald E. Hutto, Mayor

**BILL NO. 2262**

**RESOLUTION NO. 5122**

**A RESOLUTION AUTHORIZING THE OFFERING FOR SALE OF GENERAL  
OBLIGATION BONDS, SERIES 2022-A, OF THE CITY OF WINFIELD, KANSAS.**

**WHEREAS**, the City of Winfield, Kansas (the “Issuer”), has previously authorized certain improvements described as follows (collectively the “Improvements”):

<u>Project Description</u>	<u>Res. No.</u>	<u>Authority (K.S.A.)</u>	<u>Amount</u>
Advanced Metering Infrastructure Project	Res. 3021	14-570 <i>et seq.</i> / Charter 39	\$ 2,700,000
Meyer Hall Building Improvements	Res. 4821	14-570 <i>et seq.</i> / Charter 39	600,000
Electric GridLiance Project	Res. 1122	14-570 <i>et seq.</i> / Charter 39	12,000,000
Strother Field T Hangar Project	Res. 1222	14-570 <i>et seq.</i> / Charter 39	<u>1,250,000</u>
<b>Total:</b>			<b>\$16,550,000</b>

**WHEREAS**, the Issuer desires to issue its general obligation bonds in order to permanently finance the costs of such Improvements and to retire the following temporary notes of the Issuer, which were issued to temporarily finance a portion of the costs of the Improvements (the “Refunded Notes”):

<u>Series</u>	<u>Dated Date</u>	<u>Maturity Date</u>	<u>Original Amount</u>	<u>Outstanding Amount</u>	<u>Redemption Amount</u>	<u>Redemption Date</u>
2021-1	08/26/2021	12/01/2022	\$1,900,000	\$1,900,000	\$1,900,000	09/09/2022

**WHEREAS**, the Issuer proposes to issue its general obligation bonds to pay a portion of the costs of the Improvements and to retire the Refunded Notes; and

**WHEREAS**, the City Commission of the Issuer (the “Governing Body”) has selected the firm of Stifel, Nicolaus & Company, Incorporated, Kansas City, Missouri (the “Municipal Advisor”), as municipal advisor for one or more series of general obligation bonds of the Issuer to be issued in order to provide funds to permanently finance the Improvements and to retire the Refunded Notes; and

**WHEREAS**, the Issuer desires to authorize the Municipal Advisor to proceed with the offering for sale of said general obligation bonds and related activities; and

**WHEREAS**, one of the duties and responsibilities of the Issuer is to prepare and distribute a preliminary official statement relating to said general obligation bonds; and

**WHEREAS**, the Issuer desires to authorize the Municipal Advisor and Gilmore & Bell, P.C., Wichita, Kansas, the Issuer’s bond counsel (“Bond Counsel”), in conjunction with the Finance Director to proceed with the preparation and distribution of a preliminary official statement and notice of bond sale and to authorize the distribution thereof and all other preliminary action necessary to sell said general obligation bonds.



**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINFIELD, KANSAS, AS FOLLOWS:**

**Section 1.** There is hereby authorized to be offered for sale the Issuer's General Obligation Bonds, Series 2022-A (the "Bonds") described in the Notice of Bond Sale, which is hereby approved in substantially the form presented to the Governing Body this date (the "Notice of Bond Sale"). All proposals for the purchase of the Bonds shall be delivered to the Governing Body at its meeting to be held on the sale date referenced in the Notice of Bond Sale, at which meeting the Governing Body shall review such bids and award the sale of the Bonds or reject all proposals.

**Section 2.** The Mayor, City Manager and Finance Director in conjunction with the Municipal Advisor and Bond Counsel are hereby authorized to cause to be prepared a Preliminary Official Statement relating to the Bonds (the "Preliminary Official Statement"), and such officials and other representatives of the Issuer are hereby authorized to use such document in connection with the sale of the Bonds.

**Section 3.** The Mayor, City Manager and Finance Director, in conjunction with the Municipal Advisor and Bond Counsel, is hereby authorized and directed to give notice of said bond sale by publishing a summary of the Notice of Bond Sale not less than 6 days before the date of the bond sale in a newspaper of general circulation in Cowley County, Kansas, and the ***Kansas Register*** and by distributing copies of the Notice of Bond Sale and Preliminary Official Statement to prospective purchasers of the Bonds. Proposals for the purchase of the Bonds shall be submitted upon the terms and conditions set forth in the Notice of Bond Sale, and awarded or rejected in the manner set forth in the Notice of Bond Sale.

**Section 4.** For the purpose of enabling the purchaser of the Bonds (the "Purchaser") to comply with the requirements of Rule 15c2-12 of the Securities and Exchange Commission (the "Rule"), the Mayor, City Manager and Finance Director are hereby authorized: (a) to approve the form of the Preliminary Official Statement and to execute the "Certificate Deeming Preliminary Official Statement Final" in substantially the form attached hereto as ***Exhibit A*** as approval of the Preliminary Official Statement, such official's signature thereon being conclusive evidence of such official's and the Issuer's approval thereof; (b) covenant to provide continuous secondary market disclosure by annually transmitting certain financial information and operating data and other information necessary to comply with the Rule to the Municipal Securities Rulemaking Board; and (c) take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary to enable the Purchaser to comply with the requirement of the Rule.

**Section 5.** The Issuer agrees to provide to the Purchaser within seven business days of the date of the sale of Bonds or within sufficient time to accompany any confirmation that requests payment from any customer of the Purchaser, whichever is earlier, sufficient copies of the final Official Statement to enable the Purchaser to comply with the requirements of the Rule and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

**Section 6.** The Mayor, City Manager, Finance Director and the other officers and representatives of the Issuer, the Municipal Advisor and Bond Counsel are hereby authorized and directed to take such other action as may be necessary to: (a) carry out the sale of the Bonds; and (b) make provision for payment and/or redemption of the Refunded Notes from proceeds of the Bonds and other available funds.

The transactions described in this Resolution may be conducted, and documents related to the Bonds may be sent, received, executed, and stored, by electronic means or transmissions. Copies, telecopies, electronic files and other reproductions of original executed documents (or documents executed

by electronic means or transmissions) shall be deemed to be authentic and valid counterparts of such documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 7.** The Mayor, City Manager or Finance Director are hereby authorized and directed to execute the engagement letter related to services to be provided by the Municipal Advisor.

**Section 8.** This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

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**ADOPTED** by the City Commission on July 18, 2022.

(SEAL)

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Ronald E. Hutto, Mayor

ATTEST:

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Brenda Peters, City Clerk

***EXHIBIT A***

**CERTIFICATE DEEMING  
PRELIMINARY OFFICIAL STATEMENT FINAL**

August 5, 2022

Re:     \$9,400,000\* City of Winfield, Kansas, General Obligation Bonds, Series 2022-A

The undersigned are the duly acting Mayor and Finance Director of the City of Winfield, Kansas (the “Issuer”), and are authorized to deliver this Certificate to the purchaser (the “Purchaser”) of the above-referenced bonds (the “Bonds”) on behalf of the Issuer. The Issuer has previously caused to be delivered to the Purchaser copies of the Preliminary Official Statement (the “Preliminary Official Statement”) relating to the Bonds.

For the purpose of enabling the Purchaser to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission (the “Rule”), the Issuer hereby deems the information regarding the Issuer contained in the Preliminary Official Statement to be final as of its date, except for the omission of such information as is permitted by the Rule, such as offering prices, interest rates, selling compensation, aggregate principal amount, principal per maturity, delivery dates, ratings, identity of the underwriters and other terms of the Bonds depending on such matters.

**CITY OF WINFIELD, KANSAS**

By: \_\_\_\_\_  
Title: Mayor

By: \_\_\_\_\_  
Title: Finance Director

**NOTICE OF BOND SALE**

**\$9,400,000\***

**CITY OF WINFIELD, KANSAS**

**GENERAL OBLIGATION BONDS  
SERIES 2022-A**

(GENERAL OBLIGATION BONDS PAYABLE  
FROM UNLIMITED AD VALOREM TAXES)

**Bids.** Facsimile and electronic (as explained below) bids for the purchase of the above-referenced bonds (the “Bonds”) of the City of Winfield, Kansas (the “Issuer”) herein described will be received on behalf of the undersigned Finance Director of the Issuer at the address hereinafter set forth in the case of facsimile bids, and via PARITY® in the case of electronic bids, until 11:00 A.M. applicable Central Time (the “Submittal Hour”), on

**AUGUST 15, 2022**

(the “Sale Date”). All bids will be publicly evaluated at said time and place and the award of the Bonds to the successful bidder (the “Successful Bidder”) will be acted upon by the City Commission of the Issuer (the “Governing Body”) at its meeting to be held at 5:30 p.m. on the Sale Date. No oral or auction bids will be considered. Capitalized terms not otherwise defined herein shall have the meanings set forth in the hereinafter referenced Preliminary Official Statement relating to the Bonds.

**Terms of the Bonds.** The Bonds will consist of fully registered bonds in the denomination of \$5,000 or any integral multiple thereof (the “Authorized Denomination”). The Bonds will be dated September 8, 2022 (the “Dated Date”), and will become due in principal installments on September 1 in the years as follows:

<u>Year</u>	<u>Principal Amount*</u>	<u>Year</u>	<u>Principal Amount*</u>
2023	\$340,000	2033	\$540,000
2024	425,000	2034	560,000
2025	440,000	2035	575,000
2026	445,000	2036	590,000
2027	465,000	2037	610,000
2028	470,000	2038	360,000
2029	480,000	2039	375,000
2030	495,000	2040	385,000
2031	510,000	2041	400,000
2032	520,000	2042	415,000

The Bonds will bear interest from the Dated Date at rates to be determined when the Bonds are sold as hereinafter provided, which interest will be payable semiannually on March 1 and September 1 in each year, beginning on March 1, 2023 (the “Interest Payment Dates”).

**\*Adjustment of Issue Size.** The Issuer reserves the right to increase or decrease the total principal amount of the Bonds or the schedule of principal payments described above, depending on the purchase price and interest rates bid and the offering prices specified by the Successful Bidder, but in no event will the total principal amount of the Bonds exceed \$9,600,000. The Successful Bidder may not withdraw its bid or change the interest rates bid as a result of any changes made to the principal amount of the Bonds or the schedule of principal payments as described herein. If there is an increase or decrease in the final aggregate principal amount of the Bonds or the schedule of principal payments as described above, the Issuer will notify the Successful Bidder by means of telephone or facsimile transmission, subsequently confirmed in writing, no later than 2:00 p.m. applicable Central Time, on the Sale Date. The actual purchase price for the Bonds shall be calculated by applying the percentage of par value bid by the Successful Bidder against the final aggregate principal amount of the Bonds, as adjusted, plus accrued interest from the Dated Date to the Closing Date (as hereinafter defined).

**Place of Payment.** The principal of and interest on the Bonds will be payable in lawful money of the United States of America by check or draft of the Treasurer of the State of Kansas, Topeka, Kansas (the "Paying Agent" and "Bond Registrar"). The principal of each Bond will be payable at maturity or earlier redemption to the owner thereof whose name is on the registration books (the "Bond Register") of the Bond Registrar (the "Registered Owner") upon presentation and surrender at the principal office of the Paying Agent. Interest on each Bond will be payable to the Registered Owner of such Bond as of the fifteenth day (whether or not a business day) of the calendar month next preceding each Interest Payment Date (the "Record Date") (a) mailed by the Paying Agent to the address of such Registered Owner as shown on the Bond Register or at such other address as is furnished to the Paying Agent in writing by such Registered Owner; or (b) in the case of an interest payment to Cede & Co. or any Owner of \$500,000 or more in aggregate principal amount of Bonds, by wire transfer to such Registered Owner upon written notice given to the Paying Agent by such Registered Owner, not less than 15 days prior to the Record Date for such interest, containing the wire transfer address to which such Registered Owner wishes to have such wire directed.

**Bond Registration.** The Bonds will be registered pursuant to a plan of registration approved by the Issuer and the Attorney General of the State of Kansas (the "State"). The Issuer will pay for the fees of the Bond Registrar for registration and transfer of the Bonds and will also pay for printing a reasonable supply of registered bond blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the Bond Registrar, will be the responsibility of the Owners.

**Book-Entry-Only System.** The Depository Trust Company, New York, New York ("DTC"), will act as securities depository for the Bonds. The Bonds will initially be issued exclusively in "book entry" form and shall be initially registered in the name of Cede & Co., as the nominee of DTC and no beneficial owner will receive certificates representing their interests in the Bonds. During the term of the Bonds, so long as the book-entry-only system is continued, the Issuer will make payments of principal of, premium, if any, and interest on the Bonds to DTC or its nominee as the Registered Owner of the Bonds. DTC will make book-entry-only transfers among its participants and receive and transmit payment of principal of, premium, if any, and interest on the Bonds to its participants who shall be responsible for transmitting payments to beneficial owners of the Bonds in accordance with agreements between such participants and the beneficial owners. The Issuer will not be responsible for maintaining, supervising or reviewing the records maintained by DTC, its participants or persons acting through such participants. In the event that: (a) DTC determines not to continue to act as securities depository for the Bonds, or (b) the Issuer determines that continuation of the book-entry-only form of evidence and transfer of ownership of the Bonds would adversely affect the interests of the beneficial owners of the Bonds, the Issuer will discontinue the book-entry-only form of registration with DTC. If the Issuer fails to identify another qualified securities depository to replace DTC, the Issuer will cause to be authenticated and delivered to the beneficial owners

replacement Bonds in the form of fully registered certificates. Reference is made to the Official Statement for further information regarding the book-entry-only system of registration of the Bonds and DTC.

### **Redemption of Bonds Prior to Maturity.**

**General.** Whenever the Issuer is to select Bonds for the purpose of redemption, it will, in the case of Bonds in denominations greater than the minimum Authorized Denomination, if less than all of the Bonds then outstanding are to be called for redemption, treat each minimum Authorized Denomination of face value of each such fully registered Bond as though it were a separate Bond in the minimum Authorized Denomination.

**Optional Redemption.** At the option of the Issuer, Bonds maturing on September 1 in the years 2031, and thereafter, will be subject to redemption and payment prior to maturity on September 1, 2030, and thereafter, as a whole or in part (selection of maturities and the amount of Bonds of each maturity to be redeemed to be determined by the Issuer in such equitable manner as it may determine) at any time, at the redemption price of 100% (expressed as a percentage of the principal amount), plus accrued interest to the date of redemption.

**Mandatory Redemption.** A bidder may elect to have all or a portion of the Bonds scheduled to mature in consecutive years issued as term bonds (the “Term Bonds”) scheduled to mature in the latest of said consecutive years and subject to mandatory redemption requirements consistent with the schedule of serial maturities set forth above, subject to the following conditions: (a) not less than all Bonds of the same serial maturity shall be converted to Term Bonds with mandatory redemption requirements; and (b) a bidder shall make such an election by completing the applicable paragraph on the Official Bid Form or completing the applicable information on PARITY®.

**Notice and Effect of Call for Redemption.** Unless waived by any owner of Bonds to be redeemed, if the Issuer shall call any Bonds for redemption and payment prior to the maturity thereof, the Issuer shall give written notice of its intention to call and pay said Bonds to the Bond Registrar, any provider of municipal bond insurance and the Successful Bidder. In addition, the Issuer shall cause the Bond Registrar to give written notice of redemption to the registered owners of said Bonds. Each of said written notices shall be deposited in United States first class mail not less than 30 days prior to the Redemption Date. All notices of redemption shall state the Redemption Date, the redemption price, the Bonds to be redeemed, the place of surrender of Bonds so called for redemption and a statement of the effect of the redemption. The Issuer shall also give such additional notice as may be required by State law or regulation of the Securities and Exchange Commission in effect as of the date of such notice. If any Bond be called for redemption and payment as aforesaid, all interest on such Bond shall cease from and after the Redemption Date, provided funds are available for its payment at the price hereinbefore specified.

**Authority, Purpose and Security.** The Bonds are being issued pursuant to K.S.A. 14-570 *et seq.*, as amended by Charter Ordinance No. 39, and an ordinance and a resolution adopted by the Governing Body (collectively the “Bond Resolution”) for the purpose of paying a portion of the cost of certain public improvements (the “Improvements”). The Bonds shall be general obligations of the Issuer payable as to both principal and interest from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the Issuer. The full faith, credit and resources of the Issuer are irrevocably pledged for the prompt payment of the principal and interest on the Bonds as the same become due.

**Submission of Bids.** Facsimile bids must be made on forms which may be procured from the Municipal Advisor and shall be addressed to the undersigned, and marked “Proposal for General Obligation Bonds, Series 2022-A.” Facsimile bids should not be preceded by a cover sheet and should be sent only

once to **(620) 221-5593**. Confirmation of receipt of facsimile bids may be made by contacting the Municipal Advisor at the number listed below. Electronic bids via PARITY® must be submitted in accordance with its Rules of Participation, as well as the provisions of this Notice of Bond Sale. ***Any bid submitted shall include the initial offering prices to the public for each maturity of the Bonds.*** If provisions of this Notice of Bond Sale conflict with those of PARITY®, this Notice of Bond Sale shall control. Bids must be received prior to the Submittal Hour on the Sale Date accompanied by the Deposit (as hereinafter defined), which may be submitted separately. The Issuer and Municipal Advisor shall not be responsible for failure of transmission of facsimile or delivery by mail or in person of any bid.

**PARITY®.** Information about the electronic bidding services of PARITY® may be obtained from i-Deal LLC at 1359 Broadway, 2nd Floor, New York, New York 10018, Phone No. (212) 849-5023.

**Conditions of Bids.** Proposals will be received on the Bonds bearing such rate or rates of interest as may be specified by the bidders, subject to the following conditions: (a) the same rate shall apply to all Bonds of the same maturity year; (b) no interest rate may exceed a rate equal to the daily yield for the 10-year Treasury Bond published by ***THE BOND BUYER***, in New York, New York, on the Monday next preceding the day on which the Bonds are sold, plus 3%; (c) no supplemental interest payments will be considered; and (d) no zero coupon interest rates will be considered. No bid for less than ***100%*** of the principal amount of the Bonds and accrued interest thereon to the date of delivery will be considered. Each bid shall specify the total interest cost (expressed in dollars) during the term of the Bonds on the basis of such bid, the premium, if any, offered by the bidder, the net interest cost (expressed in dollars) on the basis of such bid, and an estimate of the TIC (as hereinafter defined) on the basis of such bid. Each bidder shall certify to the Issuer the correctness of the information contained on the Official Bid Form; the Issuer will be entitled to rely on such certification. Each bidder agrees that, if it is awarded the Bonds, it will provide the certification described under the caption “Establishment of Issue Price” in this Notice.

**Good Faith Deposit.** A good faith deposit (the “Deposit”) in the amount of \$188,000 payable to the order of the Issuer is required in order to secure the Issuer from any loss resulting from the failure of the bidder to comply with the terms of its bid.

(a) ***Certified or Cashier’s Check.*** Certified or cashier’s check drawn on a bank located in the United States of America received by the Issuer or the Municipal Advisor ***prior to the Submittal Hour***; or

(b) ***Wire Transfer.*** Wire transfer submitted by the Successful Bidder in Federal Reserve funds, immediately available for use by the Issuer ***not later than 2:00 p.m. applicable Central Time on the Sale Date*** (wire transfer information may be obtained from the Municipal Advisor at the addresses set forth below).

Contemporaneously with the submission of a wire transfer Deposit, such bidder shall send an email to the Municipal Advisor at the email address set forth below, including the following information: (a) notification that a wire transfer has been made; (b) the amount of the wire transfer; and (c) return wire transfer instructions in the event such bid is unsuccessful. Checks submitted for Deposits by unsuccessful bidders will be returned; wire transfer Deposits submitted by unsuccessful bidders will not be accepted or shall be returned in the same manner received on the next business day following the Sale Date. The Issuer reserves the right to withhold reasonable charges for any fees or expenses incurred in returning a wire transfer Deposit. No interest on the Deposit will be paid by the Issuer. If a bid is accepted, the Deposit, or the proceeds thereof, will be held by the Issuer until the Successful Bidder has complied with all of the terms and conditions of this Notice at which time the amount of said Deposit shall be returned to the Successful Bidder or deducted from the purchase price at the option of the Issuer. If a bid is accepted but the Issuer fails to deliver the Bonds to the Successful Bidder in accordance with the terms and conditions of this Notice, said Deposit, or the proceeds thereof, will be returned to the Successful Bidder. If a bid is



accepted but the bidder defaults in the performance of any of the terms and conditions of this Notice, the proceeds of such Deposit will be retained by the Issuer as and for liquidated damages.

**Basis of Award.** Subject to the timely receipt of the Deposit set forth above, the award of the Bonds will be made on the basis of the lowest true interest cost (“TIC”), which will be determined as follows: the TIC is the discount rate (expressed as a per annum percentage rate) which, when used in computing the present value of all payments of principal and interest to be paid on the Bonds, from the payment dates to the Dated Date, produces an amount equal to the price bid, including any adjustments for premium, if any. Present value will be computed on the basis of semiannual compounding and a 360-day year of twelve 30-day months. Bidders are requested to provide a calculation of the TIC for the Bonds on the Official Bid Form, computed as specified herein on the basis of their respective bids, which shall be considered as informative only and not binding on either the Issuer or the bidder. The Issuer or its Municipal Advisor will verify the TIC based on such bids. If there is any discrepancy between the TIC specified and the bid price and interest rates specified, the specified bid price and interest rates shall govern and the TIC specified in the bid shall be adjusted accordingly. If two or more proper bids providing for identical amounts for the lowest TIC are received, the Governing Body will determine which bid, if any, will be accepted, and its determination is final.

The Issuer reserves the right to reject any and/or all bids and to waive any irregularities in a submitted bid. Any bid received after the Submittal Hour on the Sale Date will not be considered. Any disputes arising hereunder shall be governed by the laws of the State, and any party submitting a bid agrees to be subject to jurisdiction and venue of the federal and state courts within the State with regard to such dispute.

The Issuer’s acceptance of the Successful Bidder’s proposal for the purchase of the Bonds in accordance with this Notice of Bond Sale shall constitute a bond purchase agreement between the Issuer and the Successful Bidder for purposes of the laws of the State and a contract between the Issuer and the Successful Bidder for the purposes of Rule 15c2-12 of the Securities and Exchange Commission (the “Rule”) and Rule G-32 of the Municipal Securities Rulemaking Board (“Rule G-32”). The method of acceptance shall be determined solely by the Governing Body.

**Bond Ratings.** The outstanding general obligation bonds of the Issuer are rated “[A+]” by S&P Global Ratings, a division of S&P Global Inc. The Issuer has applied to S&P Global Ratings, a division of S&P Global Inc. for a rating on the Bonds herein offered for sale.

**Optional Bond Insurance.** The Issuer has **not** applied for any policy of municipal bond insurance with respect to the Bonds. If the Bonds qualify for municipal bond insurance, and any bidder desires to purchase such policy, such indication and the name of the desired insurer must be set forth on the bidder’s Official Bid Form. The Issuer specifically reserves the right to reject any bid specifying municipal bond insurance, even though such bid may result in the lowest to the Issuer.

If the Successful Bidder elects to purchase the Bonds with municipal bond insurance, certain rating agencies will assign their ratings to the Bonds with the understanding that upon delivery of the Bonds, a policy insuring the payment when due of the principal of and interest on the Bonds will be issued by such bond insurer. All costs associated with the purchase and issuance of such municipal bond insurance policy and associated ratings and expenses (other than any independent rating requested by the Issuer) shall be paid by the Successful Bidder. Failure of the municipal bond insurer to issue the policy after the award of the Bonds shall not constitute cause for failure or refusal by the Successful Bidder to accept delivery of the Bonds.

**CUSIP Numbers.** CUSIP identification numbers will be assigned and printed on the Bonds, but neither the failure to print such number on any Bond nor any error with respect thereto shall constitute cause for failure or refusal by the purchaser thereof to accept delivery of and pay for the Bonds in accordance with the terms of this Notice. The Municipal Advisor will apply for CUSIP numbers pursuant to Rule G-34 implemented by the Municipal Securities Rulemaking Board. All expenses in relation to the assignment and printing of CUSIP numbers on the Bonds will be paid by the Issuer.

**Delivery and Payment.** The Issuer will pay for preparation of the Bonds and will deliver the Bonds properly prepared, executed and registered without cost on or about **SEPTEMBER 8, 2022** (the “Closing Date”), to DTC for the account of the Successful Bidder. The Successful Bidder will be furnished with a certified transcript of the proceedings evidencing the authorization and issuance of the Bonds and the usual closing documents, including a certificate that there is no litigation pending or threatened at the time of delivery of the Bonds affecting their validity and a certificate regarding the completeness and accuracy of the Official Statement. Payment for the Bonds shall be made in federal reserve funds, immediately available for use by the Issuer. The Issuer will deliver one Bond of each maturity registered in the nominee name of DTC.

**Establishment of Issue Price.**

(a) In order to provide the Issuer with information necessary for compliance with Section 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder (collectively, the “Code”), the Successful Bidder will be required to assist the Issuer in establishing the “issue price” of the Bonds and complete, execute and deliver to the Issuer prior to the Closing Date, a written certification in a form acceptable to the Successful Bidder, the Issuer and Bond Counsel (the “Issue Price Certificate”) containing the following for each maturity of the Bonds: (1) the interest rate; (2) the reasonably expected initial offering price to the “public” (as said term is used in Treasury Regulation Section 1.148-1(f) (the “Regulation”)) or the sale price; and (3) pricing wires or equivalent communications supporting such offering or sale price. However, such Issue Price Certificate may indicate that the Successful Bidder has purchased the Bonds for its own account in a capacity other than as an underwriter or wholesaler, and currently has no intent to reoffer the Bonds for sale to the public. Any action to be taken or documentation to be received by the Issuer pursuant hereto may be taken or received by the Municipal Advisor or Bond Counsel on behalf of the Issuer.

(b) The Issuer intends that the sale of the Bonds pursuant to this Notice shall constitute a “competitive sale” as defined in the Regulation. In support thereof: (1) the Issuer shall cause this Notice to be disseminated to potential bidders in a manner reasonably designed to reach potential bidders; (2) all bidders shall have an equal opportunity to submit a bid; (3) the Issuer reasonably expects that it will receive bids from at least three bidders that have established industry reputations for underwriting municipal bonds such as the Bonds; and (4) the Issuer anticipates awarding the sale of the Bonds to the bidder that provides a bid with the lowest TIC in accordance with the section hereof entitled “Basis of Award.”

(c) Any bid submitted pursuant to this Notice shall be considered a firm offer for the purchase of the Bonds as specified therein. The Successful Bidder shall constitute an “underwriter” as said term is defined in the Regulation. By submitting its bid, the Successful Bidder confirms that it shall require any agreement among underwriters, a selling group agreement or other agreement to which it is a party relating to the initial sale of the Bonds, to include provisions requiring compliance with provisions of the Code and the Regulation regarding the initial sale of the Bonds.

(d) If all of the requirements of a “competitive sale” are not satisfied, the Issuer shall advise the Successful Bidder of such fact at the time of award of the sale of the Bonds to the Successful Bidder and the following provisions shall apply to the Bonds. ***In such event, any bid submitted will not be subject***

**to cancellation or withdrawal.** Within twenty-four (24) hours of the notice of award of the sale of the Bonds, the Successful Bidder shall advise the Issuer if a “substantial amount” (as defined in the Regulation (10%)) of any maturity of the Bonds has been sold to the public and the price at which such substantial amount was sold. The Issuer will treat such sale price as the “issue price” for such maturity, applied on a maturity-by-maturity basis. The Issuer will **not** require the Successful Bidder to comply with that portion of the Regulation commonly described as the “hold-the-offering-price” requirement for the remaining maturities, but the Successful Bidder may elect such option. If the Successful Bidder exercises such option, the Issuer will apply the initial offering price to the public provided in the bid as the issue price for such maturities. If the Successful Bidder does not exercise that option, it shall thereafter promptly provide the Issuer the prices at which a substantial amount of such maturities are sold to the public. ***Any change in the issue price of any of the Bonds after the Submittal Hour will not affect the purchase price for the Bonds submitted in the bid of the Successful Bidder.***

(e) This agreement by the Successful Bidder to provide such information will continue to apply after the Closing Time if: (a) the Issuer requests the information in connection with an audit or inquiry by the Internal Revenue Service (the “IRS”) or the Securities and Exchange Commission (the “SEC”) or (b) the information is required to be retained by the Issuer pursuant to future regulation or similar guidance from the IRS, the SEC or other federal or state regulatory authority.

**Preliminary Official Statement and Official Statement.** The Issuer has prepared a Preliminary Official Statement dated August 5, 2022, “deemed final” by the Issuer except for the omission of certain information as provided in the Rule, copies of which may be obtained from the Finance Director or from the Municipal Advisor. Upon the sale of the Bonds, the Issuer will adopt the final Official Statement and will furnish the Successful Bidder, without cost, within seven business days of the acceptance of the Successful Bidder’s proposal, with a sufficient number of copies thereof, which may be in electronic format, in order for the Successful Bidder to comply with the requirements of the Rule and Rule G-32. Additional copies may be ordered by the Successful Bidder at its expense.

**Continuing Disclosure.** In the Bond Resolution, the Issuer has covenanted to provide annually certain financial information and operating data and other information necessary to comply with the Rule, and to transmit the same to the Municipal Securities Rulemaking Board. This covenant is for the benefit of and is enforceable by any Registered Owner of the Bonds. For further information, reference is made to the caption “CONTINUING DISCLOSURE” in the Preliminary Official Statement.

**Assessed Valuation and Indebtedness.** The total assessed valuation of the taxable tangible property within the Issuer for the year 2022 is as follows:

Equalized Assessed Valuation of	
Taxable Tangible Property .....	\$80,484,267
Tangible Valuation of Motor Vehicles (2021) .....	<u>10,582,685</u>
Equalized Assessed Tangible Valuation	
for Computation of Bonded Debt Limitations .....	\$91,066,952

The total general obligation indebtedness of the Issuer as of the Dated Date, including the Bonds being sold, is \$33,295,000. Temporary notes in the principal amount of \$1,900,000 will be retired out of proceeds of the Bonds and other available funds, which will reduce the outstanding general obligation indebtedness of the Issuer to \$31,395,000.

**Legal Opinion.** The Bonds will be sold subject to the approving legal opinion of GILMORE & BELL, P.C., WICHITA, KANSAS, Bond Counsel to the Issuer, which opinion will be furnished and paid for by the Issuer, will be printed on the Bonds, if the Bonds are printed, and will be delivered to the Successful Bidder when the Bonds are delivered. Said opinion will also include the opinion of Bond Counsel relating to the interest on the Bonds being excludable from gross income for federal income tax purposes and exempt from income taxation by the State. Reference is made to the Preliminary Official Statement for further discussion of federal and State income tax matters relating to the interest on the Bonds.

**Electronic Transactions.** The transactions described herein may be conducted and related documents may be sent, received and stored by electronic means or transmissions. All bid documents, closing documents, certificates, ordinances, resolutions and related instruments may be executed by electronic means or transmissions. Copies, telecopies, electronic files and other reproductions of original executed documents (or documents executed by electronic means or transmissions) shall be deemed to be authentic and valid counterparts of such documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Additional Information.** Additional information regarding the Bonds may be obtained from the undersigned or from the Municipal Advisor at the addresses set forth below:

**DATED: July 18, 2022.**

**CITY OF WINFIELD, KANSAS**

By: Brenda Peters, Finance Director

***Issuer – Facsimile Bid and Good Faith Deposit Delivery Address:***

City Hall  
200 E. Ninth Avenue  
Winfield, Kansas 67156  
Attn: Brenda Peters, Finance Director  
Phone No.: (620) 221-5500  
Fax No.: (620) 221-5593  
Email: [bpeters@winfieldks.org](mailto:bpeters@winfieldks.org)

***Municipal Advisor:***

Stifel, Nicolaus & Company, Incorporated  
Plaza Colonnade  
4801 Main Street, Suite 530  
Kansas City, Missouri 64112  
Attn: Dave Arteberry  
Phone No.: (816) 203-8733  
Email: [arteberryd@stifel.com](mailto:arteberryd@stifel.com)

## SUMMARY NOTICE OF BOND SALE

**\$9,400,000\***

### **CITY OF WINFIELD, KANSAS GENERAL OBLIGATION BONDS, SERIES 2022-A**

(GENERAL OBLIGATION BONDS PAYABLE FROM UNLIMITED AD VALOREM TAXES)

**Bids.** SUBJECT to the Notice of Bond Sale dated July 18, 2022 (the “Notice”), facsimile and electronic bids will be received on behalf of the Finance Director of the City of Winfield, Kansas (the “Issuer”) in the case of facsimile bids, at the address set forth below, and in the case of electronic bids, through **PARITY®** until 11:00 A.M. applicable Central Time, on **AUGUST 15, 2022** for the purchase of the above-referenced bonds (the “Bonds”). No bid of less than **100%** of the principal amount of the Bonds and accrued interest thereon to the date of delivery will be considered.

**Bond Details.** The Bonds will consist of fully registered bonds in the denomination of \$5,000 or any integral multiple thereof. The Bonds will be dated September 8, 2022, and will become due on September 1 in the years as follows:

<u>Year</u>	<u>Principal Amount*</u>	<u>Year</u>	<u>Principal Amount*</u>
2023	\$340,000	2033	\$540,000
2024	425,000	2034	560,000
2025	440,000	2035	575,000
2026	445,000	2036	590,000
2027	465,000	2037	610,000
2028	470,000	2038	360,000
2029	480,000	2039	375,000
2030	495,000	2040	385,000
2031	510,000	2041	400,000
2032	520,000	2042	415,000

\* Subject to change, see the Notice

The Bonds will bear interest from the date thereof at rates to be determined when the Bonds are sold as hereinafter provided, which interest will be payable semiannually on March 1 and September 1 in each year, beginning on March 1, 2023.

**Book-Entry-Only System.** The Bonds shall be registered under a book-entry-only system administered through DTC.

**Paying Agent and Bond Registrar.** Treasurer of the State of Kansas, Topeka, Kansas.

**Good Faith Deposit.** Each bid shall be accompanied (in the manner set forth in the Notice) by a good faith deposit in the form of a cashier’s or certified check drawn on a bank located in the United States of America or a wire transfer in Federal Reserve funds immediately available for use by the Issuer in the amount of \$180,700.

**Delivery.** The Issuer will pay for preparation of the Bonds and will deliver the same properly prepared, executed and registered without cost to the successful bidder on or about **September 8, 2022**, to DTC for the account of the successful bidder.

**Assessed Valuation and Indebtedness.** The Equalized Assessed Tangible Valuation for Computation of Bonded Debt Limitations for the year 2022 is \$91,066,952. The total general obligation indebtedness of the Issuer as of the Dated Date, including the Bonds being sold, is \$33,295,000. Temporary notes in the principal amount of \$1,900,000 will be retired out of proceeds of the Bonds and other available funds, which will reduce the outstanding general obligation indebtedness of the Issuer to \$31,395,000.

**Approval of Bonds.** The Bonds will be sold subject to the legal opinion of GILMORE & BELL, P.C., WICHITA, KANSAS, Bond Counsel to the Issuer, whose approving legal opinion as to the validity

of the Bonds will be furnished and paid for by the Issuer, printed on the Bonds and delivered to the successful bidder as and when the Bonds are delivered.

**Additional Information.** Additional information regarding the Bonds may be obtained from the undersigned, or from the Municipal Advisor at the addresses set forth below:

**DATED: July 18, 2022.**

***Issuer – Facsimile Bid and Good Faith Deposit Delivery Address:***

City Hall  
200 E. Ninth Avenue  
Winfield, Kansas 67156  
Attn: Brenda Peters, Finance Director  
Phone No.: (620) 221-5500  
Fax No.: (620) 221-5593  
Email: [bpeters@winfieldks.org](mailto:bpeters@winfieldks.org)

***Municipal Advisor:***

Stifel, Nicolaus & Company, Incorporated  
Plaza Colonnade  
4801 Main Street, Suite 530  
Kansas City, Missouri 64112  
Attn: Dave Arteberry  
Phone No.: (816) 203-8733  
Email: [arteberryd@stifel.com](mailto:arteberryd@stifel.com)

**KANSAS REGISTER**

DOCUMENT NO. \_\_\_\_\_

(Above space for Register Office Use)

Submission Form  
Municipal Bond Sale Notice  
(K.S.A. 10-106 as amended)

TITLE OF  
DOCUMENT

SUMMARY NOTICE OF BOND SALE

Re: City of Winfield, Kansas, General Obligation Bonds, Series 2022-A,  
Dated September 8, 2022.

NUMBER OF PAGES: 2

DESIRED PUBLICATION DATE: JULY 28, 2022

BILL TO: Brenda Peters, Finance Director  
City Hall  
200 E. Ninth Avenue  
Winfield, Kansas 67156

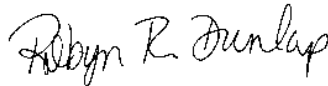
Please forward 2 Affidavits of Publication of same to Robyn R. Dunlap, Gilmore & Bell, P.C., 100 North Main, Suite 800, Wichita, KS 67202 at your earliest opportunity.

Any questions regarding this document should be directed to:

NAME ROBYN R. DUNLAP PHONE (316) 267-2091

Certification

I hereby certify that I have reviewed the attached and herein described document, and that it conforms to all applicable **Kansas Register** publication guidelines. I further certify that submission of this item for publication in the **Kansas Register** is authorized by the municipality which has issued the notice.



\_\_\_\_\_  
Authorized Signature

Robyn R. Dunlap  
Typed Name of Signer

Legal Practice Coordinator  
Position

TRANSMIT TO: Kansas Register; Secretary of State; State Capitol, Topeka, KS 66612  
PHONE: (785) 296-3489; FAX: (785) 291-3051; EMAIL: [kansasregister@sos.ks.gov](mailto:kansasregister@sos.ks.gov)

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THIS SPACE FOR REGISTER OFFICE USE ONLY

**OFFICIAL BID FORM**  
**PROPOSAL FOR THE PURCHASE OF CITY OF WINFIELD, KANSAS**  
**GENERAL OBLIGATION BONDS, SERIES 2022-A**

TO: Brenda Peters, Finance Director  
City of Winfield, Kansas

August 15, 2022

For \$9,400,000\* principal amount of General Obligation Bonds, Series 2022-A, of the City of Winfield, Kansas, to be dated September 8, 2022, as described in the Notice of Bond Sale dated July 18, 2022 (the "Notice"), said Bonds to bear interest as follows:

<u>Stated Maturity September 1</u>	<u>Principal Amount*</u>	<u>Annual Rate of Interest</u>	<u>Initial Offering Price</u>	<u>Stated Maturity September 1</u>	<u>Principal Amount*</u>	<u>Annual Rate of Interest</u>	<u>Initial Offering Price</u>
2023	\$340,000	_____ %	_____ %	2033	\$540,000	_____ %	_____ %
2024	425,000	_____ %	_____ %	2034	560,000	_____ %	_____ %
2025	440,000	_____ %	_____ %	2035	575,000	_____ %	_____ %
2026	445,000	_____ %	_____ %	2036	590,000	_____ %	_____ %
2027	465,000	_____ %	_____ %	2037	610,000	_____ %	_____ %
2028	470,000	_____ %	_____ %	2038	360,000	_____ %	_____ %
2029	480,000	_____ %	_____ %	2039	375,000	_____ %	_____ %
2030	495,000	_____ %	_____ %	2040	385,000	_____ %	_____ %
2031	510,000	_____ %	_____ %	2041	400,000	_____ %	_____ %
2032	520,000	_____ %	_____ %	2042	415,000	_____ %	_____ %

\* Subject to change, see the Notice

the undersigned will pay the purchase price for the Bonds set forth below, plus accrued interest to the date of delivery.

Principal Amount ..... \$9,400,000\*.00  
Plus Premium (if any) .....  
Total Purchase Price ..... \$ .....  
  
Total interest cost to maturity at the rates specified ..... \$ .....  
Net interest cost (adjusted for Premium) ..... \$ .....  
True Interest Cost ..... %

☐ The Bidder elects to have the following Term Bonds:

<b>Maturity Date</b>	<b>Years</b>	<b>Amount*</b>
September 1, _____	_____ to _____	\$ _____
September 1, _____	_____ to _____	\$ _____

\*subject to mandatory redemption requirements in the amounts and at the times shown above.

This proposal is subject to all terms and conditions contained in the Notice, and if the undersigned is the Successful Bidder, the undersigned will comply with all of the provisions contained in the Notice. A cashier's or certified check or a wire transfer in the amount of \$188,000 payable to the order of the Issuer, submitted in the manner set forth in the Notice accompanies this proposal as an evidence of good faith. The acceptance of this proposal by the Issuer by execution below shall constitute a contract between the Issuer and the Successful Bidder for purposes of complying with Rule 15c2-12 of the Securities and Exchange Commission and a bond purchase agreement for purposes of the laws of the State of Kansas.

Submitted by: \_\_\_\_\_

(LIST ACCOUNT MEMBERS ON REVERSE)

By: \_\_\_\_\_  
Telephone No. (\_\_\_\_) \_\_\_\_\_

**ACCEPTANCE**

The above proposal is hereby accepted on behalf of the City of Winfield, Kansas, on August 15, 2022.

Attest:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Mayor

**NOTE:** No additions or alterations in the above proposal form shall be made, and any erasures may cause rejection of any bid. Facsimile bids may be filed with the Finance Director, Fax No. (620) 221-5593 or electronic bids may be submitted via **PARITY**®, at or prior to 11:00 A.M. applicable Central Time, on August 15, 2022. Any bid received after such time will not be accepted or shall be returned to the bidder.



Treasurer of the State of Kansas  
Landon State Office Bldg.  
900 Southwest Jackson, Suite 201  
Topeka, Kansas 66612-1235

[CERTIFIED MAIL]

RCB Bank  
900 Main Street  
Winfield, Kansas 67156

RE:

**CALL FOR REDEMPTION**

**CITY OF WINFIELD, KANSAS  
GENERAL OBLIGATION TEMPORARY NOTES  
SERIES 2021-1, DATED AUGUST 26, 2021  
(THE "NOTES")**

Notice is hereby given pursuant to K.S.A. 10-129, as amended, and pursuant to the provisions of Resolution No. 7421 (the "Note Resolution") of the City of Winfield, Kansas (the "Issuer"), that the above mentioned Notes described in the attached Notice of Call for Redemption (the "Called Notes"), have been called for redemption and payment on September 9, 2022, subject to the availability of funds therefor from the proceeds of general obligation bonds to be issued by the Issuer.

The Paying Agent is hereby requested to disseminate the attached Notice of Call for Redemption in accordance with K.S.A. 10-129 and the Note Resolution. After redemption of the Called Notes the Paying Agent is requested to complete the attached Paying Agent's Certification and forward a copy of same to the undersigned.

**CITY OF WINFIELD, KANSAS**

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

**NOTICE OF CALL FOR REDEMPTION  
TO THE REGISTERED OWNERS OF  
CITY OF WINFIELD, KANSAS  
GENERAL OBLIGATION TEMPORARY NOTES  
SERIES 2021-1, DATED AUGUST 26, 2021  
(THE “NOTES”)**

Notice is hereby given that pursuant to the provisions of Resolution No. 7421 (the “Note Resolution”) of the City of Winfield, Kansas (the “Issuer”) that the following described Notes (the “Called Notes”) have been called for redemption and payment on September 9, 2022 (the “Redemption Date”), at the principal office of the Treasurer of the State of Kansas, Topeka, Kansas (the “Paying Agent”).

<b>Maturity Date</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Identification No.</b>
December 1, 2022	\$1,900,000	0.50%	024847AA1

On such Redemption Date there shall become due and payable, upon the presentation and surrender of each such Called Note, the redemption price thereof equal to 100% of the principal amount of each Called Note, together with interest accrued to the Redemption Date. Interest shall cease to accrue on the Called Notes from and after the Redemption Date, provided such funds for redemption are on deposit with the Paying Agent.

Under the provisions of Section 3406(a)(1) of the Internal Revenue Code of 1986, as amended, paying agents making payments of principal on municipal securities may be obligated to withhold a 28% tax on the payment of principal to registered owners who have failed to provide the paying agent with a valid taxpayer identification number. Registered Owners of the Called Notes who wish to avoid the imposition of the tax should provide a certified taxpayer identification number to the Paying Agent when presenting the Called Notes for payment.

**CITY OF WINFIELD, KANSAS**

By: \_\_\_\_\_  
Treasurer of the State of Kansas,  
Topeka, Kansas, as Paying Agent

\*\*\*\*\*

This Notice of Call for Redemption shall be mailed to the Treasurer of the State of Kansas, Topeka, Kansas, the Registered Owners of the Notes and the original purchaser of the Notes, not less than 30 days prior to the Redemption Date. Notice may also be given in accordance with guidelines set forth in Securities and Exchange Commission Release No. 34-23856, but such notice is not required by law.

**PAYING AGENT'S CERTIFICATION**

**CITY OF WINFIELD, KANSAS  
GENERAL OBLIGATION TEMPORARY NOTES  
SERIES 2021-1, DATED AUGUST 26, 2021  
(THE "NOTES")**

The State Treasurer, in its capacity as Paying Agent for the above-captioned Notes, does hereby certify as follows:

1. Capitalized terms not defined herein shall have the meanings ascribed thereto in the attached Notice of Call for Redemption or the Note Resolution defined therein.

2. The Called Notes have been called for redemption and payment on September 9, 2022 (the "Redemption Date").

3. The full redemption price of the Called Notes as determined pursuant to the Note Resolution is calculated as follows:

Principal Amount of Called Notes	\$1,900,000.00
Accrued Interest to Redemption Date	<u>9,843.06</u>
<b><i>Total</i></b>	<b><i>\$1,909,843.06</i></b>

4. There was deposited with the Paying Agent the sum set forth above, which has been irrevocably pledged for the payment of the principal of, redemption premium, if any, and interest on the Called Notes to the Redemption Date. In addition, sufficient funds have been deposited to provide for additional costs associated with such redemption.

5. The Notice of Call for Redemption, a copy of which is attached hereto, was disseminated in accordance with K.S.A. 10-129, as amended, and the Note Resolution.

DATED as of September 9, 2022.

**TREASURER OF THE STATE OF KANSAS,  
TOPEKA, KANSAS**

By: \_\_\_\_\_  
Director of Fiscal Services

**CITY OF WINFIELD, KANSAS  
GENERAL OBLIGATION BONDS, SERIES 2022-A**

**DISTRIBUTION LIST**

<b>ISSUER</b>	<b>BOND COUNSEL</b>
<p>CITY OF WINFIELD, KANSAS 200 E. 9<sup>th</sup> P.O. Box 646 Winfield, Kansas 67156-0646 Phone: (620) 221-5500 Fax: (620) 221-5593</p> <p><b>Taggart Wall, City Manager</b> E-mail: <a href="mailto:twall@winfieldks.org">twall@winfieldks.org</a></p> <p><b>Brenda Peters, City Clerk/Director of Finance</b> E-mail: <a href="mailto:bpeters@winfieldks.org">bpeters@winfieldks.org</a></p> <p><b>Melissa Schooley, Treasurer</b> E-mail: <a href="mailto:mschooley@winfieldks.org">mschooley@winfieldks.org</a></p> <p><b>Patrick Steward, Director of Public Improvements</b> E-mail: <a href="mailto:psteward@winfieldks.org">psteward@winfieldks.org</a></p>	<p>GILMORE &amp; BELL, P.C. 100 N. Main, Suite 800 Wichita, Kansas 67202 Phone: (316) 267-2091 Fax: (316) 262-6523</p> <p><b>Garth J. Herrmann, Esq.</b> E-mail: <a href="mailto:gherrmann@gilmorebell.com">gherrmann@gilmorebell.com</a></p> <p><b>Mitch L. Walter, Esq.</b> E-mail: <a href="mailto:mwalter@gilmorebell.com">mwalter@gilmorebell.com</a></p> <p><b>Dominic L. Eck, Esq.</b> E-mail: <a href="mailto:deck@gilmorebell.com">deck@gilmorebell.com</a></p> <p><b>Robyn R. Dunlap, Legal Practice Coordinator</b> E-mail: <a href="mailto:rdunlap@gilmorebell.com">rdunlap@gilmorebell.com</a></p> <p><b>Riley D. Babbidge, Legal Administrative Assistant</b> E-mail: <a href="mailto:rbabbidge@gilmorebell.com">rbabbidge@gilmorebell.com</a></p>
<b>ISSUER'S COUNSEL</b>	
<p>WILLIAM E. MURET, LLC 103 East 9th, Suite 208 Winfield, Kansas 67156 Phone: (620) 221-7200 Fax: (620) 221-0020</p> <p><b>William E. Muret, Esq.</b> E-mail: <a href="mailto:muret@winfieldattorneys.com">muret@winfieldattorneys.com</a></p>	<p>2405 Grand Boulevard, Suite 1100 Kansas City, Missouri 64108-2521 Telephone: (816) 221-1000 Fax: (816) 221-1018</p> <p><b>Alan Woolever, Esq.</b> E-mail: <a href="mailto:awoolever@gilmorebell.com">awoolever@gilmorebell.com</a></p> <p><b>Robert Sypniewski, Tax Practice Assistant</b> E-mail: <a href="mailto:rsypniewski@gilmorebell.com">rsypniewski@gilmorebell.com</a></p>
<b>PAYING AGENT</b>	<b>MUNICIPAL ADVISOR</b>
<p>TREASURER OF THE STATE OF KANSAS Landon State Office Building 900 Southwest Jackson, Suite 201 Topeka, Kansas 66612-1235 Phone: (785) 296-4148 Fax: (785) 296-7950</p> <p><b>Shauna Wake, Director of Fiscal Services</b> Phone: (785) 296-4160 E-mail: <a href="mailto:bond.newissues@treasurer.ks.gov">bond.newissues@treasurer.ks.gov</a></p>	<p>STIFEL NICOLAUS &amp; COMPANY, INCORPORATED Plaza Colonnade 4801 Main Street, Suite 530 Kansas City, Missouri 64112 Telephone: (816) 203-8733</p> <p><b>Dave Arteberry, Director – Public Finance</b> E-mail: <a href="mailto:arteberry@stifel.com">arteberry@stifel.com</a></p> <p><b>Nikki Jackson, Executive Assistant</b> E-mail: <a href="mailto:jacksonn@stifel.com">jacksonn@stifel.com</a></p>
<b>PURCHASER</b>	
<p>TBD</p>	



## Request for Commission Action

**Date:** 7/12/22

**Requestor:** Patrick Steward, Director of Public Improvements / City Engineer

---

**Action Requested:**

Consider a revision to the Ordinance for No Parking zones to restrict parking adjacent to the jointly owned lake in Lakeview Estates Subdivision.

**Analysis:**

Staff received a request from the Lakeview Estates Homeowner's Association requesting the commission consider creating a no parking area adjacent to the lake on the opposite side of the street from the lake. They have "Private Property" signs up adjacent to the lake itself but they've stated that they have had issues with people trespassing. Their letter states they "feel that No Parking signs will aid us in controlling access to the lake." This, in itself, does not necessarily provide engineering justification for creating a no parking area on a street. However, due to the lack of shoulder and the proximity to the intersection of Cedar Lane and Lake Shore, I believe there is sufficient merit to justify the designation.

In the same correspondence, the homeowner's requested the speed limit within the neighborhood be reduced to 15 mph. As I stated in my response to them, the modification of speed limits would require a traffic study under the MUTCD (Manual of Uniform Traffic Control Devices). It is my opinion that a study would likely not provide adequate justification for the reduced speed limit.

**Fiscal Impact:**

None.

**Attachments:** Ordinance

**LAKEVIEW ESTATES HOMEOWNER'S ASSOCIATION**

**Proposal for the City of Winfield**

**6/15/2022**

To: Winfield City Commission

From: Lakeview Estates Homeowner's Association

Subject: No parking signs along lake in Lakeview Estates and speed limit signs place at 4 locations.

Lakeview estates homeowner's met at their annual meeting on May 11<sup>th</sup>. During this meeting it was approved to petition the City of Winfield for No Parking signs along the streets next to the lake.

Fishing at our privately owned lake is restricted to homeowner's and their guests. Over the last several years there have been an increased number of people trespassing without adequate permission. We are currently in the process of placing new signage to help the homeowner's police access to the lake for fishing. We feel that No Parking signs will aid us in controlling access to the lake.

Also at this meeting it was discussed that there is an increasing number of vehicles that are traveling the curves at a higher rate of speed then is safe. Even if vehicles can negotiate the curves at 30 mph (and they can not), there is a lot of pedestrian traffic, walking individually or with their pets in our neighborhood. There are many blind spots as you round these curves, making pedestrians maintain a heightened level of awareness, for their safety. In addition the intersection of Lakeshore Dr. and Cedar Lane Dr. also has blind views as you enter the intersection; once again making 30 mph speed limit excessive and unsafe. We would like to propose a 15 mph speed limit for these areas.

Included with our petition is a map visually showing the proposed changes.

We appreciate your consideration and committee members of our Homeowner's Assn. would gladly be present at any planning session or city commission meeting when considering these changes.

Sincerely;

Amy Hutto, President- Lakeview Homeowners Assn.





**Lakeview Estates:** Indicated by white dotted lines

**Proposed No-Parking near the lake:** Indicated by Yellow solid line  
Area along the east side of Lake Shore Drive and the NorthEast side of Cedar Land Dr.

**Proposed Speed Limit Signs at all 4 entrances:**  
Marked on the map with





*(First published in the Cowley Courier Traveler, Saturday, July 23, 2022)*

**BILL NO. 2263**

**ORDINANCE NO. 4185**

**AN ORDINANCE**

**AMENDING** Chapter 74, Section 74-226 of the Revised Ordinances of the City of Winfield relating to No Parking on a portion of Cedar Lane Drive and Lakeshore Drive.

**WHEREAS**, a request was made to evaluate street parking in Lakeview Estates; and,

**WHEREAS**, upon evaluation, due to the limited availability of road shoulder adjacent to the jointly owned body of water,

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

**Section 1.** The following language in Section 74-226 regarding the 300 Block of Cedar Lane Drive and the 3200 Block Lakeshore Drive shall be added:

Street	Extent
300 Block of Cedar Lane Dr.	North Side, from Lake Shore Drive extending 320 feet West
3200 Block of Lake Shore Dr.	East side, from Cedar Lane Drive extending 300 feet South

**Section 2.** This Ordinance shall be in full force and effect on and after its publication in the official city newspaper.

**ADOPTED** this 18th day of July 2022.

(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/ps

**LAKEVIEW ESTATES HOMEOWNER'S ASSOCIATION**

**Proposal for the City of Winfield**

**6/15/2022**

To: Winfield City Commission

From: Lakeview Estates Homeowner's Association

Subject: No parking signs along lake in Lakeview Estates and speed limit signs place at 4 locations.

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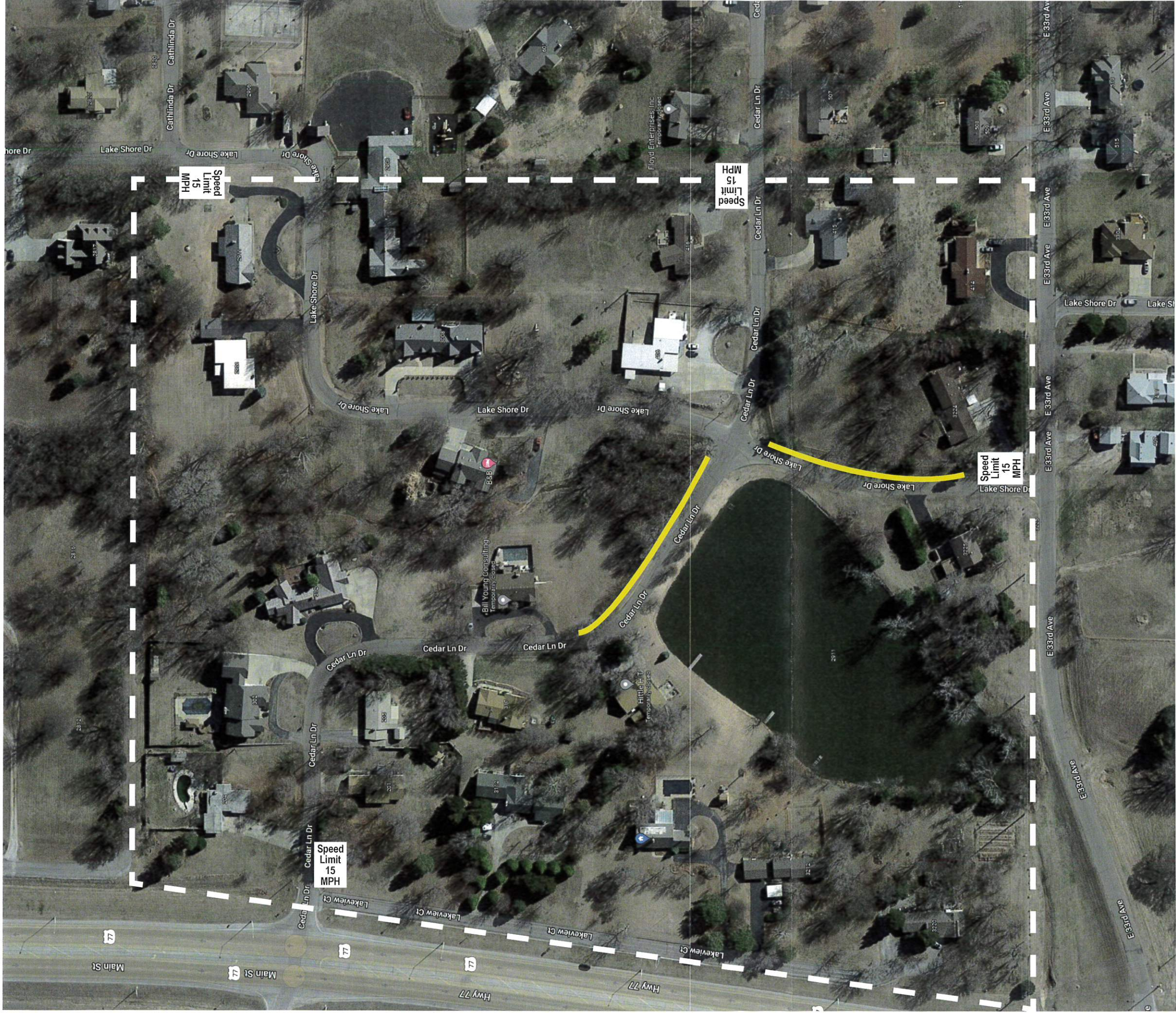
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Sincerely;

Amy Hutto, President- Lakeview Homeowners Assn.





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Area along the east side of Lake Shore Drive and the NorthEast side of Cedar Land Dr.

**Proposed Speed Limit Signs at all 4 entrances:**

Marked on the map with

**Speed  
Limit  
15  
MPH**



**A RESOLUTION**

**A RESOLUTION OF THE CITY OF WINFIELD, KANSAS NOTIFYING THE COUNTY CLERK OF THE INTENT TO A LEVY A PROPERTY TAX RATE EXCEEDING THE REVENUE NEUTRAL RATE.**

**WHEREAS**, the Revenue Neutral Rate for the City of Winfield was calculated as 49.128 mills by the Cowley County Clerk; and

**WHEREAS**, the budget proposed by the Governing Body of the City of Winfield will require the levy of a property tax rate exceeding the Revenue Neutral Rate; and

**WHEREAS**, the Governing Body will hold a hearing on September 6, 2022, allowing all interested taxpayers desiring to be heard an opportunity to give oral testimony; and

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

The City of Winfield notifies the County Clerk of the intent to levy a property tax rate exceeding the Revenue Neutral Rate of 49.128 mills.

This resolution shall take effect and be in force immediately upon its adoption and shall remain in effect until future action is taken by the Governing Body.

**ADOPTED** this 18th day of July, 2022 and **SIGNED** by the Mayor.

(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

the county clerk shall notify the governing body of any taxing district affected thereby.

(f) The provisions of this section shall be applicable to all taxable years commencing after December 31, 2011, ~~2018, and all taxable years thereafter.~~

(g) *Notwithstanding any provision of subsection (c) to the contrary, an application for relief as permitted by subsection (b) may be made for abatement of property taxes assessed but not yet paid, or for a grant of a credit for assessed property taxes paid, or for both, as the case may be, and may be made on or before December 20, 2022, for taxable years 2019 and 2020.*

Sec. 36. K.S.A. 79-2930 is hereby amended to read as follows: 79-2930. (a) Two copies of the budget certificate giving the amount of ad valorem tax to be levied and the total amount of the adopted budget of expenditures by fund, along with itemized budget forms for each and every fund and proof of publication of the notice of budget hearing containing the budget summary shall be presented to the county clerk within the time prescribed by K.S.A. 79-1801, and amendments thereto. ~~Beginning in 2009,~~ All such budget information shall be filed electronically with the county clerk. Where action has been taken under any statute to increase the amount of tax to be levied authorized by law, a statement showing the increased amount or tax levy rate voted, or a copy of the charter resolution or ordinance making the change, shall be attached to the budget each year the change is in effect.

(b) The county clerk shall make any reductions to the ad valorem tax to be levied, compute the tax levy rates based on the final equalized assessed valuation, and enter such on the budget certificate before attesting the budget, except that with regard to levies made under K.S.A. 75-2551, and amendments thereto, such levies shall be based upon the certified preliminary abstract of property values submitted to the director of property valuation pursuant to K.S.A. 79-1604, and amendments thereto. *Beginning in 2022, on or before December 31 each year,* a copy of all budgets for taxing subdivisions of the county, properly attested, shall be filed with the director of accounts and reports, along with a copy of the tax levy rate summary ~~required of the county treasurer by K.S.A. 79-2002, and amendments thereto.~~ *Beginning in 2009,* All such budget information shall be filed electronically with the director of accounts and reports.

(c) Each fund of the adopted budget certified to the county clerk in no event shall exceed the amount of ad valorem tax to be levied and the proposed expenditures of such fund in the proposed budget as originally published. The governing body of each taxing subdivision shall not certify an amount of ad valorem taxes to be levied that is in excess of any tax levy rate or amount limitations or any aggregate tax levy limitations. The governing bodies, in fixing the amount may take into consideration and make allowance for the taxes which may not be paid, such allowance, however, shall not exceed by more than 5% the percentage of delinquency for the preceding tax year.

Sec. 37. K.S.A. 2021 Supp. 79-2988 is hereby amended to read as follows: 79-2988. (a) On or before June 15 each year, the county clerk shall calculate the revenue neutral rate for each taxing subdivision and include such revenue neutral rate on the notice of the estimated assessed valuation provided to each taxing subdivision for budget purposes. The director of accounts and reports shall modify the prescribed budget information form to show the revenue neutral rate.

(b) No tax rate in excess of the revenue neutral rate shall be levied by the governing body of any taxing subdivision unless a resolution or ordinance has been approved by the governing body according to the following procedure:

(1) At least 10 days in advance of the public hearing, the governing body shall publish notice of its proposed intent to exceed the revenue neutral rate by publishing notice: (A) On the website of the governing body, if the governing body maintains a website; and

(B) in a weekly or daily newspaper of the county having a general

circulation therein. The notice shall include, but not be limited to, its proposed tax rate, its revenue neutral rate and the date, time and location of the public hearing.

(2) On or before July 20, the governing body shall notify the county clerk of its proposed intent to exceed the revenue neutral rate and provide the date, time and location of the public hearing and its proposed tax rate. For all tax years commencing after December 31, 2021, the county clerk shall notify each taxpayer with property in the taxing subdivision, by mail directed to the taxpayer's last known address, of the proposed intent to exceed the revenue neutral rate at least 10 days in advance of the public hearing. Alternatively, the county clerk may transmit the notice to the taxpayer by electronic means at least 10 days in advance of the public hearing, if such taxpayer and county clerk have consented in writing to service by electronic means. The county clerk shall consolidate the required information for all taxing subdivisions relevant to the taxpayer's property on one notice. The notice shall be in a format prescribed by the director of accounts and reports. The notice shall include, but not be limited to:

(A) The revenue neutral rate of each taxing subdivision relevant to the taxpayer's property;

(B) the proposed property tax revenue needed to fund the proposed budget of the taxing subdivision, if the taxing subdivision notified the county clerk of its proposed intent to exceed its revenue neutral rate;

(C) the proposed tax rate based upon the proposed budget and the current year's total assessed valuation of the taxing subdivision, if the taxing subdivision notified the county clerk of its proposed intent to exceed its revenue neutral rate;

(D) *the percentage by which the proposed tax rate exceeds the revenue neutral rate;*

(E) the tax rate and property tax of each taxing subdivision on the taxpayer's property from the previous year's tax statement;

~~(F)~~ the appraised value and assessed value of the taxpayer's property for the current year;

~~(G)~~ the estimates of the tax for the current tax year on the taxpayer's property based on the revenue neutral rate of each taxing subdivision and any proposed tax rates that exceed the revenue neutral rates;

~~(H)~~ the difference between the estimates of tax based on the proposed tax rate and the revenue neutral rate on the taxpayer's property described in subparagraph ~~(F)~~ (G) for any taxing subdivision that has a proposed tax rate that exceeds its revenue neutral rate; and

~~(I)~~ the date, time and location of the public hearing of the taxing subdivision, if the taxing subdivision notified the county clerk of its proposed intent to exceed its revenue neutral rate.

Although the state of Kansas is not a taxing subdivision for purposes of this section, the notice shall include a statement of the statutory mill levies imposed by the state and the estimate of the tax for the current year on the taxpayer's property based on such levies.

(3) The public hearing to consider exceeding the revenue neutral rate shall be held not sooner than August 20 and not later than September 20. The governing body shall provide interested taxpayers desiring to be heard an opportunity to present oral testimony within reasonable time limits and without unreasonable restriction on the number of individuals allowed to make public comment. The public hearing may be conducted in conjunction with the proposed budget hearing pursuant to K.S.A. 79-2929, and amendments thereto, if the governing body otherwise complies with all requirements of this section. Nothing in this section shall be construed to prohibit additional public hearings that provide additional opportunities to present testimony or public comment prior to the public hearing required by this section.

(4) A majority vote of the governing body, by the adoption of a resolution or ordinance to approve exceeding the revenue neutral rate,

shall be required prior to adoption of a proposed budget that will result in a tax rate in excess of the revenue neutral rate. Such vote of the governing body shall be conducted at the public hearing after the governing body has heard from interested taxpayers *and shall be a roll call vote*. If the governing body approves exceeding the revenue neutral rate, the governing body shall not adopt a budget that results in a tax rate in excess of its proposed tax rate as stated in the notice provided pursuant to this section. *A copy of the resolution or ordinance to approve exceeding the revenue neutral rate and a certified copy of any roll call vote reporting, at a minimum, the name and vote of each member of the governing body related to exceeding the revenue neutral rate, whether approved or not, shall be included with the adopted budget, budget certificate and other budget forms filed with the county clerk and the director of accounts and reports and shall be published on the website of the department of administration.*

(c) (1) Any governing body subject to the provisions of this section that does not comply with subsection (b) shall refund to taxpayers any property taxes over-collected based on the amount of the levy that was in excess of the revenue neutral rate.

(2) *Any taxpayer of the taxing subdivision that is the subject of the complaint or such taxpayer's duly authorized representative may file a complaint with the state board of tax appeals by filing a written complaint, on a form prescribed by the board, that contains the facts that the complaining party believes show that a governing body of a taxing subdivision did not comply with the provisions of subsection (b) and that a reduction or refund of taxes is appropriate. The complaining party shall provide a copy of such complaint to the governing body of the taxing subdivision making the levy that is the subject of the complaint. Notwithstanding K.S.A. 74-2438a, and amendments thereto, no filing fee shall be charged by the executive director of the state board of tax appeals for a complaint filed pursuant to this paragraph. The governing body of the taxing subdivision making the levy that is the subject of the complaint shall be a party to the proceeding. Notice of any summary proceeding or hearing shall be served upon such governing body, the county clerk, the director of accounts and reports and the complaining party. It shall be the duty of the governing body to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity of such levy. If upon a summary proceeding or hearing, it shall be made to appear to the satisfaction of the board that the governing body of the taxing subdivision did not comply with subsection (b), the state board of tax appeals shall order such governing body to refund to taxpayers the amount of property taxes over collected or reduce the taxes levied, if uncollected. The provisions of this subsection/paragraph shall not be construed as prohibiting any other remedies available under the law.*

(d) *On and after January 1, 2022, in the event that the 20 mills levied by a school district pursuant to K.S.A. 72-5142, and amendments thereto, increases the property tax revenue generated for the purpose of calculating the revenue neutral rate from the previous tax year and such amount of increase in revenue generated from the 20 mills is the only reason the school district would exceed the total property tax revenue from the prior year, the school district shall be deemed to not have exceeded the revenue neutral rate in levying a tax rate in excess of the revenue neutral rate to take into account the increase in revenue from only the 20 mills.*

(e) (1) Notwithstanding any other provision of law to the contrary, if the governing body of a taxing subdivision must conduct a public hearing to approve exceeding the revenue neutral rate under this section, the governing body of the taxing subdivision shall certify, on or before October 1, to the proper county clerk the amount of ad valorem tax to be levied.

(2) *If a governing body of a taxing subdivision did not comply with the provisions of subsection (b) and certifies to the county clerk an amount of ad valorem tax to be levied that would result in a tax rate in*

*excess of its revenue neutral rate, the county clerk shall reduce the ad valorem tax to be levied to the amount resulting from such taxing subdivision's revenue neutral rate.*

(e)(f) As used in this section:

(1) "Taxing subdivision" means any political subdivision of the state that levies an ad valorem tax on property.

(2) "Revenue neutral rate" means the tax rate for the current tax year that would generate the same property tax revenue as levied the previous tax year using the current tax year's total assessed valuation. To calculate the revenue neutral rate, the county clerk shall divide the property tax revenue for such taxing subdivision levied for the previous tax year by the total of all taxable assessed valuation in such taxing subdivision for the current tax year, and then multiply the quotient by 1,000 to express the rate in mills. The revenue neutral rate shall be expressed to the third decimal place.

(f)(g) In the event that a county clerk incurred costs of printing and postage that were not reimbursed pursuant to K.S.A. 2021 Supp. 79-2989, and amendments thereto, such county clerk may seek reimbursement from all taxing subdivisions required to send the notice. Such costs shall be shared proportionately by all taxing subdivisions that were included on the same notice based on the total property tax levied by each taxing subdivision. Payment of such costs shall be due to the county clerk by December 31.

~~(g) The provisions of this section shall take effect and be in force from and after January 1, 2021.~~

(h) *The department of administration or the director of accounts and reports shall make copies of adopted budgets, budget certificates, other budget documents and revenue neutral rate documents available to the public on the department of administration's website on a permanently accessible web page that may be accessed via a conspicuous link to that web page placed on the front page of the department's website. The department of administration or the director of accounts and reports shall also make the following information for each tax year available on such website:*

- (1) A list of taxing subdivisions by county;*
- (2) whether each taxing subdivision conducted a hearing to consider exceeding its revenue neutral rate;*
- (3) the revenue neutral rate of each taxing subdivision;*
- (4) the tax rate resulting from the adopted budget of each taxing subdivision; and*
- (5) the percent change between the revenue neutral rate and the tax rate for each taxing subdivision.*

Sec. 38. K.S.A. 79-3220 is hereby amended to read as follows: 79-3220. (a) (1) Each individual required to file a federal income tax return and any other individual whose gross income exceeds the sum of such individual's applicable Kansas standard deduction amount and Kansas personal exemption amount shall each make and sign a return or statement stating specifically such items as are required by the forms and rules and regulations of the secretary of revenue. If any individual is unable to make a return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer. Notwithstanding any provision of the Kansas income tax act to the contrary, all individuals not required to file a Kansas income tax return hereunder shall not be liable for any tax imposed pursuant to such act.

(2) In accordance with the provisions of K.S.A. 75-5151a, and amendments thereto, an individual who is required to file a return may file such return by electronic means in a manner approved by the secretary of revenue. A paid preparer who prepares 50 or more returns per year shall file by electronic means not less than 90% of such returns eligible for electronic filing. The requirements of this subsection may be waived by the secretary of revenue for a paid preparer if the paid preparer demonstrates a hardship in complying with the requirements of this subsection.



**79-2988. Tax levy; approval to exceed revenue neutral rate by taxing subdivisions; requirements; notices and contents; public hearing; majority vote of governing body; duties of county clerk; costs.** (a) On or before June 15 each year, the county clerk shall calculate the revenue neutral rate for each taxing subdivision and include such revenue neutral rate on the notice of the estimated assessed valuation provided to each taxing subdivision for budget purposes. The director of accounts and reports shall modify the prescribed budget information form to show the revenue neutral rate.

(b) No tax rate in excess of the revenue neutral rate shall be levied by the governing body of any taxing subdivision unless a resolution or ordinance has been approved by the governing body according to the following procedure:

(1) At least 10 days in advance of the public hearing, the governing body shall publish notice of its proposed intent to exceed the revenue neutral rate by publishing notice: (A) On the website of the governing body, if the governing body maintains a website; and

(B) in a weekly or daily newspaper of the county having a general circulation therein. The notice shall include, but not be limited to, its proposed tax rate, its revenue neutral rate and the date, time and location of the public hearing.

(2) On or before July 20, the governing body shall notify the county clerk of its proposed intent to exceed the revenue neutral rate and provide the date, time and location of the public hearing and its proposed tax rate. For all tax years commencing after December 31, 2021, the county clerk shall notify each taxpayer with property in the taxing subdivision, by mail directed to the taxpayer's last known address, of the proposed intent to exceed the revenue neutral rate at least 10 days in advance of the public hearing. Alternatively, the county clerk may transmit the notice to the taxpayer by electronic means at least 10 days in advance of the public hearing, if such taxpayer and county clerk have consented in writing to service by electronic means. The county clerk shall consolidate the required information for all taxing subdivisions relevant to the taxpayer's property on one notice. The notice shall be in a format prescribed by the director of accounts and reports. The notice shall include, but not be limited to:

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(C) the proposed tax rate based upon the proposed budget and the current year's total assessed valuation of the taxing subdivision, if the taxing subdivision notified the county clerk of its proposed intent to exceed its revenue neutral rate;

(D) the tax rate and property tax of each taxing subdivision on the taxpayer's property from the previous year's tax statement;

(E) the appraised value and assessed value of the taxpayer's property for the current year;

(F) the estimates of the tax for the current tax year on the taxpayer's property based on the revenue neutral rate of each taxing subdivision and any proposed tax rates that exceed the revenue neutral rates;

(G) the difference between the estimates of tax based on the proposed tax rate and the revenue neutral rate on the taxpayer's property described in subparagraph (F) for any taxing subdivision that has a proposed tax rate that exceeds its revenue neutral rate; and

(H) the date, time and location of the public hearing of the taxing subdivision, if the taxing subdivision notified the county clerk of its proposed intent to exceed its revenue neutral rate.

Although the state of Kansas is not a taxing subdivision for purposes of this section, the notice shall include a statement of the statutory mill levies imposed by the state and the estimate of the tax for the current year on the taxpayer's property based on such levies.

(3) The public hearing to consider exceeding the revenue neutral rate shall be held not sooner than August 20 and not later than September 20. The governing body shall provide interested taxpayers desiring to be heard an opportunity to present oral testimony within reasonable time limits and without unreasonable restriction on the number of individuals allowed to make public comment. The public hearing may be conducted in conjunction with the proposed budget hearing pursuant to K.S.A. 79-2929, and amendments thereto, if the governing body otherwise complies with all requirements of this section. Nothing in this section shall be construed to prohibit additional public hearings that provide additional opportunities to present testimony or public comment prior to the public hearing required by this section.

(4) A majority vote of the governing body, by the adoption of a resolution or ordinance to approve exceeding the revenue neutral rate, shall be required prior to adoption of a proposed budget that will result in a tax rate in excess of the revenue neutral rate. Such vote of the governing body shall be conducted at the public hearing after the governing body has heard from interested taxpayers. If the governing body approves exceeding the revenue neutral rate, the

governing body shall not adopt a budget that results in a tax rate in excess of its proposed tax rate as stated in the notice provided pursuant to this section.

(c) Any governing body subject to the provisions of this section that does not comply with subsection (b) shall refund to taxpayers any property taxes over-collected based on the amount of the levy that was in excess of the revenue neutral rate. The provisions of this subsection shall not be construed as prohibiting any other remedies available under the law.

(d) Notwithstanding any other provision of law to the contrary, if the governing body of a taxing subdivision must conduct a public hearing to approve exceeding the revenue neutral rate under this section, the governing body of the taxing subdivision shall certify, on or before October 1, to the proper county clerk the amount of ad valorem tax to be levied.

(e) As used in this section:

(1) "Taxing subdivision" means any political subdivision of the state that levies an ad valorem tax on property.

(2) "Revenue neutral rate" means the tax rate for the current tax year that would generate the same property tax revenue as levied the previous tax year using the current tax year's total assessed valuation. To calculate the revenue neutral rate, the county clerk shall divide the property tax revenue for such taxing subdivision levied for the previous tax year by the total of all taxable assessed valuation in such taxing subdivision for the current tax year, and then multiply the quotient by 1,000 to express the rate in mills. The revenue neutral rate shall be expressed to the third decimal place.

(f) In the event that a county clerk incurred costs of printing and postage that were not reimbursed pursuant to K.S.A. 2021 Supp. 79-2989, and amendments thereto, such county clerk may seek reimbursement from all taxing subdivisions required to send the notice. Such costs shall be shared proportionately by all taxing subdivisions that were included on the same notice based on the total property tax levied by each taxing subdivision. Payment of such costs shall be due to the county clerk by December 31.

(g) The provisions of this section shall take effect and be in force from and after January 1, 2021.

**History:** L. 2021, ch. 9, § 1; L. 2021, ch. 58, § 11; July 1.

County Clerk's Office

INDICATION OF REVENUE NEUTRAL RATE

PURSUANT TO K.S.A 79-1460, 79-1801, 79-2024, 79-2925c

---

Please indicate below whether your governing body will be exceeding the Revenue Neutral rate:

Yes, we intend to exceed the Revenue Neutral Rate and our proposed mill levy is \_\_\_\_\_

The date of the Hearing is \_\_\_\_\_ at \_\_\_\_\_ and will be held at \_\_\_\_\_  
in \_\_\_\_\_, KS

No, we do not plan to exceed the Revenue Neutral Rate and will submit our budget to the County Clerk on or before August 25, 2021.

\_\_\_\_\_  
SIGNATURE DATE

\_\_\_\_\_  
Title

\_\_\_\_\_  
Tax District

Tax Year:  
2022

COUNTY CLERK'S BUDGET INFORMATION FOR THE 2023 BUDGET  
CMBLT032

Date - Time:  
2022/06/10 - 13:51:55

WINFIELD

Municipality

1. Estimated Assessed Valuation Information as of July 1, 2022

	Estimated Assd Valuation	Territory Added	Property With Changed Use
Real Estate	74,604,875	0	782,360
Personal Property	3,961,181	0	0
Oil and Gas	20,610	0	0
State Assessed Utilities	1,918,211	0	0
Severed Minerals	0	0	0
Total	80,604,877	0	782,360
New Improvements	266,318	0	
Remodel	167,436	0	

2. All Personal Property excluding Watercraft 3,981,791

3. Actual Tax Rates Levied for the 2022 Budget

Fund	Rate
WINFIELD - BOND & INTEREST FUND	8.121000
WINFIELD - GENERAL FUND	37.927000
WINFIELD - INDUSTRIAL DEVELOPMENT FUND	0.157000
WINFIELD - LIBRARY FUND	6.701000
WINFIELD - SPECIAL LIABILITY EXPENSES	1.787000
	54.693000
Revenue Neutral Rate:	49.128000

4. Final Assessed Valuation from November 1, 2021 Abstract 72,309,024

5. All Personal Property excluding Watercraft for 2021 -4,389,796

6. Gross Earning (Intangible) Tax Estimate 0.00

7. Neighborhood Revitalization District Valuation Subject to Rebates 1,370,094

8. 2021 Column (2020 Tax) Delq % for WINFIELD - GENERAL FUND Fund 1.41 %

9. 2021 Column (2020 Tax) Delq % for Special Assessments 7.26 %

Tax Increment Financing - TIF/RHID:

TIF/RHID Base Assessed Valuation 0

TIF/RHID Current Assessed Valuation 0

TIF/RHID is not subtracted from Real Estate Value.

10. Watercraft Taxes 2,269.27



If you have any Recreation Commissions funds listed on this page, please send a copy of this page to the Recreation Commission.

06/10/2022

Date

*Karen Mahoney*

Provided by

COWLEY COUNTY

Name of County



## Request for Commission Action

**Date:** July 12, 2022

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

---

**Action Requested:** Consider entering into an agreement with Agora Architecture for design services of Phase 3 (Police Station / Shared Spaces).

**Analysis:**

This resolution considers awarding a contract for design of the Police Station and Shared spaces of the Public Safety Facility. This is the last phase anticipated in order to complete the public safety facility.

The reason for the timing of this agreement is to allow the programming and design to be completed such that this phase can be let for bid near the end of the construction portion of Phase 4 (Fire station remodel.) We would anticipate a let date of late 2023.

**Fiscal Impact:** The agreement is based upon the cost of construction. The anticipated construction cost for this phase is \$5.75 million. The agreement provides for design services of 7.75% of construction costs in addition to \$11,500 in programming fees for a total estimated fee for design and engineering services of \$457,125.

**Attachments:** Resolution & Agreement

**A RESOLUTION**

**AUTHORIZING** the City Manager and the City Clerk of the City of Winfield, Kansas to execute an agreement for architectural services with Agora Architecture. for the purpose of providing professional design services for Phase 3 of the Public Safety Facility for the City of Winfield.

---

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

**Section 1.** The City Manager and Clerk of the City of Winfield, Kansas are hereby authorized and directed to execute an agreement, attached hereto and made a part hereof as if fully set forth herein, between the City of Winfield, Kansas and Agora Architecture for the purpose of providing professional design services for Phase 3 of the Public Safety Facility for the City of Winfield.

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

**ADOPTED** this 18th day of July 2022.

(SEAL)

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Ronald E. Hutto, Mayor

ATTEST:

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Brenda Peters, City Clerk

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

Approved for Commission action: \_\_\_\_\_  
Taggart Wall, City Manager/ps

# AIA<sup>®</sup> Document B101<sup>™</sup> – 2017

## ***Standard Form of Agreement Between Owner and Architect***

**AGREEMENT** made as of the 13th day of July in the year 2022  
(In words, indicate day, month and year.)

**BETWEEN** the Architect's client identified as the Owner:  
(Name, legal status, address and other information)

City of Winfield  
200 E 9<sup>th</sup> Avenue  
Winfield, KS 67156

and the Architect:  
(Name, legal status, address and other information)

Agora Architectural Design, LLC  
800 Main, Suite 308  
Winfield, KS 67156

for the following Project:  
(Name, location and detailed description)

City of Winfield – Police Station PSF Phase 3  
412 E 9<sup>th</sup> Avenue  
Winfield, KS 67156

The Owner and Architect agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

## TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
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5	OWNER'S RESPONSIBILITIES
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7	COPYRIGHTS AND LICENSES
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11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

Programming Contract – Exhibit A

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

New Police Station and Training Facility addition attached to existing Fire Station

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

*(Provide total and, if known, a line item breakdown.)*

2016 Budget:

Police Department = \$4,500,000.00

Training and Meeting Areas = \$1,250,000.00

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Init.



N/A

.2 Construction commencement date:

Summer 2023

.3 Substantial Completion date or dates:

Summer 2024

.4 Other milestone dates:

N/A

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:  
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Competitive Bid

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:  
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™-2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204-2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:  
(List name, address, and other contact information.)

Patrick Steward  
Director of Public Improvements  
200 E 9<sup>th</sup> Avenue  
Winfield, KS 67156  
620-221-5520

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:  
(List name, address, and other contact information.)

N/A

§ 1.1.9 The Owner shall retain the following consultants and contractors:  
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

GSI Engineering  
4503 E. 47<sup>th</sup> St. S.  
Wichita, KS 67210

Init.

**.2 Civil Engineer:**

Professional Engineering Consultants  
303 Topeka  
Wichita, KS 67202  
316-262-2691

**.3 Other, if any:**

*(List any other consultants and contractors retained by the Owner.)*

N/A

**§ 1.1.10** The Architect identifies the following representative in accordance with Section 2.3:  
*(List name, address, and other contact information.)*

David S. Herlocker  
Agora Architectural Design, LLC  
800 Main, Suite 308  
Winfield, KS 67156

**§ 1.1.11** The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:  
*(List name, legal status, address, and other contact information.)*

**§ 1.1.11.1** Consultants retained under Basic Services:

**.1 Structural Engineer:**

Jon Lucas  
Dudley Williams and Associates, P.A.  
230 South Laura, Suite #200  
Wichita, KS 67211

**.2 Mechanical Engineer:**

To Be Determined

**.3 Electrical Engineer:**

To Be Determined

**§ 1.1.11.2** Consultants retained under Supplemental Services:

Init.

N/A

§ 1.1.12 Other Initial Information on which the Agreement is based:

N/A

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million (\$ 1,000,000 ) for each occurrence and Two Million (\$ 2,000,000 ) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million (\$ 1,000,000 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under

Init.



Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

**§ 2.5.4 Workers' Compensation at statutory limits.**

**§ 2.5.5 Employers' Liability** with policy limits not less than Five hundred thousand (\$ 500,000 ) each accident, Five hundred thousand (\$ 500,000 ) each employee, and Five hundred thousand (\$ 500,000 ) policy limit.

**§ 2.5.6 Professional Liability** covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than one million (\$ 1,000,000 ) per claim and one million (\$ 1,000,000 ) in the aggregate.

**§ 2.5.7 Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

**§ 2.5.8** The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

**ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES**

**§ 3.1** The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

**§ 3.1.1** The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

**§ 3.1.2** The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

**§ 3.1.3** As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

**§ 3.1.4** The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

**§ 3.1.5** The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

**§ 3.1.6** The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.



### **§ 3.2 Schematic Design Phase Services**

**§ 3.2.1** The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

**§ 3.2.2** The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

**§ 3.2.3** The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

**§ 3.2.4** Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

**§ 3.2.5** Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a preliminary site plan, if appropriate, preliminary building plans, and elevations; and may include some combination of study models, perspective sketches, or rough digital representations. Preliminary construction materials shall be noted on the drawings or described in writing.

**§ 3.2.5.1** The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

**§ 3.2.5.2** The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

**§ 3.2.6** The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

**§ 3.2.7** The Architect shall submit the Schematic Design Documents to the Owner and request the Owner's approval.

### **§ 3.3 Design Development Phase Services**

**§ 3.3.1** Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural and preliminary mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

**§ 3.3.2** The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

**§ 3.3.3** The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

### **§ 3.4 Construction Documents Phase Services**

**§ 3.4.1** Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and



Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

### § 3.5 Procurement Phase Services

#### § 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; ; and, (2) awarding and preparing contracts for construction.

#### § 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

#### § 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.



## **§ 3.6 Construction Phase Services**

### **§ 3.6.1 General**

**§ 3.6.1.1** The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

**§ 3.6.1.2** The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

**§ 3.6.1.3** Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

### **§ 3.6.2 Evaluations of the Work**

**§ 3.6.2.1** The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

**§ 3.6.2.2** The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 3.6.2.3** The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect’s response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 3.6.2.4** Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect’s decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

**§ 3.6.2.5** Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### **§ 3.6.3 Certificates for Payment to Contractor**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect’s certification for payment shall constitute a representation to the Owner, based on the Architect’s evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor’s



Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

#### § 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

#### § 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.



§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

## ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

### § 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

*(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	Architect
f§ 4.1.1.2 Multiple preliminary designs	Not Provided
§ 4.1.1.3 Measured drawings	Not Provided
§ 4.1.1.4 Existing facilities surveys	Not Provided
§ 4.1.1.5 Site evaluation and planning	Not Provided
§ 4.1.1.6 Building Information Model management responsibilities	Not Provided
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering	Owner

Init.

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.9 Landscape design	Not Provided
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 4.1.1.13 On-site project representation	Not Provided
§ 4.1.1.14 Conformed documents for construction	Not Provided
§ 4.1.1.15 As-designed record drawings	Not Provided
§ 4.1.1.16 As-constructed record drawings	Not Provided
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Owner/Architect
§ 4.1.1.21 Telecommunications/data design	Owner
§ 4.1.1.22 Security evaluation and planning	Owner/Architect
§ 4.1.1.23 Commissioning	Not Provided
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Not Provided
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Owner
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.30 Other Supplemental Services	Not Provided

#### § 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

*(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)*

4.1.1.1 Programming – See Exhibit A

4.1.1.10 Architectural Interior Design – Architect to work with Owner in the selection of flooring, wall, ceiling and millwork materials and colors.

4.1.1.20 Architect's Coordination of the Owner's Consultants; Coordination of Civil Engineering – Architect to work with the Owner to coordinate Civil Engineering.

4.1.1.21 Telecommunications/data design – Architect to work with Owner's Consultant to provide rough-in locations and wiring for telecommunications/data design as required by Owner's Consultant. Radio design and wiring to be secured and provided by Owner.

4.1.1.22 Security evaluation and planning – Architect to work with Owner's Consultant to provide rough-in locations and wiring for data/security as required by Owner's Consultant.

Init.



4.1.1.28 Furniture, furnishings, and equipment design – Furniture, furnishings and equipment; design, selection and procurement by Owner, Architect to work with Owner to schedule equipment rough-in requirements and locations.

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

*(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)*

4.1.1.8 Civil Engineering – Owner to secure Civil Engineer and work with Architect to coordinate Civil Engineering.

4.1.1.21 Telecommunications/data design – Owner to secure and coordinate work with telecommunication/data design. Owner to coordinate with Architect telecommunications/data design requirements for rough-in and wiring. Radio design and wiring to be secured and provided by Owner.

4.1.1.22 Security evaluation and planning – Owner to secure and coordinate design with Security Consultant. Owner to coordinate with Architect security design requirements for rough-in and wiring.

4.1.1.28 Furniture, furnishings and equipment design – Owner to secure and provide furniture, furnishings and equipment; design, selection and procurement. Owner to coordinate with Architect equipment selection, location and specifications.

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

#### § 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
  - .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
  - .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
  - .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
  - .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
  - .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
  - .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
  - .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
  - .9 Evaluation of the qualifications of entities providing bids or proposals;
  - .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;
- or,



.11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 N/A ( ) visits to the site by the Architect during construction
- .3 Three ( 3 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two ( 2 ) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within N/A ( ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as



applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.



§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.



§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### § 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a



complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 8.2.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 8.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box.)*

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

### **§ 8.3 Arbitration**

**§ 8.3.1** If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

**§ 8.3.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

**§ 8.3.2** The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

**§ 8.3.3** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### **§ 8.3.4 Consolidation or Joinder**

**§ 8.3.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 8.3.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional

person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

## ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*

.1 Termination Fee:

N/A

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

four-thousand dollars

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.



§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

## ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum  
(Insert amount)

N/A

- .2 Percentage Basis  
(Insert percentage value)

seven point seven-five ( 7.75 ) % of the Owner's Cost of the Work, as calculated in accordance with Section 11.6.

- .3 Other  
(Describe the method of compensation)

N/A

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:  
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

4.1.1.1 Programming – Hourly not to exceed \$11,500

4.1.1.10 Architectural interior design – no additional compensation

4.1.1.20 Architect coordination of Owner's consultant (Civil Engineering) – no additional compensation

4.1.1.21 Architects coordination of Owner's telecommunication/data – To be determined: Electrical Engineering only

4.1.1.22 Architects coordination of Owner's security evaluation and planning – To be determined: Electrical Engineering only

4.1.1.28 Furniture, furnishings and equipment design – no additional compensation

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:  
(Insert amount of, or basis for, compensation.)

Hourly Basis

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent ( 10 %), or as follows:  
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	twenty	percent (	20	%)
Design Development Phase	fifteen	percent (	15	%)
Construction Documents	forty	percent (	40	%)

Init.



Phase				
Procurement Phase	five	percent (	5	%)
Construction Phase	twenty	percent (	20	%)
<hr/>				
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.  
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate (\$0.00)
Principal Architect	135.00
Project Architect	125.00
Drafting Technician	90.00
Office Assistant	38.00

#### § 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent ( 10 %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:



*(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)*

## **§ 11.10 Payments to the Architect**

### **§ 11.10.1 Initial Payments**

**§ 11.10.1.1** An initial payment of N/A (\$ ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

**§ 11.10.1.2** If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of N/A (\$ ) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

### **§ 11.10.2 Progress Payments**

**§ 11.10.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

*(Insert rate of monthly or annual interest agreed upon.)*

15 % fifteen percent annually

**§ 11.10.2.2** The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

**§ 11.10.2.3** Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

## **ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Agreement are as follows:

*(Include other terms and conditions applicable to this Agreement.)*

## **ARTICLE 13 SCOPE OF THE AGREEMENT**

**§ 13.1** This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

**§ 13.2** This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

*(Insert the date of the E203-2013 incorporated into this agreement.)*

N/A

- .3 Exhibits:  
*(Check the appropriate box for any exhibits incorporated into this Agreement.)*

[ N/A ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this agreement.)*

[ X ] Other Exhibits incorporated into this Agreement:  
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

Programming Checklist – Exhibit A

.4 Other documents:  
(List other documents, if any, forming part of the Agreement.)

N/A

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
ARCHITECT (Signature)

David S. Herlocker

\_\_\_\_\_  
(Printed name, title, and license number, if required)



**Exhibit A**  
**Programming Scope-of-Services Checklist**

**PROGRAMMING**

**I**

- ☐ Review survey and property easements, restrictions, set-backs, heights and parking limits
- ☐ Review survey and obtain locations of know utilities
- ☐ Review City of Winfield stormwater plans for site and at 8<sup>th</sup> Ave.
- ☐ Verify site zoning or other restrictions on building, parking requirements and review regulations
- ☐ Legal and regulatory considerations such as:
  - ☐ Variances required
  - ☐ Special permits
- ☐ Identify Police and Training traffic flow and parking
- ☐ Identify orientation and limiting site considerations to help establish building line limitations to estimate buildable area

**II**

- ☐ Obtain the list of exterior and interior space needs
- ☐ Obtain a detailed list of building functions, occupancies, and spaces
- ☐ Obtain the list of equipment, equipment functions and locations
- ☐ Obtain approach to furnishings
- ☐ Obtain approach to voice/data, security wiring approach and responsibilities
- ☐ Participate in basic client need meetings and interviews of critical personnel as identified by City
- ☐ Identify overall occupancy and specific departmental and room occupancies
- ☐ Establish importance of room functions and relationships/interaction to other rooms
- ☐ Estimate size(s) of core area(s) required for spaces such as:
  - ☐ Mechanical services
  - ☐ Electrical, data and security services
- ☐ Create Programming list of spaces, sizes, use and equipment critical for the desired function
- ☐ Create Programming space estimate of total square footage desired
- ☐ Create bubble diagrams showing spaces with relationships flagged with their importance rankings and spatial interaction weightings

**III**

- ☐ Review Program space requirements, and compare with site restrictions
- ☐ Provide preliminary building code research
- ☐ Create bubble diagram option showing building area relationships to site constraints and known requirements

**IV**

- ☐ Obtain updated/current existing conditions of building and site as required for Schematic Design.



## Request for Commission Action

**Date:** July 12, 2022

**Requestor:** Taggart Wall, City Manager

---

**Action Requested:** Consider amending the Development Agreement with Petra Development regarding development at 19<sup>th</sup>/Bliss

**Analysis:**

This resolution amends the current agreement by splitting the project into two phases. The first phase is expected to include three buildings with approximately 71 units of a mix of 1,2 and 3 bedroom.

**Fiscal Impact:** The amendment makes no changes to incentives on the project as a whole and all previous incentives would reduce proportionate to the final development.

**Attachments:** Resolution & Agreement

**A RESOLUTION**

**AUTHORIZING** and directing the Mayor and Clerk of the City of Winfield, Kansas to execute an amendment to an agreement between the City of Winfield, Kansas and Petra Winfield Residences, LLC, for providing the sale, development, and utility improvements for Petra Win Residences Planned Unit Development.

**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 an amendment to an agreement between the City of Winfield, Kansas and Petra Winfield Residences, LLC, for providing the sale, development and utility improvements for Petra Win Residences Planned Unit Development, a copy of which is attached hereto and made a part hereof the same if fully set forth herein.

**Section 2.** This resolution shall be in full force and effect from and after its adoption.

**ADOPTED** this 18<sup>th</sup> day of July 2022.

(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/ps

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

**Between the**

**CITY OF WINFIELD, KANSAS**

**And**

**PETRA WINFIELD RESIDENCES, LLC.**

**July \_\_, 2022**



## AMENDED AND RESTATED DEVELOPMENT AGREEMENT

**THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT** (this “**Agreement**”), is made and entered into as of ~~June~~July \_\_, 2022 (the “**Effective Date**”), by and between the **CITY OF WINFIELD, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the “**City**”), and **PETRA WINFIELD RESIDENCES, LLC**, a Kansas limited liability company (“**Developer**”), (the Developer and the City are collectively referred to as the “**Parties**” and each a “**Party**”).

### RECITALS

A. The Parties previously entered into a Development Agreement dated as of February 24, 2022 and desire to amend and restate said agreement as set forth herein.

B. The City owns ~~a~~ certain parcels of land in the City (~~to be divided into~~which constitute a portion of “Parcel A” and “Parcel B” as further described below) located adjacent to the intersection of 19th Ave and Bliss St., Winfield, Kansas, more particularly described on *Exhibit A* attached hereto.

C. The City previously made improvements, together with Bliss Developments, LLC, to an adjacent parcel located at the same site.

D. The City wishes to sell the portion of Parcel A the City owns and Parcel B to the Developer for development and the Developer wishes to purchase and develop ~~the~~ Parcel A and Parcel B, together with adjacent property, with no less than 150 apartment units in two phases (collectively, the “New Facilities”) pursuant to the terms of this Agreement.

E. The City deems it necessary and in the best interest of the City to have required infrastructure improvements constructed in accordance with the policies and requirements of the City.

**NOW, THEREFORE**, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### PROPERTY PURCHASE

1. City agrees to provide a quit claim deed to Developer for the portion of Parcel A owned by the City upon ~~approval by the Governing Body of the final plat and~~ the occurrence of following conditions precedent: Developer has provided documentation, reasonably satisfactory to the City, that the Developer has secured a loan commitment from a qualified credit facility for construction financing of the Phase 1 Facilities (as defined below)

including no less than 70 apartment units and associated and required improvements to the site including internal street/parking paving and utilities and a letter of credit for the special assessments levied pursuant to Ordinance No. 4140 of the City (the “Existing Special Assessments”).

Parcel A is legally described as follows:

[TO BE PROVIDED]

2. City hereby grants to Developer the exclusive right and option to purchase Parcel B for a purchase price of \$1.00 (the “Phase 2 Option”) which may be exercised any time following Developer providing documentation, reasonably satisfactory to the City, that the Developer has secured a loan commitment from a qualified credit facility for construction financing of the Phase 2 Facilities (as defined below) including no less than an additional 70 apartment units and associated and required improvements to the site including internal street/parking paving.

Parcel B is legally described as follows:

[TO BE PROVIDED]

- ~~3.~~
3. The Developer agrees to provide all necessary engineering, surveying, studies and professional services for the development of legal descriptions and design of improvements for Parcel A and Parcel B.
4. **Previous Special Assessments.** The Existing Special Assessments have previously been levied upon a portion of Parcel A. Through its acquisition and ownership of that portion of Parcel A, the Developer will become responsible for payment of the Existing Special Assessments as they become due. The Developer shall through an established bank or financial institution, as approved by the City, establish a line of credit, escrow account or other acceptable form of surety, and have the financial institution provide to City a letter of credit in sufficient amount to cover the cost of the first two years of the Existing Special Assessments, in an approximate total amount of twenty-five thousand dollars (\$25,000.00). The letter of credit shall be furnished to City by the bank or financial institution prior to the transfer of the deed of Parcel A via quitclaim from the City to Developer.
  - a. The letter of credit shall be released upon the earlier of (i) the Building Official for the City issuing a full occupancy permit for at least one apartment building that includes not less than 24 apartment units therein on the New Parcel, or (ii) the Existing Special Assessments having been paid in full. If the Developer transfers or conveys the New Parcel to an permitted assignee pursuant to this Agreement prior to satisfaction of either subsection (i) or (ii) of this paragraph, the Developer’s letter of credit will be only be released if the City, in its discretion, accepts a replacement letter of credit from the permitted assignee. Should Existing Special

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Assessments become delinquent for a period of one calendar year, City may redeem letters of credit for unpaid special assessments against applicable parcel(s).

5. **Property Reversion.** Should Developer not have a contract for construction of the Phase 1 Facilities, with reasonable construction start pending, as acceptable to the City, by December 31, 2022, and provided no substantial improvements have been made to the ~~Phase 1 Parcel~~ Parcel A, the City shall have an option to repurchase the portion of Parcel A the City deeded to the Developer at no cost and the Developer shall give up their exclusive right and option to purchase Parcel B. In the event special assessments have been levied against Parcel A with regards to the CID (defined below), following the City's reacquisition of Parcel A Developer will be directly responsible to the City for the payment of such special assessments as the same become due. The City reserves the right to further transfer all or a portion of the repurchased portion of Parcel A to the City's land bank established pursuant to K.S.A. 12-5901 *et seq.* (the "Land Bank Act"). The City's land bank may subsequently transfer ownership of all or any portion of Parcel A with such modifications to the special assessments related to a CID as permitted by the Land Bank Act.

#### UTILITY AND SITE IMPROVEMENTS TO "NEW PARCEL"

1. Developer agrees to provide necessary required infrastructure improvements for the Phase 1 Facilities and Phase 2 Facilities (if developed) (the "Infrastructure Improvements") per the City of Winfield Subdivision, Zoning and Municipal Code and in accordance with the specifications of the City of Winfield and Kansas Department of Health and Environment. The design and construction of the Infrastructure Improvements may be completed in phases commensurate with the development of Phase 1 Facilities and Phase 2 Facilities. All Infrastructure Improvements described below will be constructed to City standards and specifications, and approved in writing by the City upon completion.
  - a. Developer agrees to contract and pay for all costs with a licensed design professional for design of street paving/parking, sanitary sewer, stormwater drainage and water improvements upon a reasonable schedule for each phase. Developer will have plans prepared for construction, subject to approval of the City. Additional engineering services may include, but are not limited to, engineering design, NPDES permit preparation, field staking, surveys, and any construction inspection. Also included shall be the cost of geotechnical testing, soil compaction testing, and quality assurance testing of all materials used in the Infrastructure Improvements and the applicable phase of the New Facilities (as defined below).
  - b. Developer agrees to construct and pay for all costs of the installation of the street paving/parking, sanitary sewer, stormwater drainage and water improvements. Street paving/parking and stormwater drainage shall include necessary grading, concrete curb and gutter, asphaltic or concrete roadway surface on a stabilized base and drainage appurtenances within the subdivision and any internal street lighting upon a reasonable schedule for each phase. Sanitary sewer improvements shall include sewer main, manholes, wyes, risers, service to structure and other necessary appurtenances. Water improvements shall include water main, fire hydrants,

valves, service lines, meters, service to structure and other necessary appurtenances.

- i. Water improvements to the meter setting shall become public assets including dedicated access utility easements within the development to the City's specification. The City agrees to accept maintenance on the public water improvements following date put in-service as acceptable to the City.
  - ii. The City agrees to waive any and all water and sewer initial hook-up and initial meter fees or charges.
- c. Developer agrees to provide all necessary electric load data, to allow the City to provide all plans and specifications, as required. Plans and specifications for electric improvements shall be prepared by the City at no charge to the Developer. Installation for underground electric utility improvements up to the meter setting shall be provided by the City. Developer agrees to pay for all associated installation costs and shall be billed for materials and labor/equipment at cost or other standard rates established by the City of Winfield. Fifty-percent of the value of said materials for the applicable phase will be due from the Developer to the City prior to procurement. Electric utility improvements up to the meter setting shall become public assets including dedicated access utility easements within the development to the City's specification. The City agrees to accept maintenance on the electric utility improvements following date put in-service as acceptable to the City.
- d. Natural gas utility improvements are not part of this agreement and if requested by the Developer at a later date, mains shall be provided in a separate agreement. Current estimates are for main extension at \$9.00 per l.f. Each individual service shall be billed at a time and material basis, based upon City rates.
- e. Developer agrees to grant access and utility easements necessary for connection of Phase 2 utilities to Phase 1 public and private infrastructure.

#### DEVELOPMENT OF "NEW FACILITIES"

1. **Phase 1** - Developer will cause to be designed, engineered and constructed an apartment complex on ~~the Phase 1 Parcel~~ Parcel A, including applicable Infrastructure Improvements (except as otherwise set forth above), (the "**Phase 1 Facilities**").
  - a. Developer will obtain all Governmental Approvals for the Phase 1 Facilities and the Phase 1 Facilities will conform to all approved plans for such improvements as provided in this Agreement, applicable building codes, City Ordinances and all other applicable rules and regulations. The Phase 1 Facilities shall include no less than 70 apartment units.
  - b. The Developer's capital investment (including fees and interest) in the Phase 1 Facilities will be greater than \$9,000,000.00.

- c. The Developer will commence site work on the New Facilities no later than August 1, 2022.
  - d. Mass grading work of the Phase 1 Facilities will be substantially completed no later than March 1, 2023.
  - e. No later than December 31, 2024, the Developer will cause the Phase 1 Facilities to reach substantial completion, meaning a Full Certificate of Occupancy from the City of Winfield Building Official shall have been issued upon 75% of units in the Phase 1 Facilities (“Substantial Completion”) (provided however that such work shall be substantially completed as set forth herein no later than December 31, 2027, regardless of any Excusable Delay as described below unless otherwise agreed by the City in writing).
2. **Phase 2** – If Developer exercises its Phase 2 Option and proceeds with development of the Phase 2 Facilities, Developer will utilize good faith commercial efforts to have designed, engineered and constructed an apartment complex on ~~the Phase 2 Parcel~~ Parcel B, including applicable Infrastructure Improvements (except as otherwise set forth above), (the “**Phase 2 Facilities**”) and:
- a. obtain all Governmental Approvals for the Phase 2 Facilities. The Phase 2 Facilities will include no less than 70 apartment units and conform to all approved plans for such improvements as provided in this Agreement, applicable building codes, City Ordinances and all other applicable rules and regulations;
  - b. invest (including fees and interest) capital of at least \$9,000,000.00 in the Phase 2 Facilities;
  - c. commence site work on the Phase 2 Facilities no later than August 1, 2025;
  - d. substantially complete mass grading work of the Phase 2 Facilities no later than March 1, 2026; and
  - e. cause the Phase 2 Facilities to reach substantial completion, meaning a Full Certificate of Occupancy from the City of Winfield Building Official shall have been issued upon 75% of units in the Phase 2 Facilities no later than December 31, 2027 (provided however that such work shall be substantially completed as set forth herein no later than December 31, 2030, regardless of any Excusable Delay as described below unless otherwise agreed by the City in writing).
  - f. If Developer does not exercise its option on Phase 2 by August 1, 2025, Developer shall forfeit their exclusive right and option for purchase of Parcel B.

The Parties agree and acknowledge that nothing in this Agreement is intended to obligate the Developer to proceed with development of the Phase 2 Facilities.

3. **New Facilities Cost.** Except as otherwise set forth in this Agreement, the Developer shall be solely responsible for and will pay all costs related to the Phase 1 Facilities and Phase 2 Facilities (collectively, the “New Facilities”).
4. **City Review.** Upon reasonable advance notice, the Developer shall meet with the City to review and discuss the design and construction of the New Facilities to enable the City to monitor the status of construction and to determine that the New Facilities is being performed and completed in accordance with this Agreement.
5. **Construction Plans.** Upon approval of the preliminary plans and specifications, the Developer shall submit Construction Plans for the New Facilities for review and approval pursuant to the City Building Code. Construction Plans may be submitted in phases or stages. The Construction Plans shall be in sufficient completeness and detail, which shall be at least 30% complete, to show that construction will be in conformance with this Agreement. The Developer agrees that all construction, improvement, equipping, and installation work on the New Facilities shall be done in accordance with the Construction Plans, and this Agreement. The Developer will furnish to the City the number of copies of the Construction Plans as required by the City.
6. **Construction Permits, Approvals.** Before commencement of construction or development of any buildings, structures or other work or improvements as part of the New Facilities, the Developer shall secure or cause to be secured any and all permits and approvals which may be required by the City. Such permits and approvals may be obtained by Developer in phases corresponding to particular stages of construction. The City shall cooperate with and provide all usual assistance to the Developer in securing these permits and approvals, and shall diligently process, review and consider all such permits and approvals as may be required by law without unreasonable delay; except the City shall not be required to issue any such permits or approval for any portion of the New Facilities not in conformance with this Agreement. The City will not waive any building permit, inspection, or site plan/plans and specifications review fees.
7. **Land Use Restrictions.** The New Parcel may be used for activities incidental to the intended operation of an apartment complex and which conform to approved uses in accordance with the City’s zoning requirements.

#### ECONOMIC DEVELOPMENT INCENTIVES

1. **Industrial Revenue Bonds.** The City declares an intent to issue, pursuant to K.S.A. 12-1740 *et seq.* (the “IRB Act”), industrial revenue bonds (“IRB’s”), in one or more series, to finance construction of the New Facilities, subject to satisfaction of the conditions set forth in this Agreement.
  - a. **Sales Tax Exemption.** Pursuant to the provisions of K.S.A. 79-3601 *et seq.* (the “Sales Tax Act”), particularly 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the New Facilities and financed with proceeds of the IRB’s are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefor. The City agrees that upon timely receipt from the Developer of the IRB application,



the City will place consideration of a resolution declaring its intent to issue the IRB's on or before its May 2, 2022 City Commission meeting and, if approved, will apply to the State Department of Revenue for a sales tax exemption certificate no later than May 15, 2022.

b. **Property Tax Exemption.** Exemption of ad valorem property taxation with respect to property financed by the IRB's shall be requested by the Developer at a rate of no more than 90% for 7 years and granted by the City, subject to satisfaction of the conditions set forth in this Agreement, the execution of a payment in lieu of taxes agreement between the City and the Developer, and the City's issuance of the IRB's. The Parties agree the intention is to issue the IRB's upon completion of the New Facilities and for the tax abatement to commence in the year following completion of the New Facilities.

c. **Conditions of IRB Issuance.** The issuance of the IRB is subject to the satisfaction of the following:

- (i) the Developer's full compliance with the terms of this Agreement;
- (ii) the successful negotiation and sale of the IRB's to a purchaser, which shall be the Developer or a financial institution determined by the Developer and acceptable to the City (the "Purchaser"), which sale shall be the responsibility of the Developer and not the City;
- (iii) the receipt of the approving legal opinion of Gilmore & Bell, P.C. ("Bond Counsel") in form acceptable to the City, the Developer and the Purchaser;
- (iv) the obtaining of all necessary governmental approvals to the issuance of the IRB's; and the commitment to and payment by the Developer or Purchaser of all expenses relating to the issuance of the IRB's, including, but not limited to: (1) expenses of the City and the City Attorney; (2) any placement fees and expenses; (3) all legal fees and expenses of Bond Counsel; and (4) all recording, filing fees and other expenses required by the IRB Act.

2. **Creation of Community Improvement District.** Developer may request, and the City agrees to consider the request to, create, pursuant to K.S.A. 12-6a26 *et seq.* (the "CID Act"), a community improvement district ("CID") and levy special assessments against the New Parcel (the "CID Special Assessments"), as required and requested, to finance, in part, construction of the New Facilities, subject to satisfaction of the conditions set forth in this Agreement.

- a. The Developer will submit a petition ("CID Petition") in conformance with the CID Act, and any other related special assessment petitions, required to request the establishment of the CID and the CID Special Assessments.
- b. The City agrees that upon timely receipt from the Developer of the CID Petition, the City will promptly place consideration of an ordinance to establish the CID on City Commission meeting agenda.

- c. The Developer may seek, acquire, and complete financing sufficient to provide up to \$6,000,000 to pay costs of the New Facilities (the "CID Debt") from an out-of-state issuer, financial institution, or other third-party debt provider and will be solely responsible for all costs thereof. No special obligation notes or bonds will be requested of, issued by, or required by the City for the New Facilities.
- d. The City will, pursuant to the provisions of the CID Act and CID Petition, levy the CID Special Assessments upon the New Parcel to pay the principal and interest upon the CID Debt as the same become due and payable for a period of 22 years from the issuance of the CID Debt (or such other period as agreed to by the City and Developer and permitted by the CID Act). Notwithstanding anything to the contrary, the City shall have no responsibility for the repayment of the CID Debt other than to provide for the distribution of the CID Special Assessments, if any, to the trustee therefor. In the event the CID Special Assessments are not sufficient to provide for the repayment of the CID Debt, the City has no obligation or duty to (i) levy any form of taxation other than the CID Special Assessments pursuant to the terms of this Agreement or (ii) make any appropriation for the payment of such CID Special Assessments or CID Debt. The Developer will indemnify and hold the City harmless from any costs or expenses that may be incurred by the City associated with the CID Special Assessments and such indemnification will survive the expiration or earlier termination of this Agreement.
- e. The City shall prepare a Tax Distribution Agreement or similar with applicable tax collecting entities to direct the collection of said special assessments directly to the applicable trustee.

#### MISCELLANEOUS

1. **Excusable Delay.** In addition to specific provisions of this Agreement, performance of a party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended for the period of any Excusable Delay, where the party seeking the extension has acted diligently and delays or defaults are due to such Excusable Delay. "Excusable Delay" means any delay in the performance of obligations under this Agreement which is beyond the reasonable control and without the fault of the Party affected and which the affected Party may not overcome despite good faith efforts and diligence, caused by damage or destruction by fire or other casualty, strike, war, riot, sabotage, act of public enemies, epidemics, default of another party, delays in consents or approvals of the City Commission, building officials, or other City departments, freight embargoes, shortage of materials, unavailability of labor, acts of God, including earthquake, adverse weather conditions such as, by way of illustration and not limitation, severe rain, snow or ice storms or below freezing temperatures of abnormal degree or abnormal duration, freezing temperatures that prevent the prudent installation of concrete or similar materials, tornadoes, floods, or other causes beyond the reasonable control or fault of the affected Party, which shall include but not be limited to any pending or threatened litigation interfering with or delaying the construction of all or any portion of

the New Facilities, which in fact prevents the Party so affected from discharging its respective obligations hereunder.

2. **Amendment.** This Agreement may be amended only by the mutual consent of the Parties and by the execution of said amendment by the Parties or their successors in interest.

3. **Successors and Assigns.**

(a) This agreement will be binding on and inure to the benefit of the Parties and their respective heirs, administrators, executors, personal representatives, agents, successors and assigns.

(b) Until Substantial Completion of the New Facilities has occurred, the obligations of Developer under this Agreement may not be assigned in whole or in part without the prior written approval of City, which approval will not be unreasonably withheld, conditioned, or delayed upon a reasonable demonstration by Developer of the proposed assignee's experience and financial capability to undertake and complete all portions of the New Facilities and the Infrastructure Improvements, all in accordance with this Agreement. Notwithstanding the foregoing, Developer is permitted to subcontract the construction of any portion of the New Facilities or Infrastructure Improvements without the consent of City but Developer will remain liable under this Agreement.

(c) The City hereby approves, and no prior consent will be required in connection with:

(i) the right of Developer to encumber or collaterally assign its interest in the New Parcel or any portion thereof or any interest in the Agreement to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of costs of the New Facilities, or the right of the holder of any such encumbrance or transferee of any such collateral assignment;

(2) the right of Developer to assign Developer's rights, duties and obligations under the Agreement to a related party (meaning any party related to the Developer by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended and any successor entity in which the principals of the Developer (either individually or collectively) or Developer own or control no less than fifty percent (50%) of the voting interest in such successor entity); or

(3) the right of Developer to sell or lease individual portions of the New Facilities in the ordinary course of the development thereof;

provided that in each such event Developer named herein will remain liable hereunder for the Substantial Completion of the New Facilities and the Infrastructure Improvements, and will be released from such liability hereunder only upon Substantial Completion.

4. **Authorization.** Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval,

notice or consent of the City or the Developer is required, or the City or the Developer is required to agree or to take some action at the request of the other Party, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the City Manager and for the Developer by any officer of the Developer so authorized; and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither Party shall have any complaint against the other as a result of any such action taken. The City Manager may seek the advice, consent or approval of the City Commission before providing any supplemental agreement, request, demand, approval, notice or consent for the City pursuant to this Section.

5. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.
6. **Consents.** Except as otherwise provided in this Agreement, whenever the consent, approval or acceptance of either Party is required hereunder, such consent, approval or acceptance shall not be unreasonably withheld or unduly delayed.

IN WITNESS WHEREOF, the foregoing Agreement is executed this \_\_\_\_ day of July 2022.

DEVELOPER  
Petra Winfield Residences, LLC

\_\_\_\_\_  
Noah Swank, Manager

CITY

\_\_\_\_\_  
Ronald E. Hutto, Mayor

Attest:

\_\_\_\_\_  
Brenda Peters, City Clerk

6/\_\_/22



**EXHIBIT A**  
**DEPICTION OF PARCEL A AND PARCEL B**

6/\_\_/22

**EXHIBIT B**

**DEPICTION OF THE PHASE 1 PARCEL AND PHASE 2 PARCEL**

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## Request for Commission Action

**Date:** July 12, 2022

**Requestor:** Taggart Wall, City Manager

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**Action Requested:** Consider resolution authorizing City Manager to apply for natural gas pipeline replacement grant

**Analysis:**

This resolution authorizes the city manager to process all necessary documentation to apply for a U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration grant for natural gas pipeline replacement.

**Fiscal Impact:** The grant requires no city match. The grant application is still being evaluated and the federal government has set an initial filing date of 7-25-2022. On 7-14-2022, the federal government issued notice that it may extend the filing date. The proposed project is amount is still being discussed and would remove the last bare steel from the system and potentially also remove additional coated steel line from the system.

**Attachments:** Resolution

**A RESOLUTION**

**AUTHORIZING** the City Manager of the City of Winfield, Kansas, to execute and submit with the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) all necessary documents related to the Notice of Funding Opportunity of Natural Gas Distribution Infrastructure Safety and Modernization Grant Program.

**WHEREAS**, the City of Winfield, Kansas is a municipal-owned utility operating a natural gas distribution system; and

**WHEREAS**, U.S. DOT PHMSA's NGDISM grants will provide funding to municipality- or community-owned utilities (not including for-profit entities) to repair, rehabilitate, or replace their natural gas distribution pipeline system or portions thereof, or to acquire equipment needed to (a) reduce incidents and fatalities and (b) avoid economic losses; and

**WHEREAS**, the goals of this program are to (1) improve the safe delivery of energy to often underserved communities, reducing incidents and fatalities, as well as methane leaks, (2) avoid economic losses caused by pipeline failures, (3) to protect our environment and reduce climate impacts by remediating aged and failing pipelines and pipe prone to leakage, and 4) create good-paying jobs.

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

**Section 1.** the City Manager of the City of Winfield, Kansas, to execute and submit with the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) all necessary documents related to the Notice of Funding Opportunity of Natural Gas Distribution Infrastructure Safety and Modernization Grant Program.

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

**ADOPTED** this 18th day of July.

(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





**U.S. Department  
of Transportation**  
Pipeline and  
Hazardous Materials  
Safety Administration  
(PHMSA)

## Notice of Funding Opportunity

### Natural Gas Distribution Infrastructure Safety and Modernization Grant Program

#### Fiscal Year (FY) 2022

NOFO Posted Date: May 24, 2022  
Applications Due Date: July 25, 2022, 11:59 pm ET  
Questions Due Date: July 15, 2022, 11:59 pm ET

Applicant must be registered at [www.grants.gov](http://www.grants.gov) to apply online. It is highly recommended that applicants begin the registration process as soon as possible to avoid delays in submission. Additionally, applicants must maintain an active registration in the System for Award Management (SAM) at [www.SAM.gov](http://www.SAM.gov).

Furthermore, applicants must register with FedConnect at <https://www.fedconnect.net> for an account before submitting an application. Your organization's Marketing Partner ID number (MPIN), which can be retrieved from SAM, is required to create an account. For instructions on how to register in FedConnect and how to use the portal, click on the link to access the [FedConnect: Ready, Set, Go! Tutorial](#) on the FedConnect home page.

#### Assistance Listing (formerly CFDA)

20.708 "[Natural Gas Distribution Infrastructure Safety and Modernization Grant Program](#)"<sup>1</sup>

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<sup>1</sup> <https://www.phmsa.dot.gov/grants/pipeline/natural-gas-distribution-infrastructure-safety-and-modernization-grants?msclkid=21d59c0bd16511ecb49f87a5499f0fc3>

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**PROGRAM SUMMARY**

Federal Agency Name:	U.S. Department of Transportation (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA)
Funding Opportunity Title:	“Natural Gas Distribution Infrastructure Safety and Modernization Grant Program - FY 2022”
Announcement Type:	Initial Announcement
Funding Opportunity Number:	<b>693JK322NF0018</b>
Assistance Listing Number:	20.708
NOFO Posted Date:	May 24, 2022
Application Due Date:	July 25, 2022, 11:59 pm ET
Question Due Date:	July 15, 2022, 11:59 pm ET

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## Natural Gas Distribution Infrastructure Safety and Modernization Grant Program – Notice of Funding Opportunity (NOFO) – Assistance Listing 20.708

### MISSION

The mission of the U.S. Department of Transportation (DOT or Department) is to deliver the world's leading transportation system, serving the American people and economy through the safe, efficient, sustainable, and equitable movement of people and goods. DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) protects people and the environment by advancing the safe transportation of energy and other hazardous materials that are essential to our daily lives. To do this, the Agency establishes national policy, sets, and enforces standards, educates, and conducts research to prevent incidents. PHMSA also prepares the public and first responders to reduce consequences if an incident does occur.

### SECTION A – PROGRAM DESCRIPTION

#### A.1 Statement of Purpose

The Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58) provides funding for the Natural Gas Distribution Infrastructure Safety and Modernization (NGDISM) Grant Program. NGDISM funds are available for municipality- or community-owned utilities (not including for-profit entities) to repair, rehabilitate, or replace their natural gas distribution pipeline system or portions thereof, or to acquire equipment to (1) reduce incidents and fatalities and (2) avoid economic losses.

Through the NGDISM Grant Program, PHMSA seeks to reduce the risk profile of existing pipeline systems with pipe prone to leakage of methane, create related good-paying jobs<sup>2</sup> and promote economic growth, and benefit disadvantaged rural and urban communities with safe provision of natural gas.

#### A.2 Statute and Program Authority

The Infrastructure Investment and Jobs Act, Public Law 117-58

#### A.3 Background

PHMSA's NGDISM grants will provide funding to municipality- or community-owned utilities (not including for-profit entities) to repair, rehabilitate, or replace their natural gas distribution pipeline system or portions thereof, or to acquire equipment needed to (a) reduce incidents and fatalities and (b) avoid economic losses. The goals of this program are to (1) improve the safe delivery of energy to often underserved communities, reducing incidents and fatalities, as well as

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<sup>2</sup> To access prevailing wage rates by county and state for various classifications of work, visit <https://SAM.gov>'s homepage. Scroll down and use the drop-down option to choose *Wage Determinations*. Click on the category of wage, for example, Construction. Type in the state and county and click search to identify the necessary wages.



methane leaks, (2) avoid economic losses caused by pipeline failures, (3) to protect our environment and reduce climate impacts by remediating aged and failing pipelines and pipe prone to leakage, and 4) create good-paying jobs.

Methane emissions are a significant contributor to climate change, and accordingly, the focus is to reduce it to the greatest extent possible. Repair, rehabilitation, and/or replacement of pipe prone to leakage (e.g., cast iron, wrought iron, bare steel, and certain vintage plastic materials) will reduce the inventory of methane leaks, support the administration's goal of addressing climate change, and reduce the safety risks associated with potential exposure to gas from leaking pipes. Many of these assets serve disadvantaged rural and urban areas with a high proportion of underserved and low socio-economic populations.

Applicants must provide a Statement of Work (SOW) addressing the scope, schedule, and budget for the proposed project (see Section D). The SOW must also include:

- a. a risk profile describing the condition of the current infrastructure for which funding is requested—and potential safety benefits;
- b. a plan for creating good-paying jobs that provides economic impact, growth, and substantial benefits to disadvantaged rural or urban communities; and
- c. the proposal's capacity to provide a reduction in lifecycle greenhouse gas emissions and any other impacts that may be beneficial to the environment or public.

Prior to awards, an Environmental Questionnaire will need to be completed that details actions to comply with state and Federal environmental laws, environmental justice, and historic preservation requirements, and describes mitigation actions to reduce environmental impacts of the project(s). Performance measures and expected outcomes, including milestones for project completion, must also be provided.

Evaluation criteria will include the following: (1) the risk profile of the existing pipeline system operated by the applicant, including the presence of pipe prone to leakage; and (2) the extent to which disadvantaged rural and urban communities benefit from the remediation. See Section E for further detail.

## **SECTION B – FEDERAL AWARD INFORMATION**

### **B.1 Award Size**

Congress appropriated \$1 billion over five years to implement and administer the NGDISM Grant Program. In FY 2022, PHMSA was appropriated \$200 million for the program (with up to \$4 million to be used for PHMSA administrative costs). PHMSA will make available \$196 million for NGDISM grants under this NOFO. There is no award minimum. An award to a single municipality- or community-owned natural gas distribution system may not be more than 12.5 percent.

**B.2 Period of Performance**

The period of performance is 36 months from the date of award for each grant.

**B.3 Type of Award**

PHMSA will make discretionary awards via grant agreements for projects selected under this NOFO. FY 2022 NGDISM award disbursements to grantees will be for eligible costs incurred on a reimbursable basis. Consistent with 2 CFR Part 200, grantees must certify that their expenditures are allowable, allocable, reasonable, and necessary to the approved project(s) before seeking reimbursement.

**B.4 Availability of Funds**

The IIJA makes FY 2022 NGDISM grant funds available for award/obligation through September 30, 2032. Prior to award, applicants must satisfy all applicable Federal statutory, regulatory, and administrative requirements, including civil rights and environmental review requirements, as outlined in this NOFO. There is no pre-award authority to incur costs for these projects before the award announcement. At the time the project selections are announced, DOT may extend pre-award authority for the selected projects. Unless authorized by DOT in writing, costs incurred prior to award of FY 2022 NGDISM grant funding via a signed grant agreement (“pre-award costs”) are ineligible for reimbursement.<sup>3</sup>

**SECTION C – ELIGIBILITY INFORMATION****C.1 Eligible Applicants**

The FY 2022 NGDISM Grant Program is open to the following entities:

- a. Municipality-owned utilities operating a natural gas distribution system
- b. Community-owned utilities operating a natural gas distribution system

\*For profit entities are NOT eligible for NGDISM grant funding.

**C.2 Cost Sharing or Matching**

There are no cost-sharing or matching requirements under this NOFO. However, applicants may propose projects that involve non-Federal contributions and describe in their application the nature and impact of the non-Federal contribution on the proposed project(s) (e.g., pipe replaced/repaired; number of jobs created; and economic impact). Any such non-Federal contribution will not be used as a factor during the merit review of applications.

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<sup>3</sup> Pre-award costs are only costs incurred directly pursuant to the negotiation and anticipation of the NGDISM grant award where such costs are necessary for efficient and timely performance of the scope of work, as consistent with 2 CFR 200 determined by DOT.

## SECTION D – APPLICATION AND SUBMISSION INFORMATION

### D.1 Address to Request Application

The application package can be accessed at [www.Grants.gov](http://www.Grants.gov), and PHMSA requires applicants for this funding opportunity to apply electronically through [www.Grants.gov](http://www.Grants.gov). Applicants must download the application package associated with this funding opportunity by following the directions provided on [www.Grants.gov](http://www.Grants.gov).

To request a hard copy of the application package, please contact:

Shakira Mack  
Pipeline and Hazardous Materials Safety Administration  
1200 New Jersey Ave. SE  
Washington, DC 20590  
Email: [PHMSAPipelineBILGrant@dot.gov](mailto:PHMSAPipelineBILGrant@dot.gov)  
Phone: (202) 366-7652

Applications will only be accepted via [www.Grants.gov](http://www.Grants.gov). Applicants who can demonstrate that they are unable to use [www.Grants.gov](http://www.Grants.gov) because of connectivity challenges in remote areas may contact Shakira Mack at [PHMSAPipelineBILGrant@dot.gov](mailto:PHMSAPipelineBILGrant@dot.gov) to request alternative means to submit their applications.

If you are hearing-impaired, please contact the FR/TTY at 1-800-877-8339 or email [PHMSA-Accessibility@dot.gov](mailto:PHMSA-Accessibility@dot.gov).

The application package contains the required electronic forms and the ability to upload attachments for the Budget Narrative, budget justification, Project Narrative, assurances, and certifications. The applicant must submit the information outlined in the Application Guide in addition to the program-specific information below.

To begin the process, applicants must be registered with [www.Grants.gov](http://www.Grants.gov) to submit an application. It is highly recommended that applicants begin the registration process as soon as possible to avoid delays with submission. Failure to comply with the prescribed application requirements as described in this section may result in the failure of an application to be reviewed.

#### Accessing Grant Systems:

1. **Grants.gov** For new users, go to <http://www.grants.gov/web/grants/applicants.html>, or go to the main page at <http://www.grants.gov/> and select “Register.” NOTE: New user registrations for Grants.gov can take up to two weeks to complete. For additional questions on how to register, contact Grants.gov support by phone at (800) 518-4726 or via email at [support@grants.gov](mailto:support@grants.gov).

2. **FedConnect** Applicants must register with FedConnect at <https://www.fedconnect.net> before submitting an application. Your organization's Marketing Partner Identification Number (MPIN), which can be retrieved from the System for Award Management (SAM), is required to create an account. For instructions on how to register in FedConnect and how to use the portal, click on the link to review the tutorial on the FedConnect home page. For other technical issues or questions, email [fcsupport@unisonglobal.com](mailto:fcsupport@unisonglobal.com) or call 1-800-899-6665, option 2. The FedConnect Support Center is staffed Monday - Friday 8 a.m. to 8 p.m., ET, except Federal holidays.

## **D.2 Content and Form of Application Submission**

Applications for the FY 2022 NGDISM Grant Program should be submitted in electronic format in Grants.gov. There are two overall sections: (1) standard forms that the applicant must download and complete from Grants.gov under the FY 2022 NGDISM Grant Program funding opportunity; and (2) attachments the applicant will need to create and upload per the NOFO requirements. PHMSA advises applicants to read this section carefully.

### **Standard Forms**

The following forms are found in Grants.gov under the FY 2022 NGDISM Grant Program funding opportunity and must be completed by the applicant.

1. Standard Form (SF)-424 – Application for Federal Assistance
2. SF-424C – Budget Information for Construction Programs
3. SF-424D – Assurances for Construction Program
4. Budget Narrative Attachment Form
5. Project Narrative Attachment Form
6. Certification Regarding Lobbying Form
7. Standard Title VI/Non-Discrimination Assurances – Civil Rights Assurances

Additionally, a National Environmental Policy Act (NEPA) Tier 2 Environmental Questionnaire will be provided to applicants prior to final selection for award.

### **Applicant Attachments**

The following applicant attachments must be created by the applicant and uploaded to Grants.gov under the FY 2022 NGDISM Grant Program funding opportunity. Guidance for submitting the Project Narrative and Budget Narrative is listed in the following section.

1. Project Narrative
2. Budget Narrative
3. Indirect cost rate agreement, and/or statement claiming a 10 percent de minimis rate (if applicable)
4. Letters of Support from partner organizations (if applicable)
5. Additional optional attachments (if applicable)



Applications should be well written and free of mathematical errors in the line-item budget and Budget Narrative. Project Narratives should have sections clearly identified and follow the structure requested in this NOFO. The application forms and templates are available on Grants.gov in the 'Related Documents' tab with detailed instructions on the application process.

## **Project Narrative**

The following Project Narrative sections are required to facilitate the application review and award process. Please submit the sections in the order prescribed below. Applicants should clearly identify the sections in the Project Narrative section of the application.

1. Cover Letter
  - a. Organization Name
  - b. Contact Information
2. Applicant Eligibility
3. Project Summary
  - a. Project Location
  - b. Project Eligibility
  - c. Project Funding
4. Detailed Project Description
5. Statement of Authority and Pipeline Infrastructure Safety and Modernization Capabilities
6. Projected Outputs and Objectives
7. Project Implementation and Management
8. Explanation of Evaluation and Selection Criteria Equivalence
9. Equity, as Defined in the Executive Order 13985
10. Buy America
11. Critical Infrastructure Security and Resilience
12. Environmental Analysis

The Project Narrative may not exceed 25 pages in length (excluding cover pages, table of contents, and supporting documentation). PHMSA will not review or consider Project Narrative pages beyond the 25-page limitation. If possible, applications should submit supporting documents via website links rather than hard copies. If supporting documents are submitted, applicants must clearly identify the page number(s) of the relevant portion in the Project Narrative supporting documentation. The Project Narrative must adhere to the following outline.

### **1. Cover Letter.**

- a. **Organization Name.** This should include: (1) name and title of this NOFO; (2) your organization's name and mission; (3) a brief overview of the structure of your organization, programs, leadership, and special expertise; and (4) your organization's experience and capacity to manage Federal grant programs. If your application proposes to partner with another nonprofit organization, a letter of support is required with your application.

- b. **Contact Information.** Identify the designated project director, including the name, position, address, email address, and telephone number of the individual(s) who will be responsible for coordinating the funded activities. Additionally, identify the Authorized Representative(s) who will accept the awarded grant document, as well as individuals responsible for the submission of required Federal financial reports and progress reports.
2. **Applicant Eligibility.** Explain how applicant meets the eligibility criteria outlined in Section C.1. of this NOFO.
3. **Project Summary.** Describe the identified need to repair, rehabilitate, or replace the natural gas distribution pipeline system or portions thereof, or the equipment needed to (a) reduce incidents and fatalities and (b) avoid economic losses. Briefly explain how the proposed activities will help to address the identified needs.
  - a. **Project Location:** Include geospatial data for the project, as well as a map and aerial photographs of the project's location. DOT has made the following tool available for applicants to identify disadvantaged communities in their area: <https://usdot.maps.arcgis.com/apps/dashboards/d6f90dfcc8b44525b04c7ce748a3674a>. All projects will be considered except those without location-specific infrastructure information.
  - b. **Project Schedule:** Include a detailed project schedule that identifies all major project milestones. Examples of such milestones include state and local planning approvals; start and completion of Tier 2 Environmental Questionnaire, which will detail compliance with Federal environmental and historic preservation requirements. The project schedule will also include required approvals such as: permitting; design completion; right-of-way acquisition; approval of plans, specifications, and estimates; procurement; state and local approvals; public involvement; project partnership and implementation agreements; and construction agreements. The project schedule should be sufficiently detailed to demonstrate that: 1) all necessary activities will be completed to allow NGDISM Grant Program funds to be expended within 36 months after award; 2) all real property and right-of-way acquisition will be completed in a timely manner in accordance with 49 CFR Part 24, 23 CFR Part 710, and other applicable legal requirements or a statement that no right-of-way acquisition is necessary; and 3) the applicant has sought community input through public involvement, particularly engaging with environmental justice communities or disadvantaged rural and urban communities that may be affected by the project where applicable.
  - c. **Project Eligibility:** Identify how this project is eligible for funding under this NOFO. Eligible grant project expenses include the following:
    - Construction costs related to repairing, rehabilitating, or replacing natural gas pipeline distribution systems.
    - Labor costs related to planning, repairing, rehabilitating, or replacing natural gas pipeline distribution systems.

- Equipment costs related to repairing, rehabilitating, or replacing natural gas pipeline distribution systems.
- Equipment costs related to reducing incidents and fatalities and avoiding economic losses on natural gas distribution systems.

- d. **Project Funding:** Indicate in table format the amount of Federal funding requested and total project cost. Identify whether partial funding would be accepted in order to complete the project and the level of minimum funding needed. Identify whether the replacement, rehabilitation, or repair project was in process prior to the announcement of this award—and whether and by how much the grant would expedite the project or expand the scope or impacts of the project. (This will not prevent possible grant award). Identify if all or a majority of the project is located in a disadvantaged rural or urban area. (*See Definition of “Disadvantaged Community”*)
4. **Detailed Project Description.** Include a detailed project description that expands upon the brief project summary. The detailed description should provide, at a minimum, the following elements:
- a. A SOW against which PHMSA, and the applicant, can identify and measure expected outcomes of the proposed work and monitor progress toward completing project tasks and deliverables during the period of performance.
    - The SOW should address the scope, schedule, location, and budget for the proposed project.
    - The SOW must contain sufficient detail such as project planning, preparation, or design—including site design; maps; site photos, if available; an aerial photograph of the site depicting the proposed location; engineering drawings; environmental and community impacts; and other pre-construction activities—of eligible pipeline infrastructure projects.
    - The SOW must include a description of materials being replaced, repaired, or rehabilitated.
  - b. Safety risk profile and condition of the current infrastructure for which funding is being requested. This should include relevant data, leak statistics, and risk analysis that are present in the operators Distribution Integrity Management Plan (DIMP).
  - c. To assist PHMSA’s environmental review prior to award, potential awardees will provide a completed Tier 2 Environmental Questionnaire, as detailed in #12, Environmental Analysis, below.
  - d. A description of whether the project addresses requirements under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, and their implementing regulations, including 28 CFR. Applicants should review these civil rights statutes carefully, including 28 CFR 401, et al. Applicants are encouraged to review these authorities to ensure full compliance with these obligations and to describe credible planning activities and actions. These requirements apply to grant recipients as well as subrecipients.

**5. Statement of Authority and Pipeline Infrastructure Safety and Modernization**

**Capabilities.** Describe the municipality- or community-owned utility's state authority and capability to perform pipeline infrastructure repairs, rehabilitation, or replacement, in accordance with 49 CFR Part 192, and to purchase equipment.

**6. Projected Outputs and Objectives.** Provide quantifiable and measurable outputs planned for the grant's period of performance. Outputs are quantitative data that describe the proposed activities. For repair, rehabilitation, or replacement of natural gas distribution pipeline systems, or portions thereof, or acquisition of equipment, outputs should include: (1) the quantity (e.g., feet, yards, or mileage and diameter) of pipeline affected; (2) cost of equipment that may be purchased for the project, if appropriate; (3) an estimate of the number of jobs the project may create; (4) an estimate of the project's potential for benefiting disadvantaged rural and urban communities; (5) an estimate of the economic impact or growth over the length of the project; and (6) an estimate of the reduction in methane emissions attributable to the project. Please provide supporting analysis showing how the estimated outputs were calculated. Additionally, broader outcomes or goals may be provided to describe the intended impact of the proposed outputs. This can be either quantitative or qualitative and should reflect the projected impact of the grant activity outputs.

PHMSA will consider the extent to which the project addresses the following project output criteria, which are explained in greater detail below and reflect the key program objectives.

**Output Criteria #1: Safety** – The applicant should include information on, and to the extent possible quantify, how the project will improve the safe delivery of energy to often underserved communities, reducing incidents and fatalities as well as methane leaks within the project area.

**Output Criteria #2: Environment** – The applicant should describe how its project(s) contributes towards protecting our environment and climate by remediating leak-prone pipelines and by purchasing equipment to aid in detecting or potentially mitigating methane leaks.

**Output Criteria #3: Job Creation** – The applicant should describe how the project will contribute to at least one of these outputs: 1) result in high-quality job creation by supporting good-paying jobs with a free and fair choice to join a union in project construction and in on-going operations and maintenance, and incorporate strong labor standards, such as paying prevailing wages and benefits, the use of project labor agreements, the use of community benefits agreements registered apprenticeship programs, pre-apprenticeships tied to registered apprenticeships, and other joint labor-management training programs<sup>4</sup>; 2) result in workforce opportunities for historically underrepresented groups, such as through

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<sup>4</sup> <https://www.apprenticeship.gov>

the use of local hire provisions, the use of community benefits agreements, or other workforce strategies targeted at or jointly developed with historically underrepresented groups, to support project development; 3) outline partnerships with training providers such as labor-management partnership training programs (including registered apprenticeships) and community colleges; 4) foster economic growth and development, creating long-term, high-quality jobs, addressing acute challenges, such as energy sector job losses in energy communities as identified in the report released in April 2021 by the interagency working group established by section 218 of Executive Order 14008<sup>5</sup>.

**Output Criteria #4: Equity** – The applicant should include information about whether the project(s) benefits a disadvantaged community or population, or areas of persistent poverty. (*See Definitions.*)

- 7. Project Implementation and Management.** Provide a description of the monitoring, and quality assurance plan to ensure successful project completion. Describe how you will ensure the applicable Federal pipeline safety regulations will be followed. These may include, but are not limited to, ensuring your Distribution Integrity Management Program (DIMP) is up to date, safety and performance checks, inspections, and audits of the project.
- 8. Explanation of Evaluation and Selection Criteria Equivalence.** Include a thorough discussion of how the proposed project meets all the evaluation criteria and selection criteria as outlined in Section E of this NOFO. If an application does not sufficiently address the evaluation and selection criteria, it is unlikely to be a competitive application.
- 9. Statement Certifying Compliance with Equity Requirement.** In accordance with Executive Order (EO) 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, funds must be distributed equitably under this grant. Equity means the consistent and systematically fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous persons, Asian Americans and Pacific Islanders; other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. Applicants must include a statement certifying they will comply with EO 13985.
- 10. Buy America.** Provide a description of whether materials and manufactured products to be used in the project are produced or manufactured domestically. PHMSA expects all applicants to comply with this requirement without needing a waiver. However, this section should also include an assessment of what, if any, materials, or manufactured products would require an exception or waiver of the Buy America provisions described

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<sup>5</sup> [Initial Report to the President on Empowering Workers Through Revitalizing Energy Communities \(doe.gov\)](#)



in Section F.2 of this NOFO and the applicant's current efforts and planned future efforts to maximize domestic content.

- 11. Critical Infrastructure Security and Resilience.** Each applicant selected for NGDISM grant funding under this notice must demonstrate, prior to the signing of the grant agreement, effort to consider and address physical and cyber security risks relevant to their natural gas distribution system and the type and scale of the project. Projects that have not appropriately considered and addressed physical and cyber security and resilience in their planning, design, and project oversight, as determined by the Department of Transportation and the Department of Homeland Security, will be required to do so before receiving funds for construction, consistent with Presidential Policy Directive 21 - Critical Infrastructure Security and Resilience and the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems.
- 12. Environmental Analysis.** PHMSA will publish an "Environmental Assessment, Tier 1" in the Federal Register that will analyze the environmental impacts of this grant program on a nationwide basis and solicit public comment. PHMSA will consider the public comments on the "Environmental Assessment Tier 1" in developing the "Tier 2 Environmental Questionnaire," which will consider any additional site-specific environmental impacts.

Once provisionally selected for funding, PHMSA will provide the Tier 2 Environmental Questionnaire to applicants for completion. The Tier 2 Environmental Questionnaire will analyze the environmental effects caused by the proposed project(s) specific to each site. It will also detail (1) actions to comply with state and Federal environmental, environmental justice, and historic preservation requirements and (2) additional mitigation actions to ensure that environmental impacts, such as those from excavation or the use of heavy equipment, are minimal and insignificant. PHMSA has personnel available to answer questions and assist with the completion of this process, if needed.

To facilitate planning and so that applicants may begin collecting information, PHMSA is providing the following list of subjects that the Tier 2 Environmental Questionnaire will cover with respect to the project site and vicinity:

- a) Project Description and Location** - Describe all project-related construction activities including: the number of route miles; how many miles are buried vs. aerial construction; number and types of pipelines with approximate dimensions; and whether all or part of the project is to be located on or within previously disturbed road rights-of-ways.
- b) Maps** - Include a map (or maps) that show the location of all project construction activities known at the time of application. U.S. Geological Survey (USGS) 7.5-minute quadrangle maps at a map scale of 1:24,000 are recommended; larger scale maps may be provided for site-specific proposals. USGS maps may be obtained and purchased at USGS's website. All project elements, if known at the time of the application, must be clearly depicted on any map provided. If

appropriate, photographs or aerial photographs of site-specific proposals may be provided.

- c) **Property Changes** - Describe and indicate the amount of property to be cleared, excavated, fenced, or otherwise disturbed for each site affected by construction.
- d) **Wetlands** - Determine and describe whether wetlands are present on or near the project site(s) affected by construction. Maps of wetlands may be obtained from the U.S. Fish and Wildlife Service's National Wetland Inventory [website](#) or from soil maps obtained from the U.S. Department of Agriculture Natural Resource Conservation Service's [website](#) (NRCS maps provide delineations of hydric soil areas that are indicative of potential wetland areas). Wetland information may be obtained from state agencies in those states that have such resources.
- e) **Threatened and Endangered Species** - Determine and describe whether any project site(s) or activities will directly or indirectly affect any threatened, endangered or candidate species; or if they are within or near critical habitats. To document the analysis, applicants must provide species lists and appropriate species accounts obtained from the U.S. Fish and Wildlife Service's [website](#) for each county affected by construction of the project.
- f) **Floodplains** - Determine and describe whether any facilities or sites are located within a 100- year floodplain. Information related to floodplains and National Flood Insurance Maps may be obtained from the Federal Emergency Management Agency's (FEMA) [website](#). If any project-related construction activities are within floodplains, a copy of the FEMA, "FIR Mette" map with construction activities depicted on the map must be included. For information on obtaining FIR Mette maps, review the tutorial provided by FEMA. In addition, consideration may be paid to whether pipes located in floodplains are upgraded consistent with the Federal Flood Risk Management Standard in Executive Order 14030, Climate-Related Financial Risk (86 FR 27967) and 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input (80 FR 6425.)
- g) **Historic Properties** - Provide a list of historic properties that have been listed on the [National Register of Historic Properties \(NRHP\)](#) including National Historic Landmarks and any properties, if known, that have religious and cultural significance to Indian tribes located within a quarter mile radius of the project area. Information related to such resources can be obtained from the State Historic Preservation Office (SHPO) in your respective state. See the website of the [National Conference of SHPO](#), and describe how identified historic properties may be affected or impacted by the proposed construction activities (e.g., possible disturbance to archaeological sites, visual effects of tower construction). Identify Indian tribes that may have an interest in your project area. Information regarding historic properties located on tribal lands may be obtained from the [Tribal Historic Preservation Officer](#) (THPO) or the tribe's official representative for historic preservation website. For further information see the following resources: the U.S. Department of Housing and Urban Development HUD Tribal Directory Assessment Tool, [2021 Tribal Directory](#), and the National Park Service ([NPS](#)) [Native American Consultation Database](#).
- h) **Coastal Areas** - Determine whether the project is within the boundaries of a

coastal zone management area (CZMA). For boundary and contact information related to CZMA, see the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management's [website](#).

- i) **Brownfields** - If a proposed project is located within a brownfield site, then you should contact the appropriate Federal/state regulatory authority responsible for environmental contamination from releases of hazardous substances to determine whether there are any land use restrictions or regulations regarding development of the site. If there are restrictions, then you must provide that information in the application along with an analysis of how any such restriction could affect the proposed project whether short or long-term.

**For questions or assistance in understanding and complying with the environmental review process, feel free to contact PHMSAPipelineBILGrant@dot.gov.**

In the event that a completed Tier 2 Environmental Questionnaire identifies higher than anticipated impacts to environmental or other resources for a particular site, PHMSA and the applicant may need to identify further mitigation actions; and PHMSA may seek public comment in developing those actions.

## **Budget Narrative**

The Budget Narrative is an explanation of each budget component, which supports the cost of the proposed work. The Budget Narrative should focus on how each budget item is required to achieve the proposed project goals and objectives. It should also justify how budget costs were calculated. The Budget Narrative should be clear, specific, detailed, and mathematically correct; it should correspond to the SF-424C line-item categories.

To assist with your budget narrative, the Procurement of Property and Services Worksheet template is available on Grants.gov. You may use this form or similar to accompany the Budget Narrative justification with reference to the object class categories found on the SF-424C. For each proposed activity, explain why the requested amount is needed to implement the project as proposed in the Project Narrative. The Budget Narrative must correlate with the costs identified in the SF-424C line-item budget.

## **Procurement of Property and Services**

Include a list and description of the necessary project equipment and/or activities for the NGDISM Grant Program. Include a clear timeline of forecasted dates for projected activities. This section should include: (1) type of activities; (2) any necessary pipeline infrastructure components; and (3) a list of necessary equipment, if applicable.

## **Object Class Categories** *(For Applicants' Reference)*

A well-developed Budget Narrative is an effective monitoring tool for both the awarding agency and the grant recipient. However, a Budget Narrative that does not accurately represent a project's needs makes it difficult to recommend for funding and to assess financial performance over the life of the project. A description of the object class categories is provided below:

1. **Personnel Costs:** Employee salaries for those working directly on the grant project. Include the number, type of personnel, the percentage of time dedicated to the project, hourly wage (or salary), and total cost to the grant. Each applicant selected for NGDISM grant funding must demonstrate, to the full extent possible consistent with the law, an effort to create good-paying jobs with the free and fair choice to join a union and incorporation of high labor standards.

Applicants should describe whether laborers and mechanics performing construction work on projects funded under this NOFO are paid wages and fringe benefits at least equal to those paid for similar work in the community as determined by an applicable state or local prevailing wage law or ordinance or in accordance with a wage determination for the locality issued by the US Department of Labor under 40 U.S.C. 3141 *et seq* and 29 CFR Part 1. To access prevailing wage rates by county and state for various classifications of work, visit <https://SAM.gov>'s homepage. Scroll down and use the drop-down option to choose *Wage Determinations*. Click on the category of wage, for example, Construction. Type in the state and county and click search to identify the necessary wages.

2. **Fringe Benefit Costs:** The allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe costs are benefits paid to employees, including the cost of employer's share of FICA, health insurance, workers' compensation, and vacation. Include how the fringe benefit amount is calculated (i.e., actual fringe benefits estimate, approved rate, etc.). Include a description of specific benefits charged to a project and the benefit percentage. Additional considerations:
  - The personnel salaries should have corresponding fringe benefits identified. PHMSA cannot pay fringe benefits for a position that is not listed in the Personnel section.
  - Explain what is included in the benefit package and at what percentage.
  - Fringe benefits are only for the percentage of time devoted to the grant project.
  - The applicant must not combine the fringe benefit costs with direct salaries and wages in the personnel class category.
3. **Travel Costs:** Those costs requested for field work, or for travel to professional meetings associated with grant activities. Provide the purpose, method of travel, number of persons traveling, number of days, and estimated cost for each trip. If the details of each trip are not known at the time of application submission, provide the basis for determining the amount requested.
4. **Equipment Costs:** Those items which are tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit, unless the applicant has a clear and consistent written policy that determines a different threshold. Include a description, quantity, and unit price for all equipment.
  - Pipeline infrastructure components.
  - Purchases of less than \$5,000 should be listed under "Supplies" or "Other."

- Each item of equipment must be identified with the corresponding cost. General-purpose equipment must be justified as to how it will be used on the project.
  - Analyze the cost benefits of purchasing versus leasing equipment, particularly high-cost items, and those subject to rapid technical advances. List rented or leased equipment costs in the “Contractual” or “Other” category, depending upon the procurement method.
5. **Supplies:** Tangible personal property other than equipment. Include the types of property in general terms. It is not necessary to document office supplies in detail (for example: reams of paper, boxes of paperclips, etc.). However, applicants should include a quantity and unit cost for larger cost supply items such as computers and printers.
  6. **Contractual Costs:** Those services carried out by an individual or organization, other than the applicant, in the form of a procurement relationship.
  7. **Other Costs:** Expenses that do not fit any of the categories, include rent for buildings used to conduct project activities, utilities, leased equipment, etc. “Other” direct costs must be itemized.
  8. **Indirect Costs:** Must include an indirect cost rate agreement or statement claiming a de minimis rate. Indirect costs are allowable under the NGDISM Grant Program. Indirect costs are incurred for common or joint objectives that benefit more than one project. The applicant must include a current, and fully executed, indirect cost rate agreement or statement claiming a de minimis rate in the application, if claiming indirect costs. The rate must be applied to the appropriate base in the approved agreement. If the rate will not be approved by the application due date, attach the letter of renewal or letter of request sent to the cognizant agency for your application. If the applicant has never received or has an expired indirect cost rate agreement, the applicant may be eligible for the 10 percent de minimis rate provided by 2 CFR § 200.414. A nonprofit entity that has never received a negotiated indirect cost rate may elect to charge a de minimis rate of 10 percent of modified total direct costs, per 2 CFR § 200.414, which may be used indefinitely. Applicants intending to charge the de minimis rate must include a statement verifying that the organization has never received a negotiated indirect cost rate and that the organization has elected to charge the de minimis rate.

### D.3 Unique Entity Identifier (UEI) and SAM

PHMSA may not make an award to an applicant until the applicant has complied with all applicable UEI and SAM requirements. If an applicant has not fully complied with the requirements by the time PHMSA is ready to make an award, PHMSA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making an award to another applicant. PHMSA recommends that applicants review the SAM database to ensure that their UEI is updated and “active” at the following link:  
<https://www.sam.gov/portal/public/SAM/>.



Each applicant is required to:

- Register in SAM (SAM.gov) before submitting an application.
- Provide a valid UEI in the application.
- Always maintain an active SAM registration and UEI with current information during the time period in which they have an active Federal award or an application under consideration.

#### **D.4 Submission Dates and Times**

Applicants must submit applications to [www.Grants.gov](http://www.Grants.gov) no later than 11:59 p.m., ET, July 25, 2022. PHMSA reviews [www.Grants.gov](http://www.Grants.gov) information on the dates and times of applications submitted to determine timeliness of submissions. Applications received after the deadline will not be considered. PHMSA may confer with applicants to clarify any questions it has with their application after submission.

If an applicant has technical difficulties submitting the application through Grants.gov, that applicant should contact the Grants Program Office by email at **PHMSAPipelineBILGrant@dot.gov**. In order to apply for funding under this announcement, all applicants are to be registered as an organization with Grants.gov. Applicants are strongly encouraged to apply early to ensure all materials are received before the deadline.

#### **D.5 Funding Restrictions**

The following costs are not eligible for reimbursement under the FY 2022 NGDISM Grant Program:

1. Activities initiated before PHMSA has announced the projects that have been selected and extended pre-award authority in writing.
2. Entertainment, alcohol, or morale costs.
3. Expenses claimed and/or reimbursed by another program.
4. Excessive costs for general office supplies, equipment, computer software, printing and copying.
5. Expenses that supplant existing operational funds.
6. Any costs disallowed or stated as ineligible in 2 CFR Part 200.
7. Restrictions on Use of Funds for Lobbying, Support of Litigation, or Direct Advocacy – The recipient and its contractors may not conduct political lobbying, as defined in the statutes, regulations, and 2 CFR 200.450– “Lobbying,” within the federally-supported project. The recipient and its contractors may not use federal funds for lobbying specifically to obtain grants and cooperative agreements. The recipient and its contractors must comply with 49 CFR 20, U.S. Department of Transportation “New Restrictions on Lobbying.” 49 CFR 20 is incorporated by reference into this award. Funds may not be used, directly or indirectly, to support or oppose union organizing.

## SECTION E – APPLICATION REVIEW INFORMATION

### E.1 Criteria

PHMSA developed criteria to evaluate submitted applications. Submission of an application is not a guarantee of award. PHMSA may, at its discretion, award grant funds based on an application in its entirety, award grant funds for only portions of an application, or not award any grant funds at all.

#### 1. Technical Review Criteria

Applications will be evaluated against the following technical criteria.

- Does the applicant’s project scope establish clear goals and objectives that include the (1) detailed location; (2) materials being replaced, rehabilitated, or repaired; (3) project cost; and (4) project timeline?
- Does the applicant provide the number and a description of each activity proposed?
- Does the applicant identify measurable results and deliverables, that align with project goals and objectives?
- Does the proposed project outline the risk profile of the distribution pipeline infrastructure that is prone to leakage? This includes review of the relevant project data, leak statistics, and risk analysis that are present in the operator’s DIMP.
- If applicable, does the Procurement of Property and Services Worksheet list needed safety equipment purchases and clearly define the use of such equipment?
- Consistent with 2 CFR 200, are the applicant’s program activities allowable, allocable, necessary, and reasonable?
- Did the applicant describe how the proposed project(s) will create good-paying jobs with the free and fair choice to join a union and incorporate high labor standards? Did the applicant list what efforts they will take to meet these goals?
- Does the project have a project labor agreement?
  - If not, how does the project propose to ensure ready access to a sufficient supply of appropriately skilled labor to ensure high-quality construction throughout the life of the Project, such as a description of the operator qualification program<sup>6</sup>, any required professional certifications and/or in-house training, registered apprenticeships or labor-management partnership training programs, and partnerships like unions, community colleges, or community-based groups?
- What specific job titles will the project(s) fund?
- Does the applicant’s proposed project(s) provide substantial benefits to disadvantaged rural or urban communities?
- Does the applicant’s proposed project(s) provide substantial economic impact or growth?
- Does the applicant outline a monitoring and evaluation strategy to help ensure that the

<sup>6</sup> <https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-D/part-192?toc=1>

- project(s) will be successful?
- Does the applicant comply with Title VI, non-discrimination assurances?
- Can the applicant successfully comply with required environmental assessment activities?

## 2. Programmatic Review Criteria

PHMSA will conduct a programmatic review to assess factors identified below.

- Does the applicant provide a timeline that clearly communicates when project activities will take place?
- Does the applicant list clear outputs, goals, and objectives that indicate the grant will have a projected impact on reducing risk and enhancing pipeline safety, environmental protection, and emissions reductions?
- Does the applicant direct funds or activities to serve underserved communities, consistent with Executive Order 13985<sup>7</sup>?
- Did applicant provide a completed SF-424 form and SF-424A budget form?
- Did the applicant submit a completed Title VI form?
- Does the budget (SF-424A) and Budget Narrative align?
- If there are funds under labor costs, does the Budget Narrative clearly describe how labor costs were derived?
- If there are costs under “Other” in the Budget Narrative, have the costs been reasonably explained?
- If indirect cost rates are requested, does the application include an approved, current indirect cost rate agreement or statement claiming the 10 percent de minimis rate?

### E.2 Review and Selection Process

- 1. Administrative Review:** PHMSA will conduct an administrative review to ensure the application meets the eligibility criteria outlined in Section C – Eligibility Information. Each application will be reviewed for completeness to ensure it includes all the required elements to qualify for the grant. If the application does not meet the required elements, then the application is likely to be rejected. PHMSA may confer with applicants to clarify any questions it has with their application after submission.
- 2. Technical Review:** PHMSA will conduct a technical review to assess how the proposed work is to be performed and whether the applications are responsive to the applicable program requirements as identified in Section E.1. Technical review members may consist of representatives from pipeline safety stakeholder groups who are not competing for this grant program, the public, and PHMSA pipeline staff.
- 3. Programmatic Review:** PHMSA will conduct a programmatic review to assess programmatic factors identified in Section E.1. Programmatic factors are those relevant

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<sup>7</sup><https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>

and essential to the process of selecting applications that best achieve the program objectives, in accordance with applicable statutes, regulations, policies, and guidelines. Other programmatic factors may include history of performance, program priorities, and other DOT needs.

**4. Additional Considerations for Review:** After applying the above selection criteria, PHMSA will *consider* the following key DOT objectives:

- Equitable Economic Strength and Improving Core Assets - PHMSA will assess the project's ability to contribute to economic progress stemming from infrastructure investment such as the creation of high-quality jobs, the free and fair choice to join a union, and the incorporation of strong labor standards. Such considerations will include, but are not limited to, the extent to which the project invests in core distribution pipeline infrastructure assets (e.g., those parts of the system that ensure the safe and environmentally sound delivery of natural gas).
- Ensuring Investments Meet Equity and Economic Inclusion Goals - PHMSA will assess the project's ability to encourage racial equity by investing in projects that proactively address racial equity and barriers to opportunities. Such considerations will include, but are not limited to, the extent to which the project expands high-quality workforce development programs and supportive services to help train, hire, and retain under-represented populations in good-paying jobs or registered apprenticeship in the natural gas distribution industry.
- PHMSA will consider the extent the applications address Title VI and Section 504 requirements to ensure PHMSA-funded activities serve and provide access to all communities equally. The successful applicant will be responsible for implementing an effective and compliant Title VI and Section 504 program under the technical assistance from PHMSA's Office of Civil Rights.
- Resilience and Addressing Climate Change - PHMSA will assess the project's ability to reduce the harmful effects of climate change and anticipate necessary improvements to pipeline infrastructure to enhance resilience and preparedness. Such considerations will include, but are not limited to, the extent to which the project reduces emissions, promotes energy efficiency, increases resiliency, and recycles or redevelops existing infrastructure.
- PHMSA will assess the likelihood the project outlined in the application can be completed within 36 months.
- PHMSA will consider whether an exception/waiver of the Buy America provisions will be necessary to complete the project. Among otherwise comparable applications, projects that depend on materials or manufactured products that do not comply with domestic preference requirements will be less competitive than projects that comply with those requirements. Among otherwise comparable applications that require

exceptions or waivers, an application that presents an effective plan to maximize domestic content will be more competitive than one that does not. Applicants whose projects will likely require a waiver are highly encouraged to provide a plan that demonstrates efforts to maximize domestic content.

- PHMSA will consider whether projects have appropriately considered and addressed physical and cyber security and resilience in their planning, design, and project oversight, as determined by the Department of Transportation and the Department of Homeland Security.

**\* Further, please note that in order to comply with the requirements of 2 CFR Part 200, Subpart E, and DOT's Guide to Financial Assistance, PHMSA's Agreement Officers and Grant Specialists may request additional information pertaining to your application during the application review and evaluation process.**

## 5. Ratings Guidelines:

Based on the results from each review, each application will receive an overall rating as one of the following:

**Highly Recommended:** The application demonstrates that the NOFO requirements are very well understood, and the approach will likely result in high-quality performance. The application clearly addresses and exceeds requirements with no weaknesses. The application contains outstanding features that meet or exceed the expectations of DOT on multiple dimensions. The application scope aligns extremely well with DOT objectives and priorities. The risk of poor performance is very low.

**Recommended:** The application demonstrates that the NOFO requirements are understood, and the approach will likely result in satisfactory performance. The application addresses and meets requirements with some minor but correctable weaknesses. The application demonstrates requisite experience, qualifications, and performance capabilities. The application scope aligns with DOT objectives and priorities. The risk of poor performance is low.

**Acceptable:** The application demonstrates that the NOFO requirements are mostly understood, and the approach will likely result in satisfactory performance of part of the requirements. The application addresses some of the requirements with some weaknesses. The application demonstrates some experience, qualifications, and/or performance capabilities. The application partially aligns with DOT objectives and priorities. The risk of poor performance is moderate.

**Not Acceptable:** The application does not meet the NOFO requirements. The application fails to address many requirements. The applicant may be ineligible to apply for the grant. The application could not satisfy critical requirements without a major revision and/or a rewrite of the application or a major redirection effort. The application scope does not align with DOT objectives and priorities. The risk of poor performance is high.



## **6. Selection Process:**

PHMSA will recommend applications for award based on the final overall rating as described above. Final award recommendations will be made by PHMSA's Associate Administrator for the Office of Pipeline Safety after taking into consideration recommendations made during the administrative, technical, and programmatic reviews and how well the applications address PHMSA's safety and environmental priorities. The PHMSA Administrator, or designee, will make final award selection decisions.

### **E.3 Federal Award Performance and Integrity (FAPIS)**

Prior to making a federal award with a total amount of Federal share greater than the simplified acquisition threshold, PHMSA is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIS) (see 41 U.S.C. § 2313). An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM. PHMSA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR § 200.206.

### **E.4 Anticipated Announcement and Federal Award Dates**

Applicants chosen for funding will receive electronic notification of the Federal award. Upon notification, the applicant's authorized official must sign and return the award within the timeframe prescribed by PHMSA. PHMSA will announce awards prior to or on February 8, 2023.

## **SECTION F – FEDERAL AWARD ADMINISTRATION INFORMATION**

### **F.1 Federal Award Notice**

PHMSA's grant awarding official will award grants to responsible and eligible applicants, at its discretion, whose applications are judged meritorious under the procedures set forth in this NOFO. All funds provided by PHMSA must be expended solely for the purpose for which the funds are awarded in accordance with the approved application and budget, regulations, terms, and conditions of the award, applicable federal cost principles, environmental compliance as

specified, and the DOT's financial assistance regulations. Funds may not be used for lobbying or litigation.

The grant award agreement, signed by both the PHMSA Agreement Officer and the recipient's Authorized Representative, is the authorizing document and will be provided through electronic means to the Authorized Representative. The award document will provide pertinent instructions and information including, at a minimum, the following:

1. The legal name and address of recipient;
2. Title of project;
3. Name(s) of key personnel chosen to direct and control approved activities;
4. Federal Award Identification Number assigned by PHMSA;
5. Period of Performance, specifying the duration of the project;
6. Total grant funding amount PHMSA approved for the project;
7. Legal authority(ies) under which the award is issued;
8. Assistance Listing Program Number (formerly CFDA);
9. Applicable award terms and conditions;
10. Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the award; and
11. Other information or provisions deemed necessary by PHMSA.

## **F.2 Administrative and National Policy Requirements**

In connection with any program or activity conducted with or benefiting from funds awarded under this NOFO, grantees must comply with all applicable requirements of federal law, including, without limitation, the Constitution of the United States; the conditions of performance, nondiscrimination requirements, and other assurances made applicable to the award of funds in accordance with DOT regulations; and applicable federal financial assistance and contracting principles promulgated by the Office of Management and Budget (OMB). In complying with these requirements, grantees must ensure that no concession agreements are denied, or other contracting decisions made on the basis of speech or other activities protected by the First Amendment. If the Department determines that a grantee has failed to comply with applicable federal requirements, the Department may terminate the award of funds and disallow previously incurred costs, requiring the grantee to reimburse any expended award funds.

The administration of this award by PHMSA and the grantee will be based on the following Federal statutory and regulatory requirements:

1. Infrastructure Investment and Jobs Act (Public Law 117-58).
2. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
3. 49 CFR Part 20, "New Restrictions on Lobbying." 49 CFR Part 20 will be incorporated by reference into any award under this program and is available at <https://www.ecfr.gov/> by clicking on "Title 49 CFR Part 20."

4. Title VI of the Civil Right Act of 1964, which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.
5. 49 CFR Part 21, “Nondiscrimination in Federally- Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964.” 49 CFR Part 21 will be incorporated by reference into any award under this program. 49 CFR Part 21 is available at: <https://www.ecfr.gov/> by clicking on “Title 49 CFR Part 21.”
6. 49 CFR Part 32, “Government wide Requirements for Drug-Free Workplace (Financial Assistance),” which implements the requirements of Public Law 100-690, Title Subtitle D, “Drug-Free Workplace Act of 1988.” 49 CFR Part 32 will be incorporated by reference into any award under this program and is available at: <https://www.ecfr.gov/> by clicking on “Title 49 CFR Part 32.”
7. Executive Orders: “Advancing Racial Equity and Support for Underserved Communities Throughout the Federal Government” (EO 13985); “Federal Actions to Address Environmental Justice in Minority Populations” (EO 12898); “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis” (EO 13990); Implementing the Infrastructure Investment and Jobs Act (EO 14052); and “Tackling the Climate Crisis at Home and Abroad” (EO 14008).
8. National Environmental Policy Act and applicable environmental and historic preservation laws, as well as compliance with mitigation actions described in the completed Tier 2 – Environmental Questionnaire during construction or repair activities.
9. As expressed in Executive Order 14005, *Ensuring the Future is Made in All of America by All of America’s Workers* (86 FR 7475), it is the policy of the executive branch to use terms and conditions of Federal financial assistance awards to maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States.

The Buy America requirements of IJA div. G §§ 70911-70917 and Executive Order 14005 apply to funds made available under this NOFO and other expenditures within the scope of the award, and all grant recipients must apply, comply with, and implement all provisions of IJA div. G §§ 70911-70917 and related provisions in the grant agreement when implementing grant projects. If selected for an award, grant recipients will be required to obtain approval from PHMSA before applying any Buy America waiver. To obtain that approval, grant recipients must be prepared to demonstrate how they will maximize the use of domestic goods, products, and materials in carrying out their project.

10. It is the policy of the United States to strengthen the security and resilience of its critical infrastructure against both physical and cyber threats. Each applicant selected for NGDISM grant funding under this notice must demonstrate, prior to the signing of the grant agreement, effort to consider and address physical and cyber security risks relevant to the transportation mode and the type and scale of the project. Projects that have not appropriately considered and addressed physical and cyber security and resilience in their planning, design, and project oversight, as determined by the Department of Transportation and the Department of Homeland Security, will be required to do so before receiving funds for construction, consistent with Presidential Policy Directive 21 - Critical Infrastructure Security and Resilience and the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems. Additional resources and support are available via the Cybersecurity Infrastructure and Security Agency (CISA) <https://www.cisa.gov/pipeline-cybersecurity-library> and the Transportation Security Administration (TSA) [https://www.tsa.gov/sites/default/files/pipeline\\_security\\_guidelines.pdf](https://www.tsa.gov/sites/default/files/pipeline_security_guidelines.pdf).
11. Each applicant selected for NGDISM grant funding should demonstrate, to the full extent possible consistent with the law, an effort to create good-paying jobs with the free and fair choice to join a union and incorporation of high labor standards.

### **F.3 Reporting Requirements**

#### **Progress Reporting on Grant Activities**

Grant recipients will be required to comply with all PHMSA reporting requirements, including quarterly progress reports, quarterly federal financial reports (SF-425), and final performance and financial reports. Grants recipients must also comply with applicable auditing, monitoring and close-out requirements. Unless otherwise instructed in the grant terms and conditions, reports must be submitted to PHMSAPipelineBILGrant@dot.gov. Pursuant to 2 CFR 170.210, non-federal entities applying under this NOFO must have the necessary processes and systems in place to comply with the reporting requirements should they receive federal funding.

## Quarterly Reporting

Each applicant selected for funding must collect information and report on the project's performance using measures mutually agreed upon by PHMSA and the grantee to assess progress in achieving strategic goals and objectives.

Examples of performance measures are listed in the table below. This is offered as a sample only and is not a PHMSA required form/format.

<p style="text-align: center;"><b>*** SAMPLE ***</b></p> <p style="text-align: center;"><b>Pipeline and Hazardous Materials Safety Administration</b></p> <p style="text-align: center;">Natural Gas Distribution Infrastructure Safety and Modernization (NGDISM) Grant Program</p> <p style="text-align: center;">Quarterly Progress Report</p>	
Metrics	
Unit of Measurement	Project Name: Line 2 Repair
Length of pipeline - repaired, rehabilitated, or replaced In Feet, Yards, Mileage and Diameter	East 4 <sup>th</sup> street pipeline replacement project 6" in diameter Replacing 8 miles of pipeline
Estimate of reduction in methane emissions attributable to project	Report methane emissions in MCF (may include estimated leaks and estimated emissions associated with an avoided rupture/incident, where appropriate).
Equipment purchased	Actual Cost
1. In-line cleaning tools	\$1,500.00
2. Pipe inspection camera	\$10,500.00
3. Multi-Frequency Pipe Locator	\$1,500.00
4. Pipe	\$175,000.00
<b>Total</b>	<b>\$188,500.00</b>
Project Descriptions	
Other Outcomes	
Description of how project benefitted disadvantaged rural and urban communities including pipeline serving Historically Disadvantaged Community	Line 2 Replacement provided economic benefits to the park south neighborhood/rate payers, as follows:  Retail, restaurants, small businesses benefitted from this project as follows:
Chart or graph of economic impact or growth over the length of the project.	
Other broader outcomes such as improved climate/environment: describe the intended impact	The project connected or upgraded a new affordable housing project in the park south neighborhood.



## Final Progress Reports

Each recipient is required to submit a final progress report and final Federal Financial Report (Final SF-425). Final financial reports and progress reports are submitted by email to PHMSAPipelineBILGrant@dot.gov. The reports are due no later than 120 days after the performance period has ended. Final progress reports must follow the instructions outlined in the terms and conditions of the grant award, and must include:

1. A summary of the activities and outputs that took place during the period of performance—including estimated reduction in risk of fatalities and/or serious injuries, and estimated reduction in methane emissions. If the projected outputs listed in the approved Project Narrative were not met, an explanation should be provided.
2. Challenges the grantee faced, and strategies taken to mitigate such challenges.
3. A complete timeline of the activities that took place during the completed period of performance.
4. As available, impact statements or analyses regarding the impact that current period of performance grant activities have had on infrastructure improvement for communities, pipeline safety, and mitigation of environmental hazards.

*All applications and reports will be made available to the public upon request.*

## F.4 E-Invoicing

Recipients of PHMSA grants must use the DOT Delphi eInvoicing System.

### a) Recipient Requirements:

Recipients must:

- 1) Have internet access to register and submit payment requests through the Delphi eInvoicing system.
- 2) Submit payment requests electronically and receive payment electronically.

### b) System User Requirements:

- 1) Contact the assigned grant specialist directly to sign up for the system. PHMSA will provide the recipient's name and email address to the DOT Financial Management Office. The DOT Financial Management Office will then invite the recipient to sign up for the system.
- 2) DOT will send the recipient a User Account Application form to verify identity. The recipient must complete the form and present it to a Notary Public for verification.

The recipient will return the notarized form as follows:

### Via U.S. Postal Service (certified):

DOT Enterprise Services Center  
FAA Accounts Payable, AMZ-100  
PO Box 25710  
Oklahoma City, OK 73125

**Via FedEx or UPS:**

DOT Enterprise Services Center  
MMAC-FAA/ESC/AMZ-150  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169

**SECTION G – FEDERAL AWARDING AGENCY CONTACTS**

Questions related to the content of this funding opportunity should be submitted via the Message Center in FedConnect. For technical issues or questions related to FedConnect, please email [fcsupport@unisonglobal.com](mailto:fcsupport@unisonglobal.com). Applicants can submit questions through the portal on their website or call 1-800-899-6665 option 2.

**PHMSA Agreement Administrator**

Cristina Keating  
[Cristina.Keating@dot.gov](mailto:Cristina.Keating@dot.gov)

**PHMSA Program Contact**

Shakira Mack  
Phone: (202) 366-7652  
Email: [PHMSAPipelineBILGrant@dot.gov](mailto:PHMSAPipelineBILGrant@dot.gov)

Grants.gov Contact Center  
Phone: (800) 518-4726  
E-mail: [support@grants.gov](mailto:support@grants.gov)

## SECTION H – OTHER INFORMATION

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible.

If the application includes information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should: (1) note on the front cover that the submission “Contains Confidential Business Information (CBI);” (2) mark each affected page “CBI;” and (3) highlight or otherwise denote the CBI portions.

DOT regulations implementing the Freedom of Information Act (FOIA) are found at 49 CFR Part 7 Subpart C—Availability of Reasonably Described Records under the Freedom of Information Act which requires PHMSA to make requested materials, information, and records publicly available under FOIA. Unless prohibited by law and to the extent permitted under the FOIA, contents of applications submitted by successful applicants may be released in response to FOIA requests.

### Definitions

**Areas of Persistent Poverty** – In this context, Areas of Persistent Poverty means: (1) any county that has consistently had greater than or equal to 20 percent of the population living in poverty during the 30-year period preceding November 15, 2021, as measured by the 1990 and 2000<sup>8</sup> decennial census and the most recent annual Small Area Income Poverty Estimates as estimated by the Bureau of the census<sup>9</sup>; (2) any census tract with a poverty rate of at least 20 percent as measured by the 2014-2018 5-year data series available from the American Community Survey of the Bureau of the Census<sup>10</sup>; or (3) any territory or possession of the United States. A county satisfies this definition only if 20 percent of its population was living in poverty in all three of the listed datasets: (a) the 1990 decennial census; (b) the 2000 decennial census; and (c) the 2020 Small Area Income Poverty Estimates. The Department lists all counties and census tracts that meet this definition for Areas of Persistent Poverty at <https://datahub.transportation.gov/stories/s/tsyd-k6ij>.

**Compliance with Award Terms and Conditions** – Submission of an application constitutes the recipient’s agreement to comply with and spend funds consistent with all the terms and conditions of this award. If PHMSA determines that noncompliance by the recipient cannot be remedied by imposing additional conditions, PHMSA may take one or more of the following actions, as PHMSA deems appropriate in the circumstances:

<sup>8</sup> See <https://www.census.gov/data/tables/time-series/dec/census-poverty.html> for county dataset

<sup>9</sup> See <https://www.census.gov/data/datasets/2020/demo/saie/2020-state-and-county.html> for December 2020 Small Area Income Poverty Dataset

<sup>10</sup> See

<https://data.census.gov/cedsci/table?q=ACSST1Y2018.S1701&tid=ACSST5Y2018.S1701&hidePreview=false> for 2014- 2018 five-year data series from the American Community Survey

- a) Temporarily withhold payments pending correction of the deficiency by the recipient;
- b) Disallow all, or part of, the cost of the activity or action not in compliance;
- c) Wholly or partly suspend or terminate the Federal award;
- d) Initiate suspension or debarment proceedings as authorized under 2 CFR Part 180;
- e) Withhold further Federal awards for the project or program; and
- f) Take other remedies that may be legally available.

**Disadvantaged Community** – Consistent with OMB's Interim Guidance for the Justice40 Initiative, a project is located in a Disadvantaged Community if:

- (1) the project is located in a Disadvantaged Community as identified in the Transportation Disadvantaged Community tool  
<https://usdot.maps.arcgis.com/apps/dashboards/d6f90dfcc8b44525b04c7ce748a3674a>;
- (2) the project is located on Tribal land; or
- (3) the project is located in any territory or possession of the United States.

Applicants should provide an image of the map tool outputs. The designation of project location and eligibility as a Disadvantaged Community will be verified by the Department upon receipt of the application.

**Government-wide Debarment and Suspension (Non-procurement)** – The recipient must review the “list of parties excluded from federal procurement or non- procurement programs” located on the SAM website before entering into a sub-award. No sub-award may be issued to an entity or person identified on the “list of parties excluded from federal procurement or non- procurement programs.” 2 CFR 1200 - “Non-procurement Suspension and Debarment” is incorporated by reference into this notification. The recipient must inform the PHMSA Program Contact if the recipient suspends or debars a sub-awardee.

**Historically Nondiscrimination** – The recipient must comply with Title VI of the Civil Right Act of 1964, which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied benefits of, be subject to discrimination under any program or activity receiving Federal financial assistance. The recipient must comply with 49 CFR 21, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964.”

In an effort to ensure that all recipients of PHMSA funds are aware of their responsibilities under the various civil rights laws and regulations, the PHMSA Office of Civil Rights has developed an information tool and training. These documents are found on the PHMSA website at <https://www.phmsa.dot.gov/about-phmsa/civil-rights/grant-recipient-information>. If there are any questions concerning your responsibilities under

the External Civil Rights Program, please contact Rosanne Goodwill, PHMSA Civil Rights Director, at 202-366-6580 or by e-mail at [rosanne.goodwill@dot.gov](mailto:rosanne.goodwill@dot.gov).

**Order of Precedence** – Any inconsistency or conflict in the terms and conditions specified in this award will be resolved according to the following order of precedence:

- a) The Federal statute authorizing this award or any other Federal statutes, laws, regulations, or directives directly affecting performance of this award.
- b) Terms and conditions of this award.

**Pipe Prone to Leakage** – From the Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2020: “pipelines that are known to leak based on the material (including cast iron, unprotected steel, wrought iron, and historic plastics with known issues).”

**Pipeline** – From 49 CFR Part 192.3, pipeline means all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.

**Recipient Responsibilities** – In accepting a PHMSA financial assistance award, the recipient assumes legal, financial, administrative, and programmatic responsibility for administering award funds in accordance with the laws, rules, regulations, and Executive Orders governing grants and cooperative agreements, and the award terms and conditions, including responsibility for complying with any applicable provisions included in the award.

**Rural** – Consistent with the Department's Rural Opportunities to Use Transportation for Economic Success (ROUTES) Initiative (<https://www.transportation.gov/rural>), the Department recognizes that rural transportation infrastructure faces unique challenges. To the extent that those challenges are reflected in the merit criteria listed, the Department will consider how the activities proposed in the application address those challenges, regardless of the geographic location of those activities.

**Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200)** – The recipient (and any subrecipients) must comply with these requirements including the cost principles which apply to the recipient, and the audit requirements the recipient must follow. A recipient who expends \$750,000 or more of Federal funds, in the recipient's fiscal year, must have an audit conducted.

**Urban** – In, relating to, characteristic of, or constituting a town or city.





U.S. Department of Transportation

**Pipeline and Hazardous Materials Safety Administration**

**Pipeline Safety**  
Natural Gas Distribution Infrastructure  
Safety and Modernization  
Grant Program

**Evaluation Plan**

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## 1. Introduction

This Evaluation Plan identifies the major steps and provides guidance regarding PHMSA's evaluation and selection process for applicants of the Natural Gas Distribution Infrastructure Safety and Modernization (NGDISM) Grant Program.

### Grant Management Roles

Grant Management – Pipeline Safety NGDISM Program	
<b>Source(s) / Process Owner(s)</b>	Grants Program Supervisor, Agreement Officer Representative Budget Certifier Grant Program Support Specialist Agreement Officer Agreement Specialist Program Office Representative (OPS) Office of Chief Counsel Director of Budget and Finance

Each application will be subject to the following review phases. Additional information regarding the specific criteria for each review is found below in **Section 2 Criteria**.

- 1. Retrieve the Applications** – Applications submitted through Grants.gov are received in PRISM Grants and downloaded for review.
- 2. Administrative Review** – The Agreement Specialist conducts the administrative review of each application. Each application will be reviewed for completeness to ensure it includes all required elements to qualify for the grant.
- 3. Eligibility Review** – As a second step in the administrative review process, the Program Office Representative conducts the eligibility review of each applicant. Ineligible applicants will not have their application package forwarded for additional review and will be notified of their ineligibility by the Agreement Officer.
- 4. Technical Review** – Applications are reviewed by a Technical Evaluation Panel (TEP), consisting of subject matter experts (SME), to verify the technical merit of the application and to identify strengths and weaknesses.
- 5. Programmatic Review** – The Office of Pipeline Safety (or Program Office) receives the TEP evaluations and conducts the programmatic review. The programmatic review determines if the applicant's proposed budget is realistic, whether the contents of the application adhere to the program requirements set forth in the Notice of Funding Opportunity (NOFO) and is responsive to the program review checklist.
- 6. Title VI and Section 504 Review by PHMSA Office of Civil Rights (OCR)** – OCR will conduct the Title VI and Section 504 compliance review of each eligible application.

- 7. Budget Review** – The Agreement Specialist reviews the budget and budget narrative according to the budget review checklist to determine if activities proposed are allocable, reasonable, and allowable.

## 2. Criteria

### **Administrative Review**

Administrative review consists of an intake review for completeness and an eligibility review for applicant eligibility.

#### ***Intake Review***

The administrative review will assess whether the applicant's grant package is complete. The application package is reviewed for the presence, not the quality, of the required elements specified in the NOFO.

The documents listed below must be completed and included in application submission:

- Form 424, *Application for Federal Assistance*
- Form 424 C, *Budget Information for Construction Programs*
- Form 424 D, *Assurance for Construction Programs*
- Budget Narrative Attachment Form
- Project Narrative Attachment Form – less than or equal to 25 pages in length
- Signed Title VI Assurance
- Certification Regarding Lobbying Form

Packages that include each of the documents above will go through to the next review phase.

#### ***Eligibility Review***

The eligibility review will assess whether the applications pass the following eligibility criteria:

1. The applicant is a municipality-owned utility operating a natural gas distribution system.

**OR**

2. The applicant is a community-owned utility operating a natural gas distribution system.

**AND**

3. The applicant is a not-for-profit entity.

Applications that satisfy the above criteria will move to the next review phase. After reviewing the project and budget narratives, the Program Office Representative should ensure that:

1. Construction costs are related to repairing, rehabilitating, or replacing natural gas distribution systems.

**AND/OR**

2. Labor costs are related to repairing, rehabilitating, or replacing natural gas distribution systems.

**AND/OR**

3. Equipment costs are related to repairing, rehabilitating, or replacing natural gas distribution systems.

**OR**

4. Equipment acquisitions **unrelated** to repairing, rehabilitating, or replacing natural gas distribution system components (1) reduce incidents and fatalities; **and** (2) avoid economic losses of natural gas distribution systems.

If one or more of the items above applies, then the application is eligible for this grant opportunity and the application can continue to the next review phase.

## Technical Review

Technical Evaluation Panel (TEP) members may consist of representatives from pipeline safety stakeholder groups who are not competing for this grant program, the public, and PHMSA grant specialists. Each member of the TEP signs a non-disclosure and conflict of interest agreement prior to participating in the review. Each TEP member receives a technical review checklist describing how to score applications in the Excel spreadsheet calculation tool. Each technical review checklist will provide for the evaluation of materials supporting the grant application, including relevant and appropriate application data, leak statistics, and risk analysis data necessary to support the grant application.

The TEP will be given the eligible applications and checklist documents. They will also receive an instructional briefing on how to review the applications and fill out the scorecard. The TEP will be comprised of individuals with the background necessary to evaluate the applications relative to the questions below:

1. Is the proposal directly related to repairing, rehabilitating, or replacing a natural gas distribution pipeline system or portions of it?
2. Is the proposal directly related to acquiring equipment to (1) reduce incidents and fatalities; and (2) avoid economic losses of natural gas distribution systems?
3. Does the applicant's project scope establish clear goals and objectives that include the (1) detailed project location; (2) materials being replaced, rehabilitated, or repaired; (3) project cost; (4) equipment being purchased; and (5) timeline?
4. Does the applicant provide the number of proposed project task and a description of each task proposed?
5. Does the applicant's project scope identify measurable results, deliverables, timelines, and estimated project costs that align with project goals and objectives?
6. Does the proposed project outline the risk profile of the distribution pipeline infrastructure that is prone to leakage? This includes review of the relevant project data, leak statistics, and risk analysis that should be part of the operator's Distribution Integrity Management Program.
7. If applicable, does the Procurement of Property and Services worksheet list the necessary equipment purchases and clearly define the use of such equipment?
8. Are the applicant's program activities allowable, allocable, necessary, and reasonable?



9. Did the applicant describe how the proposed project(s) will create good-paying jobs with the free and fair choice to join a union and incorporate high labor standards? Did the applicant list what efforts they will take to meet these goals??
10. What specific job titles will the project(s) fund?
11. Does the applicant's proposed project(s) provide substantial benefits to disadvantaged rural or urban communities?
12. Does the applicant's proposed project(s) provide substantial economic impact or growth?
13. Does the applicant outline a monitoring and evaluation strategy to help ensure that the project(s) will be successful?
14. Can the applicant successfully comply with required environmental assessment activities?

The TEP will begin a review and schedule a meeting approximately 10-14 days later to obtain the aggregate rating for each application.

The criteria used to determine the aggregate rating is set forth in Section E.3 of the NOFO (and listed below), to rank applications and begin to compile the recommendations for award.

## **Programmatic Review**

The Program Office will conduct a review of rated applications to assess how the proposed work is to be performed and whether the applications are responsive to the grant program requirements. The Program Office will assess the applicant's ability to manage Federal grant funds and this grant program successfully. PHMSA will consider the completeness and clarity of responses to the following questions:

1. Does the cover letter include the name/title of the NOFO, the organization's name and mission, a brief overview of the organization structure/programs/leadership/expertise, and a brief description of the organization's experience and capacity to manage Federal grant programs?
2. Is sufficient contact information provided including designated project directors, activity coordinator, financial reports contact?
3. Did the applicant clearly explain their eligibility? (*2<sup>nd</sup> Check for Eligibility*)
4. Does the project narrative determine that the applicant has identified the need to repair, replace or rehabilitate the natural gas distribution pipeline system or portions thereof?
5. Does the project narrative address project location (geospatial data, maps, aerial photographs), and is there an indication of service based on a nondiscriminatory basis?
6. Does the applicant provide a timeline that clearly communicates when project activities will take place?
7. Does the project narrative address the eligibility for this project? (See NOFO Section D.6, 3(c))
8. Is there a table of the funding for the project? *Note: A detailed budget review is performed separately so this should be a general review of the funding request.*
9. Is the project in a disadvantaged rural or urban area?

10. Is there a safety risk profile provided?
11. Does the applicant list clear outputs, goals, and objectives that indicate the grant will have a projected impact on reducing risk and enhancing pipeline safety and environmental protection?
12. Did the applicant address Title VI requirements? *Note: The OCR team will conduct a detailed Title VI program review.*
13. Did the applicant identify projected outputs and objectives that are quantifiable and measurable?
14. Did the applicant identify monitory efforts, internal controls, and quality assurance plans to ensure the project's success?
15. Did the applicant include a discussion on how the proposed project meets all the evaluation and selection criteria in Section E of the NOFO?

### ***Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 Compliance Review***

The Office of Civil Right (OCR) representative will conduct an evaluation of applications to ensure they comply with Title VI and Section 504 requirements. OCR may need to request additional information from applicants or assist in educating applicants on Title and Section 504 requirements.

OCR will provide its assessment results to the Program Office Representative for rating.

### **Budget Review**

PHMSA will review the funding request and details to evaluate applicant performance and program management. This review ensures grantees are using Federal funds in compliance with 2 CFR Part 200.403-Factors affecting allowability of costs. The series of questions and requirements noted below are to assist PHMSA in determining whether the projects proposed are allocable, reasonable, necessary, and allowable. PHMSA will consider the completeness and clarity of responses to the following questions:

1. Did the applicant provide a line-item budget that is consistent and properly completed?
2. Did the budget narrative provide an explanation or breakout of the personnel costs?
  - a. Are the costs included in the personnel line item allowable?
  - b. Are labor cost estimates fair and accurate according to the prevailing wage rates for the state and the county within the project(s) area?
3. Did the budget narrative provide an explanation or breakout of the staff fringe benefits?
  - a. Are the costs included in the fringe benefit line item allowable?
4. If there are funds entered under the travel line item, does the budget narrative provide a clear and reasonable explanation that relates to these costs?
  - a. Are the costs included in the travel line item allowable?
5. Did the budget narrative clearly identify equipment purchases and separate them from supply purchases (i.e., <\$5,000/unit)?
  - a. Are these costs adequately explained?
  - b. Are the equipment line-item costs allowable?

6. If these are funds under the contractual line item, does the budget narrative clearly describe how contractual costs were derived for each contract and/or sub-contract?
  - a. Are the costs included in the contractual line item allowable?
7. If there are funds under “other,” have the costs been reasonably explained?
  - a. Are the costs included in the “other” line item allowable?
8. Have the costs been reasonably explained for any funds under “other?”
  - a. Is the amount included in the budget properly calculated as provided in the ICR?
9. Is the applicant requesting pre-award costs?
10. Review the Federal Awardee Performance and Integrity Information System (FAPIS)
11. Any Federal tax delinquency or felony conviction?
12. Is the applicant on the Terrorist Watchlist?
13. Check Single Audit Clearinghouse for a current audit and review any findings or financial concerns.

### Funding Restrictions

The following costs are not eligible for reimbursement under the NGDISM Grant Program:

1. Activities initiated prior to the execution of a grant or without written approval.
2. Entertainment, alcohol, or morale costs.
3. Expenses claimed and/or reimbursed by another Federal program.
4. Excessive costs for general office supplies, equipment, computer software, printing, and copying.
5. Expenses that supplant existing operational funds/programs.
6. Any costs disallowed or stated as ineligible in Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
7. Restrictions on Use of Funds for Lobbying, Support of Litigation, or Direct Advocacy – The recipient and its contractors may not conduct political lobbying, as defined in the statutes, regulations, and 2 CFR 200.450– “Lobbying,” within the federally-supported project. The recipient and its contractors may not use federal funds for lobbying specifically to obtain grants and cooperative agreements. The recipient and its contractors must comply with 49 CFR 20, U.S. Department of Transportation “New Restrictions on Lobbying.” 49 CFR 20 is incorporated by reference into this award.

Upon completion and approval of the Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 Compliance and Budget Reviews, the Program Office Representative will use the overall ratings, as set forth in Section E.3 of the NOFO (and listed below), to rank applications and begin to compile the recommendations for award.

## 3. Rating and Scoring Guidelines

Based on the results of the administrative, technical, and programmatic reviews, each application will receive one of the following overall ratings:

**Highly Recommended:** The application demonstrates that the NOFO requirements are very well understood, and the approach will likely result in high-quality performance. The application clearly addresses and exceeds requirements with no weaknesses. The application contains outstanding features that meet or exceed the expectations of DOT on multiple dimensions. The application scope aligns extremely well with DOT objectives and priorities. The risk of poor performance is very low.

**Recommended:** The application demonstrates that the NOFO requirements are understood, and the approach will likely result in satisfactory performance. The application addresses and meets requirements with some minor but correctable weaknesses. The application demonstrates requisite experience, qualifications, and performance capabilities. The application scope aligns with DOT objectives and priorities. The risk of poor performance is low.

**Acceptable:** The application demonstrates that the NOFO requirements are mostly understood, and the approach will likely result in satisfactory performance of part of the requirements. The application addresses some of the requirements with some weaknesses. The application demonstrates some experience, qualifications, and/or performance capabilities. The application partially aligns with DOT objectives and priorities. The risk of poor performance is moderate.

**Not Acceptable:** The application does not meet the NOFO requirements. The application fails to address many requirements. The applicant may be ineligible to apply for the grant. The application could not satisfy critical requirements without a major revision and/or a rewrite of the application or a major redirection effort. The application scope does not align with DOT objectives and priorities. The risk of poor performance is high.

## 4. Applicant Selection

PHMSA's Associate Administrator for the Office of Pipeline Safety will make award recommendations to the PHMSA Administrator, or designee, after taking into consideration recommendations made during the administrative, technical, and programmatic reviews and how well the applications address PHMSA's safety and environmental priorities. The PHMSA Administrator, or designee, will make the award selection decisions.



## RFCA Fixing Resolutions

**Date:** July 18, 2022

**Requestor:** Josh Wallace, Environmental Inspector

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**818 Main:** Leaking roof with abandoned foodstuffs and materials falling off façade (recently guttering).

**315 W 15th:** Damaged walls and roofing of two sheds/garage.

**1821 Manning:** Damaged roofing.

**1321 John:** Damaged roofing and walls.

**1803 Fuller:** Damaged Roofing.

**1602 Fuller:** Damaged Roofing.

**Action Requested:** Seeking consideration for the approval of fixing resolution for the 9/19/2022 commission meeting regarding the condemnation of certain structures.

**Status:** All properties owners were sent certified letters requesting an inspection or informing that the property is dangerous or injurious to the health, safety or morals of the occupants of such buildings or other residents of the city (uninhabitable), or which have a blighting influence on properties in the area.

Owners were requested to return a signed demolition or repair timeline and obtain the necessary permits to do so.

As of the above date no timelines have been returned.

Only one permit has been pulled (315 W 15<sup>th</sup>) and no work has been started at this time.

**Attachments:**

**Fixing Resolution - 818 Main - 2 Photos**

**Fixing Resolution - 315 W 15th- 2 Photos**

**Fixing Resolution - 1821 Manning- 2 Photos**

**Fixing Resolution - 1321 John- 2 Photos**

**Fixing Resolution - 1803 Fuller- 2 Photos**

**Fixing Resolution - 1602 Fuller- 2 Photos**



## RFCA Fixing Resolutions

818 Main #1-2



## RFCA Fixing Resolutions





## RFCA Fixing Resolutions





## RFCA Fixing Resolutions





## RFCA Fixing Resolutions





## RFCA Fixing Resolutions



(First published in the Cowley Courier Traveler, Saturday, July 23, 2022)

**BILL NO. 2268**

**RESOLUTION NO. 5622**

**A RESOLUTION**

**FIXING** the time and place and providing for notice of a public hearing before the Governing Body of the City of Winfield, Kansas, regarding the condemnation of a certain structure in the City of Winfield, Cowley County, Kansas.

**WHEREAS**, on 7/18/2022, the Environmental Inspector of the City or designee of Winfield, Kansas, acting as the enforcing officer pursuant to K.S.A. 12-1750 Supp. et. Seq., filed with the Governing Body of said City, a statement in writing that certain structures hereinafter described are unsafe for human habitation and/or dangerous.

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

**Section 1.** A hearing will be held on 9/19/2022 at 5:30 p.m. in the Community Council Room, City Hall, 200 East Ninth Avenue, Winfield, Kansas Winfield, Kansas, at which time the owners, their agents, lien holders of record and any occupants of said structures legally described below:

Structure(s), *BUSINESS*, on a tract of land legally described as; ***WINFIELD, TOWNSITE OF, BLOCK 128, Lot 10 in Winfield, Kansas. Commonly known as 818 Main. Recorded in Book 754 page 596, in the Office of the Register of Deeds of Cowley County, Kansas,***

may appear and show cause why said structure(s) should not be condemned as unsafe and dangerous and ordered repaired or demolished.

**Section 2.** The City Clerk is hereby directed to have this resolution published twice in the official city newspaper once each week for two consecutive weeks on the same day of each week and shall give notice to said person or persons in the manner provided by K.S.A. 12-1750 Supp. et. seq.

**Section 3.** This resolution shall be in full force and effect from and after its adoption and publication in the official city newspaper.

**ADOPTED** this 18th day of July 2022.

(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 / jw

(First published in the Cowley Courier Traveler, Saturday, July 23, 2022)

**BILL NO. 2269**

**RESOLUTION NO. 5722**

**A RESOLUTION**

**FIXING** the time and place and providing for notice of a public hearing before the Governing Body of the City of Winfield, Kansas, regarding the condemnation of a certain structure in the City of Winfield, Cowley County, Kansas.

**WHEREAS**, on 7/18/2022, the Environmental Inspector of the City or designee of Winfield, Kansas, acting as the enforcing officer pursuant to K.S.A. 12-1750 Supp. et. Seq., filed with the Governing Body of said City, a statement in writing that certain structures hereinafter described are unsafe for human habitation and/or dangerous.

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

**Section 1.** A hearing will be held on 9/19/2022 at 5:30 p.m. in the Community Council Room, City Hall, 200 East Ninth Avenue, Winfield, Kansas Winfield, Kansas, at which time the owners, their agents, lien holders of record and any occupants of said structures legally described below:

Structure(s), *SHEDS/GARAGES*, on a tract of land legally described as; ***ROBINSONS ADD, BLOCK 75, Lot 4. in Winfield, Kansas. Commonly known as 315 W 15th. Recorded in Book 955 page 412, in the Office of the Register of Deeds of Cowley County, Kansas,***

may appear and show cause why said structure(s) should not be condemned as unsafe and dangerous and ordered repaired or demolished.

**Section 2.** The City Clerk is hereby directed to have this resolution published twice in the official city newspaper once each week for two consecutive weeks on the same day of each week and shall give notice to said person or persons in the manner provided by K.S.A. 12-1750 Supp. et. seq.

**Section 3.** This resolution shall be in full force and effect from and after its adoption and publication in the official city newspaper.

**ADOPTED** this 18th day of July 2022.

(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 / jw

(First published in the Cowley Courier Traveler, Saturday, July 23, 2022)

**BILL NO. 2270**

**RESOLUTION NO. 5822**

**A RESOLUTION**

**FIXING** the time and place and providing for notice of a public hearing before the Governing Body of the City of Winfield, Kansas, regarding the condemnation of a certain structure in the City of Winfield, Cowley County, Kansas.

**WHEREAS**, on 7/18/2022, the Environmental Inspector of the City or designee of Winfield, Kansas, acting as the enforcing officer pursuant to K.S.A. 12-1750 Supp. et. Seq., filed with the Governing Body of said City, a statement in writing that certain structures hereinafter described are unsafe for human habitation and/or dangerous.

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

**Section 1.** A hearing will be held on 9/19/2022 at 5:30 p.m. in the Community Council Room, City Hall, 200 East Ninth Avenue, Winfield, Kansas Winfield, Kansas, at which time the owners, their agents, lien holders of record and any occupants of said structures legally described below:

Structure(s), *BAR/TAVERN*, on a tract of land legally described as; ***MANSFIELD'S ADD, BLOCK 98, S10 LT 11 & ALL LT 12. in Winfield, Kansas. Commonly known as 1821 Manning. Recorded in Book 426 page 573, in the Office of the Register of Deeds of Cowley County, Kansas,***

may appear and show cause why said structure(s) should not be condemned as unsafe and dangerous and ordered repaired or demolished.

**Section 2.** The City Clerk is hereby directed to have this resolution published twice in the official city newspaper once each week for two consecutive weeks on the same day of each week and shall give notice to said person or persons in the manner provided by K.S.A. 12-1750 Supp. et. seq.

**Section 3.** This resolution shall be in full force and effect from and after its adoption and publication in the official city newspaper.

**ADOPTED** this 18th day of July 2022.

(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 / jw

(First published in the Cowley Courier Traveler, Saturday, July 23, 2022)

**BILL NO. 2271**

**RESOLUTION NO. 5922**

**A RESOLUTION**

**FIXING** the time and place and providing for notice of a public hearing before the Governing Body of the City of Winfield, Kansas, regarding the condemnation of a certain structure in the City of Winfield, Cowley County, Kansas.

\_\_\_\_\_  
**WHEREAS**, on 7/18/2022, the Environmental Inspector of the City or designee of Winfield, Kansas, acting as the enforcing officer pursuant to K.S.A. 12-1750 Supp. et. Seq., filed with the Governing Body of said City, a statement in writing that certain structures hereinafter described are unsafe for human habitation and/or dangerous.

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

**Section 1.** A hearing will be held on 9/19/2022 at 5:30 p.m. in the Community Council Room, City Hall, 200 East Ninth Avenue, Winfield, Kansas Winfield, Kansas, at which time the owners, their agents, lien holders of record and any occupants of said structures legally described below:

Structure(s), *SHED/GARAGE*, on a tract of land legally described as; ***TORRANCE ADD, S 50 LT 16. in Winfield, Kansas. Commonly known as 1321 John. Recorded in Book 254 page 300, in the Office of the Register of Deeds of Cowley County, Kansas,***

may appear and show cause why said structure(s) should not be condemned as unsafe and dangerous and ordered repaired or demolished.

**Section 2.** The City Clerk is hereby directed to have this resolution published twice in the official city newspaper once each week for two consecutive weeks on the same day of each week and shall give notice to said person or persons in the manner provided by K.S.A. 12-1750 Supp. et. seq.

**Section 3.** This resolution shall be in full force and effect from and after its adoption and publication in the official city newspaper.

**ADOPTED** this 18th day of July 2022.

(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 / jw



**BILL NO. 2272**

**RESOLUTION NO. 6022**

**A RESOLUTION**

**FIXING** the time and place and providing for notice of a public hearing before the Governing Body of the City of Winfield, Kansas, regarding the condemnation of a certain structure in the City of Winfield, Cowley County, Kansas.

\_\_\_\_\_  
**WHEREAS**, on 7/18/2022, the Environmental Inspector of the City or designee of Winfield, Kansas, acting as the enforcing officer pursuant to K.S.A. 12-1750 Supp. et. Seq., filed with the Governing Body of said City, a statement in writing that certain structures hereinafter described are unsafe for human habitation and/or dangerous.

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

**Section 1.** A hearing will be held on 9/19/2022 at 5:30 p.m. in the Community Council Room, City Hall, 200 East Ninth Avenue, Winfield, Kansas Winfield, Kansas, at which time the owners, their agents, lien holders of record and any occupants of said structures legally described below:

Structure(s), *SHED/GARAGE*, on a tract of land legally described as; ***LOOMIS ADD, BLOCK 178, Lot 1 - 2 in Winfield, Kansas. Commonly known as 1803 Fuller. Recorded in Book 426 page 573, in the Office of the Register of Deeds of Cowley County, Kansas,***

may appear and show cause why said structure(s) should not be condemned as unsafe and dangerous and ordered repaired or demolished.

**Section 2.** The City Clerk is hereby directed to have this resolution published twice in the official city newspaper once each week for two consecutive weeks on the same day of each week and shall give notice to said person or persons in the manner provided by K.S.A. 12-1750 Supp. et. seq.

**Section 3.** This resolution shall be in full force and effect from and after its adoption and publication in the official city newspaper.

**ADOPTED** this 18th day of July 2022.

(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 / jw

**BILL NO. 2273**

**RESOLUTION NO. 6122**

**A RESOLUTION**

**FIXING** the time and place and providing for notice of a public hearing before the Governing Body of the City of Winfield, Kansas, regarding the condemnation of a certain structure in the City of Winfield, Cowley County, Kansas.

**WHEREAS**, on 7/18/2022, the Environmental Inspector of the City or designee of Winfield, Kansas, acting as the enforcing officer pursuant to K.S.A. 12-1750 Supp. et. Seq., filed with the Governing Body of said City, a statement in writing that certain structures hereinafter described are unsafe for human habitation and/or dangerous.

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

**Section 1.** A hearing will be held on 9/19/2022 at 5:30 p.m. in the Community Council Room, City Hall, 200 East Ninth Avenue, Winfield, Kansas Winfield, Kansas, at which time the owners, their agents, lien holders of record and any occupants of said structures legally described below:

Structure(s), *SHED/GARAGE*, on a tract of land legally described as; ***LOOMIS ADD, BLOCK 196, Lot 12 in Winfield, Kansas. Commonly known as 1602 Fuller. Recorded in Book 558 page 564, in the Office of the Register of Deeds of Cowley County, Kansas,***

may appear and show cause why said structure(s) should not be condemned as unsafe and dangerous and ordered repaired or demolished.

**Section 2.** The City Clerk is hereby directed to have this resolution published twice in the official city newspaper once each week for two consecutive weeks on the same day of each week and shall give notice to said person or persons in the manner provided by K.S.A. 12-1750 Supp. et. seq.

**Section 3.** This resolution shall be in full force and effect from and after its adoption and publication in the official city newspaper.

**ADOPTED** this 18th day of July 2022.

(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 / jw

**A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS MAKING CERTAIN FINDINGS OF FACT AS REQUIRED BY K.S.A. 79-251 WITH RESPECT TO A PROPERTY TAX EXEMPTION TO BE GRANTED TO S AND Y INDUSTRIES, INC.**

**WHEREAS**, S and Y Industries, Inc. (the “Company”) has applied to the City of Winfield, Kansas (the “City”) for a property tax exemption pursuant to the provisions of Article 11, Section 13 of the Kansas Constitution for additions to a facility located at 724 Industrial Road in the City to be used for one of the exempt purposes set forth in Article 11, Section 13 of the Kansas Constitution; and

**WHEREAS**, the governing body of the City has investigated the facts regarding the construction of an addition to the facility and the use to which the Company will put such property;

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

**Section 1.** The governing body of the City has determined and makes a factual finding that the facility for which the exemption is to be granted will be used exclusively in the Company's business of manufacturing articles of commerce as specified in Article 11, Section 13 of the Kansas Constitution.

**Section 2.** This Resolution shall take effect and be in full force from and after its adoption by the Governing Body.

**ADOPTED** on July 18, 2022.

---

Mayor

[SEAL]

Attest:

---

City Clerk

**BILL NO. 2275**

**ORDINANCE NO. 4186**

**AN ORDINANCE EXEMPTING CERTAIN PROPERTY IN THE CITY OF WINFIELD, KANSAS, FROM AD VALOREM TAXATION FOR ECONOMIC DEVELOPMENT PURPOSES PURSUANT TO ARTICLE 11, SECTION 13 OF THE KANSAS CONSTITUTION; PROVIDING THE TERMS AND CONDITIONS FOR AD VALOREM TAX EXEMPTION; AND DESCRIBING THE PROPERTY SO EXEMPTED.**

**WHEREAS**, Article 11, Section 13 of the Kansas Constitution permits the governing body of any city by ordinance to exempt from ad valorem taxation all or any portion of the appraised valuation of all buildings, together with the land upon which such buildings were located, and all tangible personal property associated therewith used exclusively by a business for the purpose of manufacturing articles of commerce for not more than ten (10) calendar years after the calendar year in which the business commences its operations or in which expansion of an existing business is completed; and

**WHEREAS**, the governing body of the City of Winfield, Kansas (the “City”), after conducting a public hearing pursuant to published notice as provided by law, has determined that the building additions constructed by S and Y Industries, Inc. (the “Company”) and used exclusively in the Company's business of manufacturing articles of commerce should be granted tax exemption for economic development purposes; and

**WHEREAS**, the governing body of the City has by previously adopted resolution made the findings of fact required by K.S.A. 79-251;

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

**Section 1. Grant of Exemption.** In accordance with Article 11, Section 13 of the Kansas Constitution, and pursuant to K.S.A. 79-251, Resolution No. 6222 of the City, the governing body of the City hereby determines that the following described property should be granted a 100% ad valorem tax exemption, provided no exemption may be granted from the ad valorem tax levied by a school district pursuant to the provisions of K.S.A. 72-53,113 and amendments thereto, and subject to proper application to and approval of the State Board of Tax Appeals, and further subject to the conditions set forth herein:

The building improvements located at 724 Industrial Road in the City constructed in 2021: (the “Project”):

**Lot 3, Corrected Plat of Winfield Industrial Park Subdivision, Winfield, Cowley County, Kansas; and**

**Lot 4, Corrected Plat of Winfield Industrial Park Subdivision, Winfield, Cowley County, Kansas**

The exemption shall commence as of January 1 following completion of the Project and shall be for a term of 10 years. Continuation of the ad valorem tax exemption shall be subject to compliance by the Company with the terms and conditions of the Tax Incentive Agreement herein described, and the exemption may be withdrawn by the governing body upon a finding that the Company is no longer entitled to such exemption under the terms of the Tax Incentive Agreement.

**Section 2. Authorization of Tax Incentive Agreement.** The form of the Tax Incentive Agreement presented to the governing body of the City on this date is hereby approved, with such minor corrections or modifications as may be approved by the Mayor, such approval to be conclusively evidenced by execution of the agreement by the Mayor and the City Clerk, and the Mayor and City Clerk are hereby authorized to execute the Tax Incentive Agreement on behalf of the City.

**Section 3. Transferability of Exemption.** If there is a change in ownership of the exempt property, the ad valorem tax exemption granted by this Ordinance is not transferable without the express approval of the City.

**Section 4. Effective Date.** This Ordinance shall be in full force and effect from and after its passage, execution by the Mayor, and publication in the official city newspaper as provided by law.

*[balance of this page intentionally left blank]*



**PASSED AND SIGNED** July 18, 2022.

---

Mayor

(SEAL)

Attest:

---

City Clerk

\* \* \* \* \*

CERTIFICATE OF COPY

I hereby certify that the attached copy is a true and correct copy of Ordinance No. \_\_\_\_\_ of the governing body of the City of Winfield, Kansas, duly passed by the governing body, signed by the Mayor, and published in the official City newspaper on the respective date stated therein, and that the signed original of such Ordinance is on file in my office.

[SEAL]

---

City Clerk