

**CITY COMMISSION MEETING  
Winfield, Kansas**

DATE: Monday, March 06, 2023  
TIME: 5:30 p.m.  
PLACE: City Commission – Community Council Room – First Floor – City Building

***AGENDA***

CALL TO ORDER.....Mayor Gregory N. Thompson

ROLL CALL.....City Clerk, Tania Richardson

MINUTES OF PRECEDING MEETING .....Tuesday, February 21, 2023

**PUBLIC HEARING**

- Consider determination that the structures at 320 Iowa St. are unsafe and/or dangerous, and ordering said structure(s) to be repaired or removed in ninety (90) days.

**BUSINESS FROM THE FLOOR**

- Citizens to be heard

**NEW BUSINESS**

Ordinances & Resolutions

**Bill No. 2312 – A Resolution** – Setting forth findings that the structure(s), A house on a tract of land legally described as; West 93 feet of Lot 10, Block 16, Highland Park Addition to the City of Winfield, KS Commonly known as 320 Iowa St. Recorded in Book 0849 page 0099, in the Office of the Register of Deeds of Cowley County, Kansas, is unsafe and/or dangerous and ordering said structure(s) to be repaired or removed in ninety (90) days.

**Bill No. 2313 – A Resolution** – Authorizing and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute an agreement for transportation services between the City of Winfield and Enable Gas Transmission, LLC., Oklahoma City, Oklahoma, regarding natural gas transmission services.

**Bill No. 2314 – A Resolution** – Authorizing and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute a First Amendment to an Indefeasible Right of Use Agreement for the use of certain dark fibers between the City of Winfield and Kansas Fiber Network, LLC, Kansas.

**OTHER BUSINESS**

- Consider KMEA Board of Director appointments

**ADJOURNMENT**

- Next Commission Work Session 4:00 p.m. Thursday March 16, 2023
- Next regular meeting 5:30 p.m. Monday, March 20, 2023

## **CITY COMMISSION MEETING MINUTES**

### **February 21, 2023**

The Board of City Commissioners met in regular session, Tuesday, February 21, 2023 at 5:30 p.m. in the City Commission-Community Council Meeting Room, City Hall; Mayor Gregory N. Thompson presiding. Commissioners Brenda K. Butters was present. Also, in attendance were Taggart Wall, City Manager; Tania Richardson, City Clerk; and William E. Muret, City Attorney. Other staff members present were Patrick Steward, Director of Public Improvements; and Stacy Michener, Community Development Coordinator/Planner.

Mayor Thompson noted Commissioner Hutto absent, other Commissioners present.

Commissioner Butters moved that the minutes of the February 6, 2023 meeting be approved. Mayor Thompson seconded the motion. With both Commissioners voting aye, motion carried.

### **BUSINESS FROM THE FLOOR**

-Ruth Richer, 807 Spey Ct, appeared before the Commission to present concerns about high utility costs and property taxes.

### **NEW BUSINESS**

**Bill No. 2305 – A Resolution** – Revoking the previous designation of condemnation of real estate. Director of Public Improvements Steward explains this Resolution allows the designation of condemnation to be revoked in order to provide a clear title. Upon motion by Commissioner Butters, seconded by Commissioner Thompson, both Commissioners voting aye, Bill No. 2305 was adopted and numbered Resolution No. 0523.

**Bill No. 2306 – A Resolution** – Authorizing and directing the City Manager and Clerk of the City of Winfield, Kansas, to enter into an agreement with D&T's Hauling & Excavating for the demolition and removal of the structure(s), Shed/Garage, on a tract of land legally described as: S22, T32, R04, PT SW1/4 BEG E132 FROM SW COR, E72, N330, W72, S330 EXC S180 LES S ROW, to Winfield, Kansas. Commonly known as 907 Lynn. Director of Public Improvements Steward explains this Resolution awards a contract to D&T's Hauling & Excavating in the amount of \$3,000 for the removal of dangerous and damaged structures. Upon motion by Commissioner Butters, seconded by Commissioner Thompson, both Commissioners voting aye, Bill No. 2306 was adopted and numbered Resolution No. 0623.

**Bill No. 2307 – A Resolution** – Authorizing and directing the City Manager and Clerk of the City of Winfield, Kansas, to enter into an agreement with Lawrence Crushed Stone for the demolition and removal of the structure(s), House, on a tract of land legally described as; Winfield, Townsite of, Block 86, Lot 1, to Winfield, Kansas. Commonly known as 603 Manning. Director of Public Improvements Steward explains this Resolution awards a contract to Lawrence Crushed Stone in the amount of \$7,950 for the removal of dangerous and damaged structures. Upon motion by Commissioner Butters, seconded by Commissioner Thompson, both Commissioners voting aye, Bill No. 2307 was adopted and numbered Resolution No. 0723.

**Bill No. 2308 – A Resolution** – Authorizing and directing the City Manager and Clerk of the City of Winfield, Kansas, to enter into an agreement with D&T's Hauling & Excavating for the demolition and removal of the structure(s), Shed/Garage, on a tract of land legally described as; Torrance Add, S 50 LT 16., to Winfield, Kansas. Commonly known as 1321 John St. Director of Public Improvements

Steward explains this Resolution awards a contract to D&T's Hauling & Excavating in the amount of \$2,800 for the removal of dangerous and damaged structures. Upon motion by Commissioner Butters, seconded by Commissioner Thompson, both Commissioners voting aye, Bill No. 2308 was adopted and numbered Resolution No. 0823.

**Bill No. 2309 – A Resolution** – Authorizing and directing the City Manager and Clerk of the City of Winfield, Kansas, to enter into an agreement with D&T's Hauling & Excavating for the demolition and removal of the structure(s), House, on a tract of land legally described as; HIGHLAND PARK, BLOCK 7, W100 LTS 10-12 to Winfield, Kansas. Commonly known as 434 Massachusetts. Director of Public Improvements Steward explains this Resolution awards a contract to D&T's Hauling & Excavating in the amount of \$5,200 for the removal of dangerous and damaged structures. Upon motion by Commissioner Butters, seconded by Commissioner Thompson, both Commissioners voting aye, Bill No. 2309 was adopted and numbered Resolution No. 0923.

**Bill No. 2310 – A Resolution** – Authorizing and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute a contract for Project No. 23-TI922 for asphalt street improvements between the City of Winfield, Kansas and Conspec, Inc. DBA Kansas Paving. Director of Public Improvements Steward explains this Resolution awards a contract to Conspec, Inc. DBA Kansas Paving in the amount of \$232,267.30. Upon motion by Commissioner Butters, seconded by Commissioner Thompson, both Commissioners voting aye, Bill No. 2310 was adopted and numbered Resolution No. 1023.

**Bill No. 2311 – A Resolution** – Authorizing and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute a contract for 2023 Microsurfacing for Microseal street improvements between the City of Winfield, Kansas and Vance Brothers, Inc., Kansas City, Mo. Director of Public Improvements Steward explains this Resolution authorizes a contract with Vance Brothers, Inc., Kansas City, Mo. in the amount of \$209,479.63 for Microsurfacing for Microseal street improvements. Upon motion by Commissioner Butters, seconded by Commissioner Thompson, both Commissioners voting aye, Bill No. 2311 was adopted and numbered Resolution No. 1123.

## **OTHER BUSINESS**

-Executive Session pursuant to the preliminary discussion on the acquisition of property exception. Commissioner Thompson moved the City Commission recess into Executive Session to discuss a potential real estate transaction pursuant to the preliminary discussion on the acquisition of property exception, K.S.A. 75-4319 (b)(6). Commissioner Butters seconded the motion, both Commissioners voting aye, the motion passed. The open meeting will reconvene in the Community Council Room at 5:45 pm.

## **ADJOURNMENT**

Upon motion by Commissioner Thompson, seconded by Commissioner Butters, both Commissioners voting aye, the meeting adjourned at 5:47 p.m.

Signed and sealed this 1<sup>st</sup> day of March 2023.

Signed and approved this 6<sup>th</sup> day of March 2023.

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Tania Richardson, City Clerk

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Gregory N. Thompson, Mayor



## Request for Commission Action

**Date:** February 28, 2023

**Requestor:** Stacy Foster Michener, Planning Coordinator

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**320 Iowa**

**Action Requested:** Seeking consideration for the approval of setting resolutions regarding the determination of certain structures as unsafe and/or dangerous and ordering said structure to be repaired or removed in (90) days—allowing any owner/lien holder 30 days for a detailed written plan for rehabilitation or removal of said structures.

**Status:** All property 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.

**Attachments:** 2 Photos

## Request for Commission Action





## Request for Commission Action



*(First published in Cowley Courier Traveler on Saturday, March 11, 2023)*

**BILL NO. 2312**

**RESOLUTION NO. 1223**

**A RESOLUTION**

**SETTING**     forth findings that the structure(s), A house on a tract of land legally described as; West 93 feet of Lot 10, Block 16, Highland Park Addition to the city of Winfield, KS Commonly known as 320 Iowa St. Recorded in Book 0849 page 0099, in the Office of the Register of Deeds of Cowley County, Kansas, is unsafe and/or dangerous and ordering said structure(s) to be repaired or removed in ninety (90) days.

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**WHEREAS**, the Governing Body, by **Resolution No. 0223** scheduled a hearing for 3/6/2023 at **5:30** p.m. to hear evidence to determine if the structure(s), hereinafter described as unsafe and/or dangerous; and,

**WHEREAS**, on 3/6/2023 the Governing Body heard all the evidence submitted.

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

**Section 1.** The Governing Body hereby finds that:

A house on a tract of land legally described as; West 93 feet of Lot 10, Block 16, Highland Park Addition to the city of Winfield, KS Commonly known as 320 Iowa St. Recorded in Book 0849 page 0099, in the Office of the Register of Deeds of Cowley County, Kansas,

is unsafe and dangerous and hereby directs the owner to remove or repair said structure(s) and make the premises safe and secure. The owner has **ninety (90)** days from the date of publication of this resolution or building permit date, whichever comes first, to complete repair work, bring the structure(s) into code compliance and make said structure(s) safe and habitable. Compliance must meet city standards and expectations. The owner must have the structure(s) inspected by the city inspector and obtain a Certificate of Occupancy from the Inspection Department before said structure(s) are deemed safe, habitable and ready for occupancy. Regardless of the expenditures and/or progress on the structure(s), if the owner fails to complete the repair within the time frame specified or fails to diligently prosecute the same until the work is completed, then at its discretion said Governing body will cause the structure(s) to be razed and removed or extend the time period. The cost of razing and removal, less salvage, if any, shall be assessed as a special assessment against the parcel of land upon which the structure(s) are located.

**Section 2.** Within thirty (30) days of publication, the owner shall provide to the Building Official a detailed written plan for rehabilitation or removal of the structure(s) complete with estimated costs and completion date. Failure to provide said plan within the designated time shall constitute waiving of the established time for repair established in Section 1.

**Section 3.** The City Clerk shall cause said findings to be filed with the Register of Deeds of Cowley County, Kansas.

**Section 4.** This resolution shall be in full force and effect from and after its adoption and publication in the official city newspaper.

**ADOPTED** this 6<sup>th</sup> day March 2023.

(SEAL)

\_\_\_\_\_  
Gregory N. Thompson, Mayor

ATTEST:

\_\_\_\_\_  
Tania Richardson, City Clerk

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

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





## Request for Commission Action

**Date:** March 2, 2023

**Requestor:** Gus Collins, Director of Utilities

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**Action Requested:** Consider approval and renewal of the EGT/City of Winfield Power Plant Gas Transmission contract.

**Analysis:** The City of Winfield currently contracts with Enable Gas Transmission Company for the delivery of Natural Gas to both generating units, the steam plant on E 12<sup>th</sup> and West Gas Turbine. The contract for community will automatically renew on April 1<sup>st</sup>, however, the Power Plant agreement is an annual renewal.

The terms of the renewal are the same as last contract year. The City is still obligated on a "take or pay" term.

Here is a recap of April 2022 to March 31<sup>st</sup>, 2023:

City of Winfield Power Plant					
Firm Transport Agreement with Enable Gas Transmission					
	Take/Pay Daily Volume	Take/Pay Reservation Cost	Actual Usage	Actual Cost	
Apr 2022	10	\$74.26	771	\$260.36	
May 2022	100	\$742.58	29	\$742.87	
Jun 2022	1,500	\$3,564.95	0	\$3,564.95	
Jul 2022	1,500	\$3,564.95	627	\$11,146.58	
Aug 2022	1,500	\$3,564.95	29,876	\$14,509.21	
Sep 2022	100	\$742.58	5,809	\$2,088.44	
Oct 2022	10	\$74.26	9,485	\$2,484.16	
Nov 2022	10	\$74.26	892	\$273.55	
Dec 2022	10	\$74.26	178	\$76.43	
Jan 2023	10	\$74.26	5,510	\$1,439.23	
Feb 2023	10	\$74.26	1,546	\$471.43	<i>Estimated</i>
Mar 2023	10	\$74.26	0	\$74.26	<i>Estimated</i>
		\$12,699.83			\$37,131.47

If the Power Plant was never activated, cost would be \$12,699.83. Note: February and March are estimated above.



## Request for Commission Action

Also, EGT is again, allowing for Winfield to set the daily contract demand volume at a different level each month to reduce take or pay cost in non-summer months.

**Fiscal Impact:** If the City generates power, either to verify the capability or if requested by SPP, both of which are reimbursed 100% of our cost by either KPP or the agency requesting the city to generate.

We are recommending moving forward with same terms as the previous agreement.

**Attachments:** Contract

**A RESOLUTION**

**AUTHORIZING** and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute an agreement for transportation services between the City of Winfield and Enable Gas Transmission, LLC., Oklahoma City, Oklahoma, regarding natural gas transmission services.

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**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 agreement for transportation services between the City of Winfield and Enable Gas Transmission, LLC., Oklahoma City, Oklahoma, regarding natural gas transmission services for a rate as set forth in TSA No. 1011266, a copy of which is attached hereto and made a part hereof.

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

**ADOPTED** this 6th day of March, 2023

(SEAL)

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Gregory N. Thompson, Mayor

ATTEST:

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Tania Richardson, City Clerk

Approved as to form: 

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William E. Muret, City Attorney

Approved for Commission action: 

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Taggart Wall, City Manager

**AMENDED AND RESTATED  
FIRM (RATE SCHEDULE FT)  
TRANSPORTATION SERVICE AGREEMENT  
TSA No.: 1011266**

**THIS TRANSPORTATION SERVICE AGREEMENT** ("Agreement"), between Enable Gas Transmission, LLC, a Delaware limited liability company ("Transporter"), and Shipper (defined below), covering the transportation of natural gas by Transporter on behalf of Shipper as more particularly described herein, is entered into in accordance with the following terms and conditions:

**1) SHIPPER INFORMATION:**

Shipper's Name: City of Winfield, Kansas  
2701 E. 9<sup>th</sup> Avenue  
Winfield, KS 67156  
Attn: Gus Collins  
Email: gcollins@winfieldks.org

Type of Entity: Kansas municipality

Transporter's wire transfer information and addresses for notices and payments shall be located on Transporter's Internet Web Site.

**2) REGULATORY AUTHORITY: Part 284: Subpart G**

**3) TERM, CONTRACT DEMAND AND POINTS:**

The term (including term extensions), Contract Demand, Receipt Entitlement(s), and Receipt and Delivery Points for this Agreement shall be shown below or on any designated Attachment, as applicable. Absent designation of MRO's for any specific physical Point of Receipt, Transporter shall have no obligation to permit Shipper to utilize any such Point of Receipt or to receive any specific quantities on Shipper's behalf at such point.

Term: Effective Date: Originally April 1, 2018, as amended and restated April 1, 2023

Primary Term End Date: The end of the Day on March 31, 2024

Evergreen/Term Extension? No

Contract Demand (Dth/D):	10	April 1, 2023 – April 30, 2023; October 1, 2023 – March 31, 2024
	100	May 1, 2023 – May 31, 2023; September 1, 2023 – September 30, 2023
	1,500	June 1, 2023 – August 31, 2023

Receipt Entitlement(s) (Dth/D):	West 1 Pooling Area
	10 April 1, 2023 – April 30, 2023; October 1, 2023 – March 31, 2024
	100 May 1, 2023 – May 31, 2023; September 1, 2023 – September 30, 2023
	1,500 June 1, 2023 – August 31, 2023

<u>Primary Receipt Point(s):</u>	<u>Maximum Receipt Obligation (Dth/D)</u>
Egg McClure IC	10 April 1, 2023 – April 30, 2023; October 1, 2023 – March 31, 2024
(Meter No. 301104)	100 May 1, 2023 – May 31, 2023; September 1, 2023 – September 30, 2023
	1,500 June 1, 2023 – August 31, 2023

<u>Primary Delivery Point(s):</u>	<u>Maximum Delivery Obligation (Dth/D)</u>
City of Winfield PWR	10 April 1, 2023 – April 30, 2023; October 1, 2023 – March 31, 2024
(Meter No. 805107)	100 May 1, 2023 – May 31, 2023; September 1, 2023 – September 30, 2023
	1,500 June 1, 2023 – August 31, 2023

**AMENDED AND RESTATED  
FIRM (RATE SCHEDULE FT)  
TRANSPORTATION SERVICE AGREEMENT  
TSA No.: 1011266  
(continued)**

- 4) **RATE:** Unless provided otherwise in an Attachment to this Agreement in effect during the term of this Agreement, in a capacity release award, or below, Shipper shall pay, or cause to be paid, to Transporter each month for all services provided hereunder the maximum applicable rate, and any other charges, fees, direct bill amounts, taxes, assessments, or surcharges provided for in Transporter's Tariff, as on file and in effect from time to time, for each service rendered hereunder.
- 5) **OTHER PROVISIONS:**
- 5.1) Payments shall be received by Transporter within the time prescribed by Section 14 of the GT&C of Transporter's Tariff. Amounts past due hereunder shall bear interest as provided in Section 14 of the GT&C of the Tariff. Shipper shall pay all costs associated with the collection of such past due amounts including, but not limited to, attorneys' fees and court costs. Shipper hereby represents and warrants that the party executing this Agreement on its behalf is duly authorized and possesses all necessary corporate or other authority required to legally bind Shipper.
- 5.2) Do the parties agree that the provisions of Section 13.4 of the GT&C of Transporter's Tariff shall apply with respect to third-party transportation? No
- 5.3) Does this Agreement supersede, cancel, amend, restate, substitute or correct pre-existing Transportation Service Agreement(s) between the parties? Yes  
Effective April 1, 2023, this Agreement amends and restates Transportation Service Agreement No. 1011266, originally effective April 1, 2018, as subsequently amended, restated and/or superseded prior to or as of the effective date hereof.
- 5.4) Is this Agreement entered into pursuant to and subject to CAPACITY RELEASE, Section 19 of the GT&C of Transporter's Tariff? No
- 5.5) Does this Agreement include any other terms/provisions permitted by the Tariff? Yes  
Pursuant to Section 21.10, GT&C, of the Tariff, the parties have agreed to an extension of the term with respect to all of the capacity committed under the Service Agreement being amended and extended.
- 6) All modifications, amendments or supplements to the terms and provisions hereof shall be effected only by supplementary written (or electronic, to the extent Transporter permits or requires) consent of the parties.
- 7) **SIGNATURE:** This Agreement constitutes a contract with Transporter for the transportation of natural gas, subject to the terms and conditions hereof, the General Terms and Conditions attached hereto, and any applicable attachment(s), all of which are incorporated herein by reference and made part of this Agreement.

**ENABLE GAS TRANSMISSION, LLC**

**CITY OF WINFIELD, KANSAS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



**AMENDED AND RESTATED  
FIRM (RATE SCHEDULE FT)  
TRANSPORTATION SERVICE AGREEMENT  
TSA No.: 1011266**

**GENERAL TERMS AND CONDITIONS**

1. This Agreement shall be subject to the provisions of Rate Schedule FT as well as the General Terms and Conditions ("GT&C") set forth in Transporter's Tariff, as on file and in effect from time to time, all of which by this reference are made a part hereof.
2. In accordance with Section 12.2 of the GT&C of Transporter's Tariff, Transporter shall have the right at any time, and from time to time, to file and place into effect unilateral changes or modifications in the rates and charges, and other terms and conditions of service hereunder, and as set forth in said Rate Schedule and in said GT&C of Transporter's Tariff, in accordance with the Natural Gas Act or other applicable law. Nothing contained in the foregoing provision shall preclude or prevent Shipper from protesting any such changes or modifications; however, Shipper agrees to pay all rates and charges, and to comply with all terms and conditions, in effect under the Tariff.
3. Upon Shipper's failure to pay when due all or any part of amounts billed in connection with services rendered or to comply with the terms of this Agreement, Transporter may terminate this Agreement and/or suspend service, as appropriate, in accordance with the provisions of Section 14 of the GT&C of Transporter's Tariff.
4. In accordance with Section 21.1 of the GT&C of Transporter's Tariff, upon termination hereof for whatever reason, Shipper agrees to stop delivering gas to Transporter for service and, unless otherwise agreed by Transporter, to seek no further service from Transporter hereunder. Shipper agrees to cooperate with and assist Transporter in obtaining such regulatory approvals and authorizations, if any, as are necessary or appropriate in view of such termination and abandonment of service hereunder.
5. In accordance with Section 5.7(e) of the GT&C of Transporter's Tariff, termination of this Agreement shall not relieve either party of any obligation that might otherwise exist to cash-out or correct any Imbalance hereunder nor relieve Shipper of its obligation to pay any monies due hereunder to Transporter and any portions of this Agreement necessary to accomplish such purposes shall be deemed to survive for the time and to the extent required.
6. In accordance with Sections 2.1 and 2.2 of Rate Schedule FT of Transporter's Tariff, subject to the provisions of the Tariff and this Agreement, Transporter shall receive, transport, and deliver, for the account of Shipper for the purposes contemplated herein, on a firm basis a quantity of Gas up to the quantity or quantities specified in the Agreement.
7. In accordance with Sections 2.1 and 3.3 of Rate Schedule FT of Transporter's Tariff, Gas shall be (i) tendered to Transporter for transportation hereunder at the Point(s) of Receipt and (ii) delivered by Transporter after transportation to Shipper, or for Shipper's account, at the Point(s) of Delivery on the terms and at the points shown in this Agreement. Subject to the provisions of the Tariff, Transporter shall tender for delivery quantities of Gas thermally-equivalent to those delivered by Shipper, less, as applicable, Fuel Use and LUGF, or Alternate Fuel Retentions, retained.
8. Except as otherwise permitted in the Tariff, and in accordance with Section 19 of the GT&C of Transporter's Tariff, this Agreement shall not be assigned by Shipper in whole or in part, nor shall Shipper agree to provide services to others by use of any capacity contracted for under the Agreement, without Transporter's prior written consent. In addition to all other rights and remedies, Transporter may terminate the Agreement immediately if it is assigned by Shipper or if Shipper subcontracts the capacity to others contrary to the provisions hereof, whether the assignment or contract be voluntary, or by operation of law or otherwise. Subject to the above, the respective rights and obligations of the parties under the Agreement shall extend to and be binding upon their heirs, successors, assigns and legal representatives. Shipper may request that Transporter consent to Shipper's assignment of this Agreement to an entity with which Shipper is affiliated subject to the assignee's satisfaction of the criteria in Section 14 of the GT&C of Transporter's Tariff, in the situation in which, after Shipper obtains the Agreement, a corporate reorganization results in a transfer to an affiliate of the function for which the capacity was obtained. Any person which shall succeed by purchase, merger or consolidation to the properties, substantially as an entirety, of either party hereto, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Agreement; and either party may assign or pledge this Agreement under the provisions of any mortgage, deed of trust, indenture, bank credit agreement, assignment or similar instrument which it has executed or may execute hereafter.
9. Any notice, statement, or bill provided for in this Agreement shall be in writing (or provided electronically via the Internet to the extent Transporter permits or requires) and shall be considered as having been given if hand delivered, or, if received, when mailed by United States mail, postage prepaid, to the addresses specified herein, or such other addresses as either party shall designate by written notice to the other. Additionally, notices shall be considered as having been given, if received, when sent via facsimile or through electronic data interchange.



## Request for Commission Action

**Date:** March 2<sup>nd</sup>, 2023

**Requestor:** Jerred Schmidt, Director of Information Systems

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**Action Requested:** Consider authorizing the City Manager to sign and approve the amendment to the Indefeasible Right of Use (IRU) agreement with Kansas Fiber Network, LLC dated July 22<sup>nd</sup>, 2022

**Analysis:** This amendment will add two USD 465 buildings to the IRU agreement with Kansas Fiber Network. It will add Lowell Elementary and Whittier Elementary to the agreement and allow USD 465 to complete a ring topology for their network allowing for redundant connections to most USD 465 buildings. This IRU and amendment will be added to our Interlocal Agreement between the City of Winfield and USD 465 that has been in place for 20 years and is due for renewal this year. The USD 465 Board of Education approved funding for this project at the February 13<sup>th</sup>, 2023 BOE meeting with a not to exceed budget of \$75,000.00. The overall project will include 2 stands of fiber that will connect from the High School to Irving, Irving to Lowell, Lowell to Whittier, Whittier to 12<sup>th</sup> and Mound where it will tie into our existing Aerial fiber network.

**Fiscal Impact:**

- Increases IRU fee from \$170,000.00 to \$183,579.00
- The increase of \$13,579.00 will be billed by the City of Winfield to USD 465 on completion of the project. This will be added to the USD 465 dark fiber participation costs of \$37,448.91 for a total billing of 51,027.91. This leaves room for final connections at Irving and Whittier to be coordinated with our fiber contractor.

**Staff Recommendation:** Authorize the City Manager to sign and approve the amendment to the Indefeasible Right of Use (IRU) agreement with Kansas Fiber Network, LLC dated July 22<sup>nd</sup>, 2022

**Attachments:** Proposed First Amendment to Agreement, USD 465 BOE Approval Letter

**A RESOLUTION**

**AUTHORIZING** and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute a First Amendment to an Indefeasible Right of Use Agreement for the use of certain dark fibers between the City of Winfield and Kansas Fiber Network, LLC, Kansas.

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**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, to execute a First Amendment to an Indefeasible Right of Use Agreement for the use of certain dark fibers between the City of Winfield and Kansas Fiber Network, LLC, Kansas., a copy of which is attached hereto and made a part hereof.

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

**ADOPTED** this 6th day of March, 2023

(SEAL)

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Gregory N. Thompson, Mayor

ATTEST:

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Tania Richardson, City Clerk

Approved as to form: 

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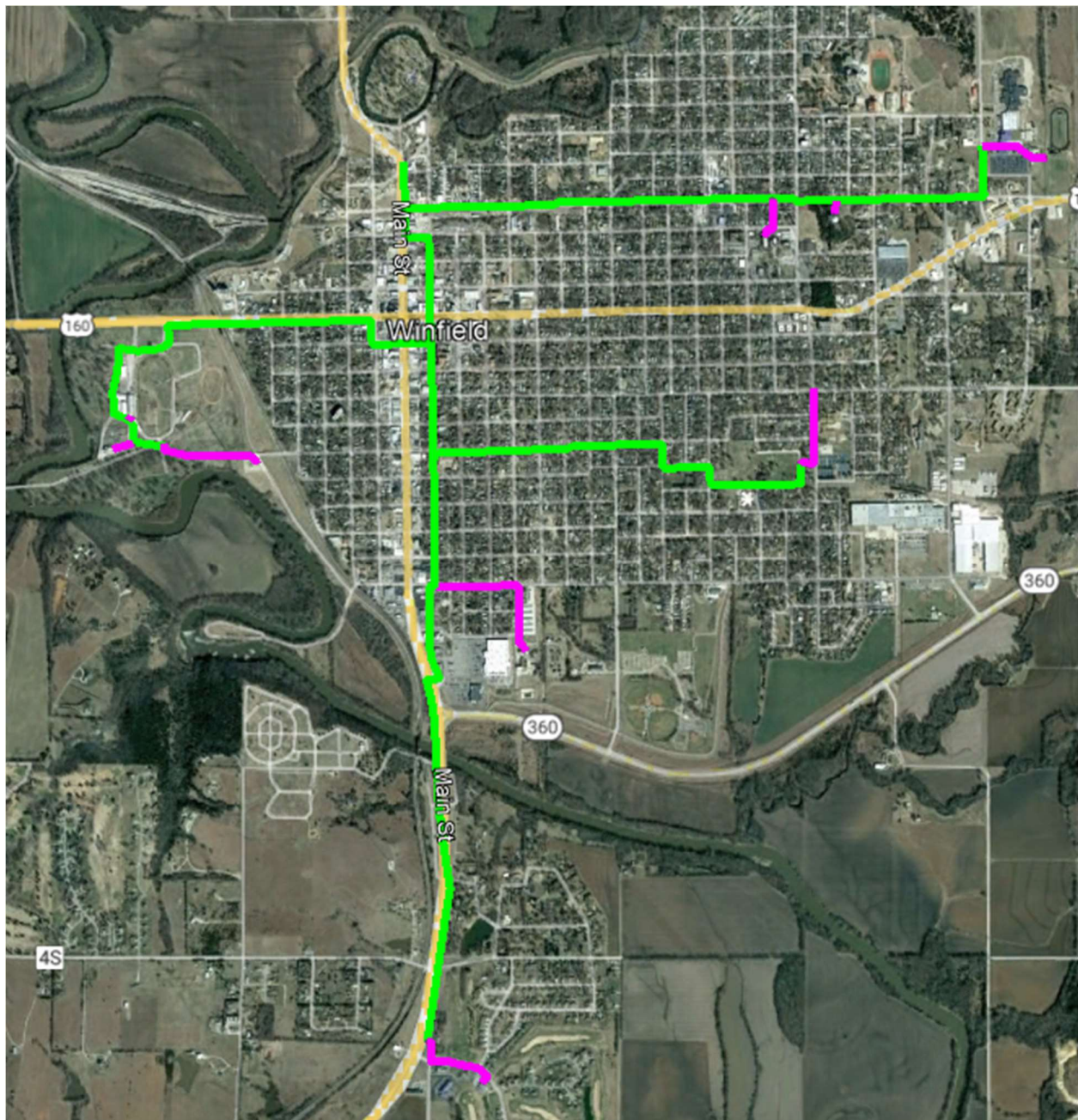
William E. Muret, City Attorney

Approved for Commission action: 

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Taggart Wall, City Manager

## KFN IRU Route Map





# USD 465 Winfield Vikings

Winfield Public Schools  
Dr. Nathan Reed, Superintendent  
Mark Littell, Assistant Superintendent  
Kent Tamsen, Director of Operations

1407 Wheat Rd.  
Winfield, KS 67156  
(620) 221-5100  
(620) 221-0508 FAX

February 14, 2023

<Digital Email Transmission>

To: Jerred Schmidt  
From: Kent Tamsen, Director of Technology and Operations  
Re: Fiber Optic Network Upgrade Project

Jerred, Our Board of Education at its February 13<sup>th</sup> meeting approved the Underground Internet Fiber 30 year agreement with the City of Winfield; with a not to exceed \$75,000.00 budget. In doing so, they have allocated the funds to move forward with the USD465 and City of Winfield upgrade project. The vote was 6-0 in an enthusiastic fashion to continue our partnership with the City.

The district, and our Board of Education, understands that it will take some time to develop the addendum for our current agreement. However, the BOE action last night is the authorization to proceed accordingly.

Please contact me with any questions. I look forward to continuing to work with you, and your team.

Sincerely,

Kent Tamsen

*The mission of USD 465 is to provide all students opportunities to gain knowledge and skills necessary for successful living in a changing world.*



## **FIRST AMENDMENT TO AGREEMENT**

This First Amendment ("First Amendment") amends the Agreement dated July 22, 2022 (the "IRU Agreement") entered into by and between Kansas Fiber Network, L.L.C., a Kansas Limited Liability Company ("KFN") and The City of Winfield, Kansas ("Customer"). This Amendment No.1 shall be effective as of the last signature below ("Effective Date"). KFN and Customer both may be hereinafter referred to individually as a "Party" and collectively as the "Parties."

### **RECITALS**

**WHEREAS**, KFN and Customer entered into a certain IRU Agreement dated July 22, 2022 (the "Agreement"); and

**WHEREAS**, the Parties wish to modify certain terms and conditions of the Agreement to (i) add six (6) IRU fiber strands from 12<sup>th</sup> and Mound Street to a City aerial splice case at Whittier Elementary school, 1400 Mound Street; and (ii) add six (6) IRU fiber strands from 14<sup>th</sup> and Millington Street to Lowell Elementary, 1404 Millington Street.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth below as well as other valuable consideration, the Parties hereto do hereby amend the Agreement as follows:

#### **Amendments to the Agreement.**

1. **Exhibit A. MATERIAL TERMS.** Shall be amended as follows.

A. The following segments shall be added to Description of IRU Fibers Supplied by KFN:

- i. Whittier Elementary – 6 fibers.
- ii. Lowell Elementary – 6 fibers.

B. IRU NRC Fee increased from \$170,000 to \$183,579.

2. **Authority.** Each person executing this First Amendment on behalf of a Party represents and warrants that it has the full power, authority, and legal right to execute and deliver this First Amendment on behalf of such Party.

3. **Counterparts.** This First Amendment may be executed in any number of counterparts and by the Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement, whether executed and exchanged electronically in pdf format or otherwise.

4. **Conflict of Terms.** Except as modified in this First Amendment, all other rates, terms and conditions of the Agreement remain in full force and effect. In the event of any conflict between the Agreement and this First Amendment, the terms of this First Amendment shall control.

IN WITNESS WHEREOF, the undersigned have caused this First Amendment to be executed.

**Kansas Fiber Network, LLC**  
(“KFN”)

**City of Winfield**

<b>By:</b>	<b>By:</b>
<b>Name: Mike Morrissey</b>	<b>Name: Taggart Wall</b>
<b>Title: VP Engineering &amp; Operations</b>	<b>Title: City Manager</b>
<b>Date:</b>	<b>Date:</b>