

Mayor Gregory N. Thompson  
Commissioner Brenda K. Butters  
Commissioner Ronald E. Hutto

**CITY COMMISSION MEETING  
Winfield, Kansas**

DATE: Monday, April 03, 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.....Monday, March 20, 2023

**PROCLAMATION**

-Proclaiming the Month of April as Fair Housing Month

**BUSINESS FROM THE FLOOR**

-Citizens to be heard

**NEW BUSINESS**

Ordinances & Resolutions

**Bill No. 2324 - An Ordinance** – Accepting and authorizing the final plat of the Broadway Estates Subdivision, in the Northeast quarter of Section 33, Township 32 South, Range 4 East of the 6<sup>th</sup> P.M., Winfield, Cowley County, Kansas.

**Bill No. 2325 - A Resolution** – Authorizing and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute Transportation Alternatives Project Agreement No. 047-23 between the City and the Secretary of the Kansas Department of Transportation, relating to State Aid for the improvement of US-160 Pedestrian Path.

**Bill No. 2326 - A Resolution** – Authorizing and directing the City Manager and Clerk of the City of Winfield, Kansas to enter into an agreement between Versasport, LLC., Wichita, Kansas and the City of Winfield, Kansas, regarding playground improvements at Cochran Park.

**OTHER BUSINESS**

**ADJOURNMENT**

-Next regular work session 4:00 p.m. Thursday April 13, 2023.  
-Next regular meeting 5:30 p.m. Monday, April 17, 2023.

**CITY COMMISSION MEETING MINUTES**  
**Winfield, Kansas**  
**March 20, 2023**

The Board of City Commissioners met in regular session, Monday, March 20, 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 and Ronald E. Hutto were also present. Also in attendance were Taggart Wall, City Manager; Tania Richardson, City Clerk and William E. Muret, City Attorney. Other staff members present were Gus Collins, Director of Utilities; Patrick Steward, Director of Public Improvements; and Eric Archambeau, Sanitation Superintendent.

Mayor Thompson noted all Commissioners were present.

Commissioner Hutto moved that the minutes of the March 6, 2023 meeting be approved. Commissioner Butters seconded the motion. With all Commissioners voting aye, motion carried.

**PROCLAMATION**

-Mayor Thompson presented a proclamation to Eric Archambeau proclaiming April 2<sup>nd</sup>, through April 8<sup>th</sup>, 2023, as Spring Beautification Week.

**BUSINESS FROM THE FLOOR**

-None

**NEW BUSINESS**

**Bill No. 2315 – An Ordinance** – Authorizing execution of the Natural Gas Prepay Participation Agreement with the Kansas Municipal Gas Agency and all other necessary documents with respect thereto and providing for the pledge of the revenues of the natural gas utility system of the City to secure such agreement. Director of Utilities Collins explains this Ordinance authorizes an agreement with KMGa to participate in a Prepay Participation Agreement. Upon motion by Commissioner Butters, seconded by Commissioner Hutto, all Commissioners voting aye, Bill No. 2315 was adopted and numbered Ordinance No. 4195.

**Bill No. 2316 - An Ordinance** – Amending Chapter 70 of the revised ordinances of the City of Winfield, Kansas relating to the establishment of a sidewalk improvement rebate program. Director of Public Improvements Steward explains this Ordinance establishes a sidewalk improvement rebate program. Upon motion by Commissioner Hutto, seconded by Commissioner Butters all Commissioners voting aye, Bill No. 2316 was adopted and numbered Ordinance No. 4196.

**Bill No. 2317 - A Resolution** – Establishing a sidewalk improvement rebate program for the City of Winfield, Kansas by the adoption of Section 70-50 of the Municipal Code. Director of Public Improvements Steward explains this Resolution sets forth various rules, regulations and fees in connection to the sidewalk improvement rebate program. Upon motion by Commissioner Butters, seconded by Commissioner Hutto, all Commissioners voting aye, Bill No. 2317 was adopted and numbered Resolution No. 1523.

**Bill No. 2318 - A Resolution** – Amending the Comprehensive Fee Schedule for services provided by the City of Winfield, Kansas, regarding the establishment of fees for a sidewalk reimbursement program. Upon motion by Commissioner Hutto, seconded by Commissioner Butters, all Commissioners voting aye, Bill No. 2318 was adopted and numbered Resolution No. 1623.

**Bill No. 2319 - A Resolution** – Authorizing and directing the City Manager and Clerk of the City of Winfield, Kansas to enter into an agreement for automated payment equipment and related professional services, regarding permit fee collections at the Winfield City Lake. City Manager Wall explains this Resolution will authorize installation of automated payment equipment and related software services at the Winfield City Lake not to exceed \$50,000. Upon motion by Commissioner Butters, seconded by Commissioner Hutto, all Commissioners voting aye, Bill No. 2319 was adopted and numbered Resolution No. 1723.

**Bill No. 2320 - A Resolution** – Authorizing and directing the City Manager and Clerk of the City of Winfield, Kansas to execute a proposal for professional services between Southwest Electric Co., Tulsa, Oklahoma and the City of Winfield, Kansas, regarding transmission and distribution substation and switchgear maintenance and inspection. Director of Utilities Collins explains that Staff is recommending Southwest Electric Co., Tulsa, Oklahoma be selected to conduct the substation maintenance and testing, at a cost of \$46,900.00. Upon motion by Commissioner Hutto, seconded by Commissioner Butters, all Commissioners voting aye, Bill No. 2320 was adopted and numbered Resolution No. 1823.

**Bill No. 2321 - A Resolution** – Authorizing an Outdoor Community Event and Temporary Entertainment District Application (Midwest Moos, Inc.) City Manager Wall explains this Resolution will approve a Temporary Entertainment District Application for Midwest Moos, at the Broadway Complex. Upon motion by Commissioner Butters, seconded by Commissioner Hutto, all Commissioners voting aye, Bill No. 2321 was adopted and numbered Resolution No. 1923.

**Bill No. 2322 - A Resolution** – Authorizing an Outdoor Community Event and Temporary Entertainment District Application (Old Skool Pro, LLC) City Manager Wall explains this Resolution will approve a Temporary Entertainment District Application for Old Skool Pro, LLC at the Winfield Fairgrounds. Upon motion by Commissioner Hutto, seconded by Commissioner Butters, all Commissioners voting aye, Bill No. 2322 was adopted and numbered Resolution No. 2023.

**Bill No. 2323 - A Resolution** – Authorizing and directing the Mayor and Clerk of the City of Winfield, Kansas to execute the Municipal Water Conservation Plan for the City of Winfield, Kansas, regarding long term water use efficiency and drought response. Director of Utilities Collins explains this Resolution will approve a new Water Conservation Plan that includes various revisions from the Division of Water Resources, Kansas Water Office (KWO). Upon motion by Commissioner Butters, seconded by Commissioner Hutto, all Commissioners voting aye, Bill No. 2323 was adopted and numbered Resolution No. 2123.

#### **OTHER BUSINESS**

- Consider CMB License Application for Midwest Moos, Broadway Complex. Commissioner Butters made a motion that the CMB license application for Midwest Moos be approved. Motion was seconded by Commissioner Hutto. With all Commissioners voting aye, motion carried.

- Consider CMB License Application for Old Skool Productions. Commissioner Hutto made a motion that the CMB license application for Old Skool Productions be approved. Motion was seconded by Commissioner Butters. With all Commissioners voting aye, motion carried.

**ADJOURNMENT**

Upon motion by Commissioner Hutto, seconded by Commissioner Butters, all Commissioners voting aye, the meeting adjourned at 5:41 p.m.

Signed and sealed this 30<sup>th</sup> day of March 2023.

Signed and approved this 3<sup>rd</sup> day of April 2023.

---

Tania Richardson, City Clerk

---

Gregory N. Thompson, Mayor

## **PROCLAMATION**

**WHEREAS**, Title VI of the landmark Civil Rights Act of 1964 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 subjected to discrimination under any program or activity received Federal financial assistance.”

**WHEREAS**, Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex or national origin. Title VIII was amended in 1988 (effective March 12, 1989) by the Fair Housing Amendments Act, which: expanded the coverage of the Fair Housing Act to prohibit discrimination based on disability or on familial status (presence of child under age of 18, and pregnant women); established new administrative enforcement mechanisms with HUD attorneys bringing actions before administrative law judges on behalf of victims of housing discrimination; and revised and expanded Justice Department jurisdiction to bring suit on behalf of victims in Federal district courts.

**WHEREAS**, the denial of equal housing opportunity is one of the most serious challenges a community can face. It is a challenge that must be met and surmounted lest it erode the vital social structure that holds a community together and gives it shape and dimension. The need for shelter is an essential human need. The right to freely choose a place to live is a basic human right and discrimination in housing is not only against the law, but contrary to our sense of what our country should mean to us and to others.

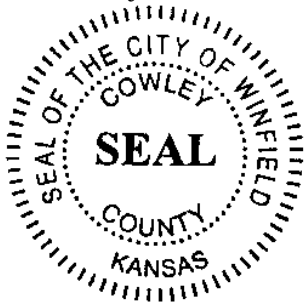
**WHEREAS**, in support of equal housing opportunity, the City of Winfield has established a Fair Housing contact whose functions include receiving complaints regarding alleged violations of jurisdictional fair housing policies and attempting to resolve legitimate grievances through conference and conciliation at the local level if possible.

**WHEREAS**, there are voluntary programs in support of fair housing that we as concerned citizens can encourage at every level in our community and in our jobs. There are personal and professional attitudes that we can and must change. These efforts are to make fair housing choice a basic right for our neighbors and ourselves.

**NOW, THEREFORE**, I, Gregory N. Thompson, Mayor of the City of Winfield, Kansas, do hereby designate the month of April 2023 as

## **FAIR HOUSING MONTH**

in the City of Winfield, Kansas, and urge all citizens to join in this observance by resolving to fight discrimination in our personal lives, and by making ourselves aware of the Fair Housing Act and the ways in which it applies to our community.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Winfield, Kansas to be affixed this 3<sup>rd</sup> day of April 2023.

Gregory N. Thompson, Mayor

ATTEST:

Tania Richardson, City Clerk



## Request for Commission Action

**Date:** March 28, 2023

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

---

**Action Requested:** Final Plat approval for Broadway Estates Subdivision.

### **Analysis:**

Attached are the minutes of the Planning Commission meeting of March 13 where they voted to recommend approval of a plat of the area on the southwest corner of Broadway and 19<sup>th</sup>. Tom Andes owns the parcel and has proposed the plat to allow for construction of additional dwellings along 19<sup>th</sup> Avenue.

**Fiscal Impact:** The subdivision provides for future infrastructure improvements and new dwelling units.

**Attachments:** Ordinance, Plat, and Minutes of PC Meeting

# Winfield Planning Commission

## Meeting Minutes

March 13, 2023

Attendance: Members present were; Willie Tuttle, Chair, Rick Cowlshaw-Vice-Chair, Mike Mildfelt, Robert Gottlob, Michael Kelley, Tom McNeish. Also present were Chamber president Sarah Werner, Patrick Steward-Director of Public Improvement and Stacy Michener, Planning Coordinator.

Chairperson Willie Tuttle called the meeting to order at 5:30 p.m.

Minutes: Mr. Tuttle requested a motion to approve the minutes from October 10, 2022.

Robert Gottlob moved and Rick Cowlshaw seconded the motion to approve the minutes.

Motion carried.

New Business:

**New Business: Item 1:** Case No. PLAT-2022-0026- Petition for final plat approval for seven (7) lots at Broadway Estates to the City of Winfield, Cowley County, Kansas, filed by Tommy and Sharon Andes and Bliss Development LLC agent.

Mr. Steward clarified the number of lots as a total of seven, 6 lots to be developed and one open.

Normal set-back in residential neighborhood was increased to 30 feet.

Mr. Tuttle asked for a motion regarding the case, Mr. Gottlob moved to recommend approval of the plat, Mr. Kelley seconded. Motion carried.

Sarah Werner with the Winfield Chamber of Commerce introduced a potential ordinance for a Downtown/Commercial Building Vacancy. This would address abandoned properties in the downtown area and encourage property owners to maintain their properties which when left in disrepair negatively impact neighboring property values and creates blight. Sarah mentioned that Emporia had created such an ordinance for their downtown area and Winfield was using that as a guide.

The planning commission asked questions of Ms. Werner and staff regarding the specifics of the proposed ordinance. Upon conclusion of the discussion, the consensus of the planning commission members present was to recommend moving forward with an ordinance of this type. They did express that the specific ordinance may need some clearer language defining specific properties to be addressed and what would exempt properties from having to be registered.

Election of Officers-

Rick Cowlshaw announced he is moving and leaving the city in the summer, asked not to be elected as an officer as he will be leaving the area.

Mr. Mildfelt made a motion to nominate Mr. Tuttle to remain chairperson, Mr. Gottlob seconded the motion. Mr. Cowlshaw nominated Mike Kelley, as Vice-chair, which was seconded by Mr. McNeish. It was voted on and all approved.

Meeting adjourned 5:55pm.

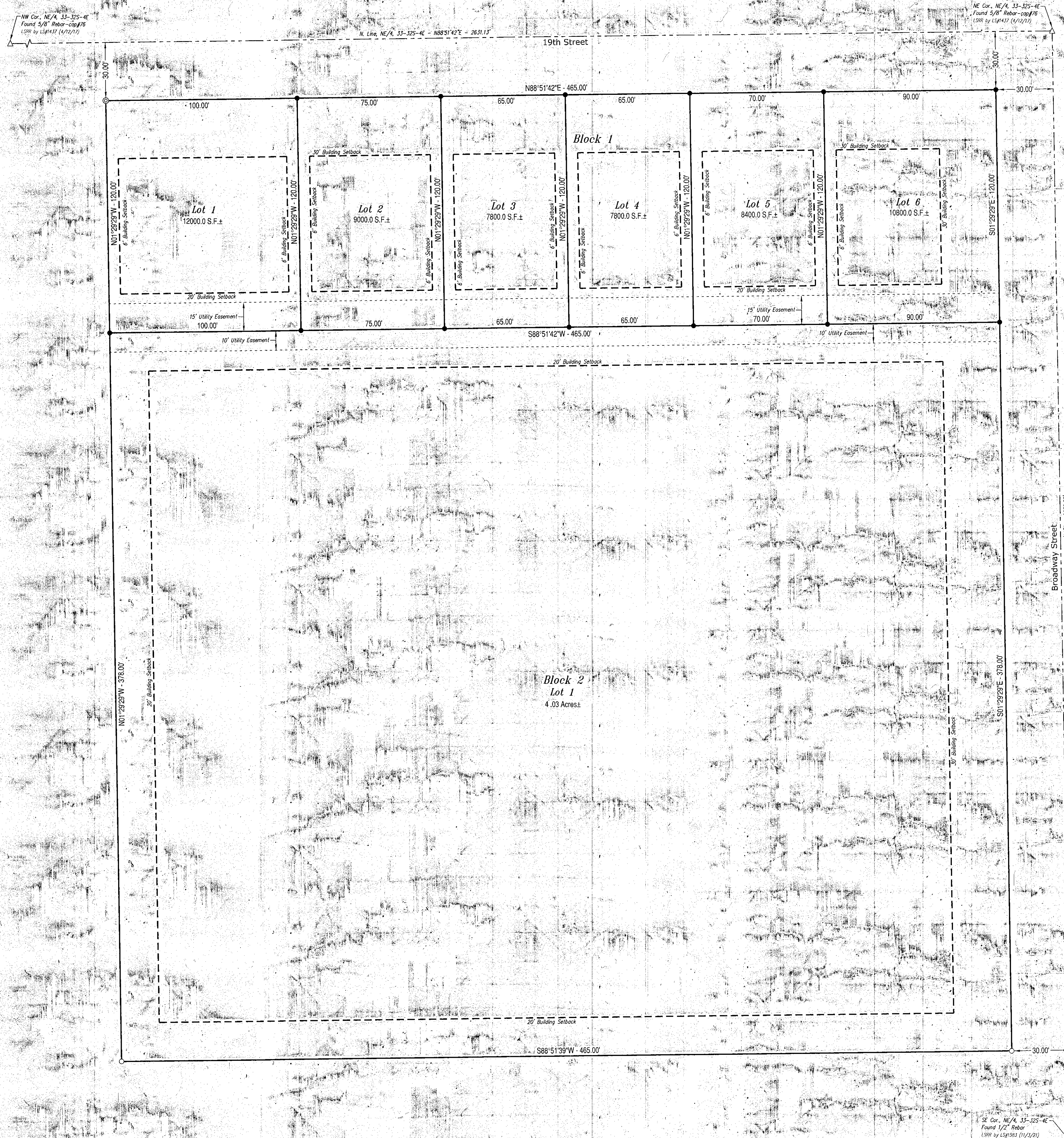
Respectfully submitted,

Stacy Foster Michener  
Acting Secretary



# "Broadway Estates"

A SUBDIVISION IN THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 32 SOUTH,  
RANGE 4 EAST OF THE 6TH P.M., WINFIELD, COWLEY COUNTY, KANSAS



## LEGAL DESCRIPTION

Book 688, Page 365  
A tract being a part of the Northeast corner of the Northeast Quarter of Section 33, Township 32 South, Range 4 East of the 6th P.M., City of Winfield, Kansas, thence South 32 rods, thence West 30 rods, thence North 32 rods, thence East 30 rods to place of beginning, except tract described as: Beginning at a point on the North line, 362 feet West of the Northeast corner of said Quarter Section, thence South 0 deg. 00 min. East (assumed) and parallel with the East line of said Quarter Section, 280 feet, thence North 89 deg. 38 min. 13 sec. West, 133 feet, thence North 0 deg. 00 min. East, 280 feet to the North line of said Quarter Section, thence South 89 deg. 38 min. 13 sec. East, along the North line of said Quarter Section, 133 feet to the point of beginning.

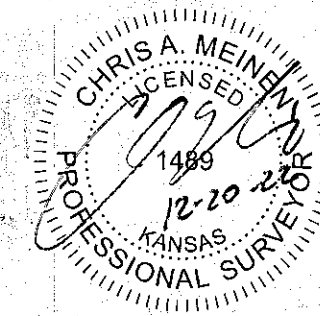
Book 845, Page 304  
A tract being a part of the North 32 rods of the East 30 rods of the Northeast Quarter of Section 33, Township 32 South, Range 4 East of the 6th P.M., Winfield, Cowley County, Kansas, described as: Beginning at a point on the North line, 362 feet West of the Northeast corner of the Northeast Quarter of said Quarter Section, thence South 0 deg. 00 min. East (assumed) and parallel with the East line of said Quarter Section, 280 feet, thence North 89 deg. 38 min. 13 sec. West, 133 feet, thence North 0 deg. 00 min. East, 280 feet to the North line of said Quarter Section, thence South 89 deg. 38 min. 13 sec. East, along the North line of said Quarter Section, 133 feet to the point of beginning.

## SURVEYOR'S CERTIFICATE

STATE OF KANSAS }  
COUNTY OF COWLEY } ss

I, the undersigned, do hereby certify that I am a registered land surveyor in the State of Kansas, with experience and proficient in land surveying that the heretofore described property of land was surveyed and subdivided by me, or under my supervision; that all Subdivision Regulations of the City of Winfield, Cowley County, Kansas, have been complied with in the preparation of this plat, and that all of the monuments shown herein actually exist and their positions are correctly shown to the best of my knowledge and belief.

Chris A. Meinen  
KANSAS P.S. NO. 1489



## COUNTY SURVEYOR'S CERTIFICATE

STATE OF KANSAS }  
COUNTY OF COWLEY } ss

I, the undersigned, Michael A. Work, do hereby certify that this plat meets the requirements of K.S.A. 58-2005, the face of this plat was reviewed for compliance with the Kansas Minimum Standards for boundary surveys. No field verification was implied. This review is for survey information only.

Michael A. Work, County Surveyor  
KANSAS P.S. NO. 1160

## OWNER'S CERTIFICATION AND DEDICATION

STATE OF KANSAS }  
COUNTY OF COWLEY } ss

This is to certify that the undersigned owner(s) of the land described in the Survey Certificate, have caused the same to be surveyed and subdivided into Blocks and Lots on the accompanying plat under the name of "Broadway Estates", and further that the land contained herein is held and shall be conveyed subject to and restrictions, reservations, and covenants on file or hereafter filed in the Office of the Register of Deeds of Cowley County, Kansas.

Tommy J. Andes  
Date Signed 2-7-23

Sharon M. Andes  
Date Signed 2-7-23

## NOTARY CERTIFICATE

STATE OF KANSAS }  
COUNTY OF COWLEY } ss

The foregoing instrument was acknowledged before me this 7th day of February, 2023, by

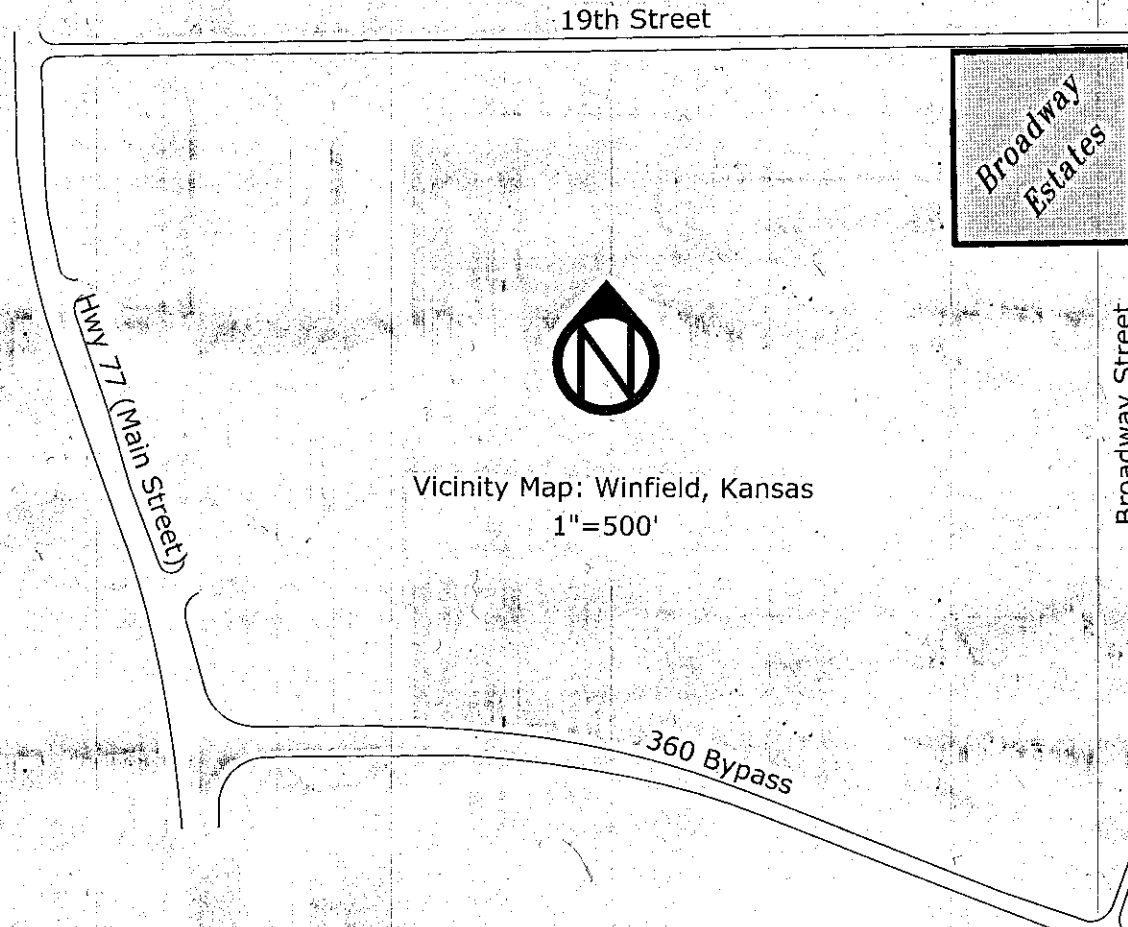
Sandra P. Osborn  
My appointment expires: 7-2-2026

## NOTARY CERTIFICATE

STATE OF KANSAS }  
COUNTY OF COWLEY } ss

The foregoing instrument was acknowledged before me this 7th day of February, 2023, by

Sandra P. Osborn  
My appointment expires: 7-2-2026



## LEGEND OF SYMBOLS:

- 3/4" Bar Found
- 1/2" Rebar Found
- 1/2" Rebar-cap#85 Set
- Section Corner

## CITY PLANNING COMMISSION CERTIFICATE

STATE OF KANSAS }  
COUNTY OF COWLEY } ss  
This plat of "Broadway Estates" has been submitted to and approved by the Winfield Planning Commission this day of , 20.

Chair: Willie Tuttle

Secretary: Patrick Steward

## CITY COUNCIL CERTIFICATE

STATE OF KANSAS }  
COUNTY OF COWLEY } ss  
The dedications shown on this plat have been accepted by the City of Winfield, Kansas, this day of , 20.

Mayor: Ronald E. Hutto

ATTEST: (SEAL)

City Clerk: Tania Richardson

## CERTIFICATE OF THE CITY ATTORNEY

STATE OF KANSAS }  
COUNTY OF COWLEY } ss  
Approved this day of , 20.  
City attorney for the City of Winfield, Kansas.

City Attorney: William E. Muret

## COUNTY TREASURER CERTIFICATE

STATE OF KANSAS }  
COUNTY OF COWLEY } ss  
I hereby certify that the taxes on the included tracts are current.

Maci DeCoudres  
Cowley County Treasurer  
Date Signed

## REGISTER OF DEEDS CERTIFICATE

STATE OF KANSAS }  
COUNTY OF COWLEY } ss  
This is to certify that this instrument was filed for record in the Register of Deeds Office at a.m./p.m., on the day of , 20.  
Book Page

(SEAL)  
Toni A. Long, Cowley County Register of Deeds

## TRANSFER RECORD

Entered for transfer record this day of , 20.  
(SEAL)  
Toni A. Long, Cowley County Register of Deeds

## NOTES:

- Surveyor has made no investigation or independent search for easements of record, encumbrances, located lands, restrictive covenants, ownership title evidence, or any other facts that an accurate and current title search may disclose.
- Bearings for this survey are based on an assumed N89°51'42"E for the North line of the Northeast Quarter, 33-32S-4E.
- This subdivision contains 5.31 acres, more or less, and is currently zoned as R-3 (High-Density Residential).
- This subdivision plat is prepared for Tom Andes, 18150 151st Road, Winfield, KS 67156.

**SMITH + OAKES**  
P.O. BOX 696 / 110 W BRYANT RD, ARKANSAS CITY, KS 67005  
PHONE / 620-442-4756 / INFO@SMITHANDOAKES.COM



*(First published in Cowley Courier Traveler on Saturday, April 8, 2023)*

**BILL NO. 2324**

**ORDINANCE NO. 4197**

**AN ORDINANCE**

**ACCEPTING** and authorizing the final plat of the Broadway Estates Subdivision, in the Northeast quarter of Section 33, Township 32 South, Range 4 East of the 6<sup>th</sup> P.M., Winfield, Cowley County, Kansas.

---

**WHEREAS**, the Planning Commission of the City of Winfield, Kansas, at the meeting of the Planning Commission of the City of Winfield, Kansas, March 13, 2023, considered the final plat of the Broadway Estates Subdivision, a parcel of land situated, in the Northeast quarter of Section 33, Township 32 South, Range 4 East of the 6<sup>th</sup> P.M., Winfield, Cowley County, Kansas. and,

**WHEREAS**, at said meeting the Planning Commission recommended approval of said plat.

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

**Section 1.** The final plat of Broadway Estates, a subdivision in the Northeast quarter of Section 33, Township 32 South, Range 4 East of the 6<sup>th</sup> P.M., Winfield, Cowley County, Kansas, more fully described as:

A tract being a part of the North 32 rods of the East 30 rods of the Northeast Quarter of Section 33, Township 32 South, Range 4 East of the 6<sup>th</sup> P.M., Winfield, Cowley County, Kansas, described as: Beginning at a point on the North line, 362 feet West of the Northeast Corner of the Northeast Quarter of said Quarter Section; thence South 0 deg. 00 min. East (assumed) and parallel with the East line of said Quarter Section, 280 feet; thence North 89 deg. 38 min. 13 sec. West, 133 feet; thence North 0 deg. 00 min. East, 280 feet to the North line of said Quarter Section; thence South 89 deg. 38 min. 13 sec. East, along the North line of said Quarter Section, 133 feet to the point of beginning.

**AND**

Commencing at the Northeast corner of the Northeast Quarter of Section 33, Township 32 South, Range 4 East of the 6<sup>th</sup> P.M., City of Winfield, Cowley County, Kansas.; thence South 32 rods; thence West 30 rods; thence North 32 rods; thence East 30 rods to place of beginning , except tract described as: Beginning at a point on the North line, 362 feet West of the Northeast corner of said Northeast Quarter; thence South 0 deg. 00 min. East (assumed) and parallel with the East line of said Quarter section, 280 feet; thence North 89 deg. 38 min. 13 sec. West, 133 feet; thence North 0 deg. 00 min. East, 280 feet to the North line of said Quarter Section; thence South 89 deg. 38 min. 13 sec. East, along the North line of said Quarter Section, 133 feet to the point of beginning.

is hereby approved and authorized for filing.

**Section 2.** The dedication of rights-of-ways and utility easements is hereby approved and accepted.

**Section 3.** The Clerk of the City of Winfield is hereby authorized and directed to file forward said plat to the Clerk of Cowley County, Kansas for approval and acceptance of dedications.

**Section 4.** This Ordinance shall be in full force and effect from and after its adoption and publication once in the official newspaper of the City.

**ADOPTED** this 3rd day of April 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 28, 2023

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

---

**Action Requested:** Approval of the agreement with the Secretary of Transportation for funding for a transportation alternatives project.

### **Analysis:**

As we've discussed previously, the City made application in 2022 for funding under KDOT's Transportation Alternatives (TA) program. The City was awarded a TA project for 2023. This project would be for the construction of a pedestrian path along 9<sup>th</sup> Avenue (US160) from College to Wheat Road. The engineering for this project was completed at the time of the roadway improvements. However funding was not identified at that time to complete the sidewalk at that time. As provided in the attached award letter, the estimated project cost is \$263,338 with a Federal TA award of \$210,670 (80%) and local project share of \$52,668 (20%).

**Fiscal Impact:** The local share portion of the project is anticipated to be funded with sales tax dollars from balances available in the Special Street Fund.

**Attachments:** Proposed Resolution, Agreement

**A RESOLUTION**

**AUTHORIZING** and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute Transportation Alternatives Project Agreement No. 047-23 between the City and the Secretary of the Kansas Department of Transportation, relating to State Aid for the improvement of US-160 Pedestrian Path.

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

**Section 1.** The Mayor and Clerk are authorized and directed to execute for and on behalf of the City of Winfield, Kansas, Transportation Alternatives Project Agreement No. 047-23 between the City and Kansas Department of Transportation giving the Secretary of Transportation of the State of Kansas authority to act for the City, and in its place and stead, to obtain for the City the benefits of State Aid and obtain the benefits of such legislation for the City on the terms and conditions set in such agreement as may be prepared and approved by the Secretary of Transportation to construct a pedestrian path on US-160 (E. 9<sup>th</sup> Ave.) from College St. to Wheat Road, known as project No. 018 TE-536-01.

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

**ADOPTED** this 3rd day of April, 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/ps

PROJECT NO. 018 TE-0536-01  
TA-T053(601)  
TRANSPORTATION ALTERNATIVES PROJECT  
US-160 PEDESTRIAN PATH  
CITY OF WINFIELD, KANSAS

## AGREEMENT

This Agreement is between the **Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the “Secretary”) and the **City of Winfield, Kansas** (“Project Sponsor” or “City”), **collectively**, the “Parties.”

### RECITALS:

- A. The Secretary is authorized by the current Federal-Aid Transportation Act to set aside certain portions of Federal funding allocated under the current Federal-Aid Transportation Act for Transportation Alternatives (TA) projects.
- B. The Secretary is empowered to pass through Federal Surface Transportation Program (STP) funds for TA projects to eligible state agencies or local governments.
- C. The Secretary and the Project Sponsor are empowered by the laws of Kansas to enter into agreements for Federal STP funding under the Transportation Alternatives Provision of the current Federal-Aid Transportation Act.
- D. The Project Sponsor has requested, and the Secretary has authorized, a Transportation Alternatives (TA) Project (“Project”), as further described in this Agreement.
- E. Under the terms of the current Federal-Aid Transportation Act and the rules and regulations of the Federal Highway Administration (FHWA), states and local governments may be entitled to receive assistance in the financing of TA projects, provided such work is done in accordance with applicable state and federal law.

**NOW, THEREFORE**, the Parties agree to the following terms and provisions.

### ARTICLE I

**DEFINITIONS:** The following terms as used in this Agreement have the designated meanings:

- 1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
- 2. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.
- 3. **“Construction Contingency Items”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.

4. **“Construction Engineering” or “CE”** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.
5. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project.
6. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.
7. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.
8. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
9. **“Encroachment”** means any building, structure, farming, vehicle parking, storage or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.
10. **“Federal Fiscal Year (FFY)”** means the fiscal year as determined by the FHWA which begins October 1 and ends on September 30 of the following calendar year.
11. **“FHWA”** means the Federal Highway Administration, a federal agency of the United States.
12. **“Fiscal Year (FY)”** means the state’s fiscal year which begins July 1 and ends on June 30 of the following calendar year.
13. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261, *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280, *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. § 65-3430, *et seq.*, Hazardous Waste.
14. **“KDOT”** means the Kansas Department of Transportation, an agency of the State of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
15. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.

16. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, acting on the Secretary’s own behalf and on behalf of the FHWA, reasonably determines are not Participating Costs.
17. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge, and road construction projects, as reasonably determined by the Secretary.
18. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the Project Sponsor.
19. **“Preliminary Engineering” or “PE”** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.
20. **“Project”** means all phases and aspects of the Construction endeavor to be undertaken by the Project Sponsor, as and when authorized by the Secretary prior to Letting, being: **Construct a pedestrian path on E. 9th Avenue (US-160) from College Street to Wheat Road in the City of Winfield, Kansas**, and is the subject of this Agreement.
21. **“Project Limits”** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.
22. **“Project Sponsor”** means the City of Winfield, Kansas, with its place of business at 200 E 9<sup>th</sup> Avenue, Winfield, KS 67156.
23. **“Responsible Bidder”** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services.
24. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
25. **“Secretary”** means the Secretary of Transportation of the State of Kansas, and his or her successors and assigns.
26. **“Useful Life Period”** means a sufficient period of time, as specifically designated in this Agreement in Article V, paragraph 2, to secure the investment of federal funds in the Project based on the nature and magnitude of Project costs and generally accepted economic or useful life cycle norms for the type of Construction involved in the Project.
27. **“Utilities” or “Utility”** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.



## ARTICLE II

### FUNDING:

1. **Funding.** The table below reflects the funding commitments of each Party. The Total Actual Costs of Construction include all Construction Contingency Items. The Parties agree estimated costs and contributions are to be used for encumbrance purposes and may be subject to change.

Party	Funding Source	Responsibility	Total Projected Contribution (\$)
Secretary	Federal (TA) Funds	80% of Total Actual Costs of Construction and Construction Engineering (CE), not to exceed \$210,670.00 .	210,670.00
Project Sponsor	Local Match	20% of Total Actual Costs of Construction and CE until the Secretary's funding limit is reached.  100% of Total Actual Costs of Construction and CE after the Secretary's funding limit is reached.  100% Costs of Preliminary Engineering (PE), Right of Way, Utility Adjustments, and Non-Participating Costs.	

## ARTICLE III

### SECRETARY RESPONSIBILITIES:

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the Project Sponsor acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives such that the Project Sponsor may obtain participation of federal funds in the cost of the Project.

2. **Letting and Administration by KDOT.** The Secretary shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the Project Sponsor. The Secretary further agrees, as agent for the Project Sponsor, to administer the Construction of the Project in accordance with the final Design Plans, as required by FHWA, to negotiate with and report to the FHWA and administer the payments due the Contractor or the Consultant, including the portion of the cost borne by the Project Sponsor.

3. **Indemnification by Contractors.** The Secretary will require the Contractor to indemnify, hold harmless, and save the Secretary and the Project Sponsor from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors, or suppliers. If the Secretary or the Project Sponsor defends a third party's claim, the Contractor shall indemnify the Secretary and the Project Sponsor for damages paid to the third party and all related expenses either the Secretary or the Project Sponsor or both incur in defending the claim.

4. **Final Billing.** After receipt of FHWA acknowledgement of final voucher claim, the Secretary's Chief of Fiscal Services will, in a timely manner, prepare a complete and final billing of all

Project costs for which the Project Sponsor is responsible and shall then transmit the complete and final billing to the Project Sponsor.

## ARTICLE IV

### PROJECT SPONSOR RESPONSIBILITIES:

1. **Secretary Authorization.** The Project shall be undertaken on behalf of the Project Sponsor by the Secretary acting in all things as its agent, and the Project Sponsor hereby constitutes and appoints the Secretary as its agent. All things done by the Secretary in connection with the Project are authorized, adopted, ratified, and confirmed by the Project Sponsor to the same extent and with the same effect as though done directly by the Project Sponsor acting in its own individual capacity. The Secretary is authorized by the Project Sponsor to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this Project.

2. **Legal Authority.** By his or her signature on this Agreement, the signatory certifies that he or she has legal and actual authority as representative and agent for the Project Sponsor to enter into this Agreement on its behalf. The Project Sponsor agrees to take any administrative and/or legal steps as may be required to give full effect to the terms of this Agreement.

3. **Conformity with State and Federal Requirements.** The Project Sponsor shall be responsible to design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current American Institute of Architects (AIA) standards, the Secretary of the Interior's Standards for the Treatment of Historic Properties, the American Society of Landscape Architects guidelines, KDOT's Design Engineering Requirements, the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP's) project memorandums, memos, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Road Design's road memorandums, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the current version of the Bureau of Traffic Engineering's Traffic Engineering Guidelines, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions, and with the rules and regulations of the FHWA pertaining to the Project. The Project Sponsor will be responsible for construction of any traffic signal and/or sidewalk improvements that are necessary to comply with Public Right-of-Way Accessibility Guidelines (PROWAG), regardless of whether such improvements are deemed non-eligible/non-participating bid items by the Secretary for reimbursement purposes.

4. **Design and Specifications.** The Project Sponsor shall be responsible to make or contract to have made Design Plans for the Project.

5. **Submission of Design Plans to Secretary.** Upon their completion, the Project Sponsor shall have the Design Plans submitted to the Secretary by a licensed professional engineer, a licensed professional architect, and/or licensed landscape architect, as applicable, attesting to the conformity of the Design Plans with the items in Article IV, paragraph 3 above. The Design Plans must be signed and sealed by the licensed professional engineer, licensed professional architect, and/or licensed landscape architect, as applicable, responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer, who is responsible for the preparation of the geological investigations or studies. All technical professionals involved in the Project are

required to meet the applicable licensing and/or certification requirements as stated in K.S.A. § 74-7001, *et seq.*

6. **Consultant Contract Language.** The Project Sponsor shall include language requiring conformity with Article IV, paragraph 3 above, in all contracts between the Project Sponsor and any Consultant with whom the Project Sponsor has contracted to perform services for the Project. In addition, any contract between the Project Sponsor and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article IV, paragraph 3 above. In addition, any contract between the Project Sponsor and any Consultant with whom the Project Sponsor has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

- (a) **Completion of Design.** Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the Consultant's control.
- (b) **Progress Reports.** Language requiring the Consultant to submit to the Project Sponsor (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.
- (c) **Third-Party Beneficiary.** Language making the Secretary a third-party beneficiary in the agreement between the Project Sponsor and the Consultant. Such language shall read:

“Because of the Secretary of Transportation of the State of Kansas’ (Secretary’s) obligation to administer state funds, federal funds, or both, the Secretary shall be a third-party beneficiary to this agreement between the Project Sponsor and the Consultant. This third-party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the Project Sponsor or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant’s negligent acts, errors, or omissions. Nothing in this provision precludes the Project Sponsor from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary’s right to payment or reimbursement.”

7. **Responsibility for Adequacy of Design.** The Project Sponsor shall be responsible for and require any Consultant retained by it to be responsible for the adequacy and accuracy of the Design Plans for the Project. Any review of these items performed by the Secretary or the Secretary’s representatives is not intended to and shall not be construed to be an undertaking of the Project Sponsor’s and its Consultant’s duty to provide adequate and accurate Design Plans for the Project. Reviews by the Secretary are not done for the benefit of the Consultant, the construction Contractor, the Project Sponsor, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Consultant or the Project Sponsor.

8. **Design Exception Indemnification.** Any design exception to the current version of the American Association of State Highway and Transportation Officials (AASHTO) Design Standards shall be in accordance with 23 C.F.R. § 625. For any design exception, the Project Sponsor agrees to the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act (K.S.A. § 75-6101, *et seq.*) to defend, indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the design exceptions for this Agreement by the Project Sponsor, the Project Sponsor's employees, or subcontractors.

9. **Authorization of Signatory.** The Project Sponsor shall authorize a duly appointed representative to sign for the Project Sponsor any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

10. **Right of Way.** The Project Sponsor agrees to the following with regard to Right of Way:

(a) **Right of Way Acquisition.** The Project Sponsor will, in its own name, as provided by law, acquire by purchase, dedication or condemnation all the Right of Way shown on the final Design Plans in accordance with the schedule established by KDOT. The Project Sponsor agrees the necessary Right of Way shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The Project Sponsor shall certify to the Secretary, on forms provided by the KDOT's Bureau of Local Projects, such Right of Way has been acquired. The Project Sponsor further agrees it will have recorded in the Office of the Register of Deeds all Right of Way, deeds, dedications, permanent easements, and temporary easements.

(b) **Right of Way Documentation.** The Project Sponsor will provide all legal descriptions required for Right of Way acquisition work. Right of Way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the Right of Way descriptions. The Project Sponsor further agrees to acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives for the participation of federal funds in the cost of the Project. The Project Sponsor agrees copies of all documents, including recommendations and coordination for appeals, bills, contracts, journal entries, case files, or documentation requested by the Office of Chief Counsel will be delivered within the time limits set by the Secretary.

(c) **Relocation Assistance.** The Project Sponsor will contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties mutually agree the Project Sponsor will undertake the relocation for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. §§ 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1, *et seq.* The Secretary will provide information, guidance, and oversight to the Project Sponsor for any relocations required by the Project.

(d) Non-Highway Use of Right of Way. Except as otherwise provided, all Right of Way provided for the Project shall be used solely for public street purposes. Any disposal of or change in the use of Right of Way or in access after Construction of the Project will require prior written approval by the Secretary.

(e) Trails and Sidewalks on KDOT Right of Way. With regard to any bike or pedestrian paths or sidewalks (“Trail/Sidewalk”) constructed on state highway right of way, if any, pursuant to the Design Plans, the Project Sponsor agrees as follows:

- (i) Project Sponsor Responsible for Repairs and Providing Alternative Accessible Routes. The Project Sponsor agrees that the primary purpose of KDOT Right of Way is for the construction and maintenance of US-160. If the construction or maintenance of US-160 reasonably requires the Trail/Sidewalk on KDOT Right of Way to be damaged or removed, the Project Sponsor shall be responsible for all repairs to the Trail/Sidewalk made necessary as a result of US-160 construction or maintenance. In the event the Trail/Sidewalk on KDOT Right of Way is temporarily closed or removed for any reason and for any length of time, the Project Sponsor will be wholly responsible for providing an alternative accessible path and for compliance with all laws and regulations relating to accessibility.
- (ii) Interference with KDOT Right of Way. If the Secretary, in the Secretary’s sole judgment, determines that continued use of the Trail/Sidewalk is or will interfere with KDOT use of its Right of Way or is otherwise rendered impractical, inconvenient, or unsafe for use by the traveling public, the Project Sponsor will remove the Trail/Sidewalk and restore the KDOT Right of Way location to its original condition prior to the Construction of the Trail/Sidewalk.
- (iii) Incorporation of Trail/Sidewalk into Local Transportation System. The Project Sponsor agrees to take all steps necessary to designate the Trail/Sidewalk component of the Project as an integral part of its local transportation system, being primarily for transportation purposes and having only incidental recreational use for purposes of 49 U.S.C. § 303 and 23 C.F.R. 771.117.
- (iv) Maintenance. When the Project is completed and final acceptance is issued, the Project Sponsor, at its own cost and expense, will maintain, including snow removal if required by law, the Trail/Sidewalk on KDOT Right of Way and make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the Project Sponsor will begin the necessary repairs within a reasonable period and will prosecute the work continuously until it is satisfactorily completed. Any notification by the State Transportation Engineer, however, is not intended to and shall not be construed to be an undertaking of the Project Sponsor’s absolute duty and obligation to maintain the Trail/Sidewalk.

(f) Use of Right of Way. The Secretary shall have the right to utilize any land owned or controlled by the Project Sponsor, lying inside or outside the limits of the Project Sponsor as shown on the final Design Plans, for the purpose of constructing the Project.

11. **Removal of Encroachments.** The Project Sponsor shall initiate and proceed with diligence to remove or require the removal of all Encroachments either on or above the limits of the Right of Way within its jurisdiction as shown on the final Design Plans for this Project. It is further agreed all such Encroachments will be removed before the Project is advertised for Letting; except the Secretary may permit the Project to be advertised for Letting before such Encroachment is fully removed if the Secretary determines the Project Sponsor and the owner of the Encroachment have fully provided for the physical removal of the Encroachment and such removal will be accomplished within a time sufficiently short to present no hindrance or delay to the Construction of the Project.

12. **Future Encroachments.** Except as provided by state and federal laws, the Project Sponsor agrees it will not in the future permit Encroachments upon the Right of Way of the Project, and specifically will require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed a distance from the Right of Way line no less than the distance permitted by the National Fire Code.

13. **Utilities.** The Project Sponsor agrees to the following with regard to Utilities:

(a) **Utility Relocation.** The Project Sponsor will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing Utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the KDOT Utility Accommodation Policy (UAP), as amended or supplemented.

(b) **Status of Utilities.** The Project Sponsor shall furnish the Secretary a list identifying existing and known Utilities affected, together with locations and proposed adjustments of the same and designate a representative to be responsible for coordinating the necessary removal or adjustment of Utilities.

(c) **Time of Relocation.** The Project Sponsor will expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The Project Sponsor shall certify to the Secretary on forms supplied by the Secretary that all Utilities required to be moved prior to Construction have either been moved or a date provided by the Project Sponsor as to when, prior to the scheduled Letting and Construction, Utilities will be moved. The Project Sponsor shall move or adjust or cause to be moved or adjusted all necessary Utilities within the time specified in the Project Sponsor's certified form except those necessary to be moved or adjusted during Construction and those which would disturb the existing street surface. The Project Sponsor will initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

(d) **Permitting of Private Utilities.** The Project Sponsor shall certify to the Secretary all privately owned Utilities occupying public Right of Way required for the Construction of the Project are permitted at the location by franchise, ordinance, agreement or permit and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of street or highway improvements.

(e) **Indemnification.** To the extent permitted by law and the Kansas Tort Claims Act (K.S.A. § 75-6101, *et seq.*), the Project Sponsor will indemnify, hold harmless, and save the Secretary

and the Contractor for damages incurred by the Secretary and Contractor because identified Utilities have not been moved or adjusted timely or accurately.

(f) Cost of Relocation. Except as provided by state and federal laws, the expense of the removal or adjustment of the Utilities located on public Right of Way shall be borne by the owners. The expense of the removal or adjustment of privately owned Utilities located on private Right of Way or easements shall be borne by the Project Sponsor except as provided by state and federal laws.

14. **Hazardous Waste**. The Project Sponsor agrees to the following with regard to Hazardous Waste:

(a) Removal of Hazardous Waste. The Project Sponsor shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The Project Sponsor shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The Project Sponsor will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency, State of Kansas environmental laws and regulations, and City and County standards where the Hazardous Waste is located.

(b) Responsibility for Hazardous Waste Remediation Costs. The Project Sponsor shall be responsible for all damages, fines or penalties, expenses, fees, claims, and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.

(c) Hazardous Waste Indemnification. The Project Sponsor shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under state or federal laws arising out of or related to any act of omission by the Project Sponsor in undertaking cleanup or remediation for any Hazardous Waste.

(d) No Waiver. By signing this Agreement the Project Sponsor has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project Limits. The Project Sponsor reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project Limits.

15. **Inspections**. The Project Sponsor is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the current KDOT approved construction engineering program and in accordance with the current edition of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and any necessary Project Special Provisions. The detailed inspection is to be performed by the Project Sponsor or the Consultant. The Secretary does not undertake for the benefit of the Project Sponsor, the Contractor, the Consultant or any third party the duty to perform the day-to-day detailed inspection of the Project, or to catch the Contractor's errors, omissions, or deviations from the final Design Plans. The Project Sponsor will require at a minimum all personnel performing Construction Engineering to comply with the high visibility requirements of the MUTCD,

Chapter 6E.02, High-Visibility Safety Apparel. The agreement for inspection services must contain this requirement as a minimum. The Project Sponsor may require additional clothing requirements for adequate visibility of personnel.

16. **Traffic Control.** The Project Sponsor agrees to the following with regard to traffic control for the Project:

(a) **Temporary Traffic Control.** The Project Sponsor shall provide a temporary traffic control plan within the Design Plans, which includes the Project Sponsor plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The Project Sponsor's temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same. The Secretary or the Secretary's authorized representative may act as the Project Sponsor's agent with full authority to determine the dates when any road closings will commence and terminate. The Secretary or the Secretary's authorized representative shall notify the Project Sponsor of the determinations made pursuant to this section.

(b) **Permanent Traffic Control.** The location, form, and character of informational, regulatory, and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. § 8-2005, must conform to the latest version of the MUTCD as adopted by the Secretary.

(c) **Parking Control.** If applicable, the Project Sponsor will control parking of vehicles on the city streets throughout the length of the Project covered by this Agreement. On-street parking will be permitted until such time as parking interferes with the orderly flow of traffic along the street.

(d) **Traffic Movements.** The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may be safely and expeditiously served. The Project Sponsor shall adopt and enforce rules and regulations governing traffic movements as may be deemed necessary or desirable by the Secretary and the FHWA.

17. **Access Control.** The Project Sponsor will maintain the control of access rights and prohibit the construction or use of any entrances or access points along the Project within the City other than those shown on the final Design Plans unless prior approval is obtained from the Secretary.

18. **Maintenance.** When the Project is completed and final acceptance is issued and until expiration of the Useful Life Period, the Project Sponsor will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the Project Sponsor will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

19. **Remittance of Estimated Share.** The Project Sponsor shall deposit with the Secretary its estimated share of the total Project expenses based upon estimated approved contract quantities. The Project Sponsor will remit its estimated share by the date indicated on the resolution form Authorization to Award Contract, Commitment of City/County Funds received by the Project Sponsor from the Secretary. The date



indicated for the Project Sponsor to deposit its estimated share of the total Project expenses is fifty (50) days after the Letting date.

20. **Payment of Final Billing.** If any payment is due to the Secretary, such payment shall be made within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

21. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the Project Sponsor shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the Project Sponsor to any party outside of the Secretary and all costs incurred by the Project Sponsor not to be reimbursed by the Secretary for Preliminary Engineering, Right of Way, Utility adjustments, Construction, and Construction Engineering work phases, or any other major expense associated with the Project.

22. **Audit.**

(a) **Audit Requirements for Federal Awards.** All local governmental units, state agencies or instrumentalities, non-profit Organizations, institutions of higher education and Indian Tribal governments shall comply with Federal-Aid Transportation Act and the requirements of 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (commonly known as the "Supercircular"). The Audit Standards set forth in 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," and specifically the requirements in Subpart F, 2 C.F.R. § 200.500, *et seq.* require either a single or program specific audit be performed by an independent certified public accountant in

(b) accordance with these standards. All information audited and audit standards and procedures shall comply with 2 C.F.R. § 200.500, *et seq.*

(c) **Agency Audit.** The Secretary and/or the FHWA may request, in their sole discretion, to conduct an audit of the Project. Upon the request of the Secretary and/or the FHWA for an audit, the Project Sponsor will participate and cooperate in the audit and shall make its records and books available to representatives of the requesting agency for a period of five (5) years after date of final payment under this Agreement. If the audit reveals payments have been made with federal funds by the Project Sponsor for items considered Non-Participating Costs, the Project Sponsor shall promptly reimburse the Secretary for such items upon notification by the Secretary.

23. **Cancellation by Project Sponsor.** If the Project Sponsor cancels the Project, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The Project Sponsor agrees to reimburse the Secretary within thirty (30) days after receipt by the Project Sponsor of the Secretary's statement of cost incurred by the Secretary prior to the cancellation of the Project.

## ARTICLE V

### SPECIAL TRANSPORTATION ENHANCEMENT REQUIREMENTS:

1. **No 4(f) Status.** It is the Parties' intention that neither this Agreement nor the Project create or expand the status of any land involved in this Project as a "significant publicly owned public park,

recreation area, or wildlife and waterfowl refuge, or any significant historic site,” for purposes of 49 U.S.C. § 303 and 23 C.F.R. § 771.135 (“4(f) status”), except as otherwise modified by this Agreement.

(a) Transportation Alternatives. Unless otherwise stated below in this section, the Parties agree the major purposes or functions of land involved in the Project are to preserve or enhance the scenic, historic, environmental, or archeological aspects, or the usefulness for intermodal users (including bicyclists, pedestrians, and other non-motorized transportation users) of existing or new transportation facilities. It is further agreed any park, recreation or refuge purposes or functions are secondary or incidental for purposes of 49 U.S.C. § 303 and 23 C.F.R. 771.135. Exceptions: NONE.

(b) 4(f) Determinations. The Parties agree for purposes of any future determinations of 4(f) status issues as required by 49 U.S.C. § 303 or applicable regulations the Secretary is hereby designated as the public official having jurisdiction of such determinations. However, it is not the intent of this section to affect the determination of whether a historic or archaeological site is on or eligible for inclusion on the National Register of Historic Places.

## 2. Useful Life.

(a) Useful Life Period. The Parties agree the Useful Life Period of the Project is twenty (20) years, commencing on the date the Secretary gives notice of final acceptance of the Project.

(b) Insurance. If the Project includes improvements to a building, the Project Sponsor will purchase and maintain insurance for property damage to the building continuously during the Useful Life Period of the Project in an amount equal to or in excess of the federal funds expended on the Project.

(c) Change in Public Use. After the Project is completed and during the entire Useful Life Period, any change in the public use of the real property for the Project will require written approval from the Secretary with FHWA concurrence.

(d) Recapture of Federal Investment.

(i) During the first ten (10) years of the Useful Life Period, if the Project is not used for the purpose set forth in this Agreement or other use approved by the Secretary and the FHWA under subparagraph (c) above, then the Project Sponsor shall pay to the Secretary 100% of the federal funds invested in the Project.

(ii) Following the first ten (10) years of the Useful Life Period and until the Useful Life Period expires, if the Project is not used for the purpose set forth in this Agreement or other use approved by the Secretary and the FHWA under subparagraph (c) above, then the Project Sponsor shall pay to the Secretary as recapture of federal funds invested in the Project an amount, which will be determined according to the following formula:

$$\begin{array}{rcl}
 \frac{\text{Total Amount of Federal Funds Invested in the Project}}{\text{Entire Useful Life Period for the Project}} & \times & \begin{array}{l} \text{Number of Full Years} \\ \text{Remaining in the Useful Life} \\ \text{Period at the time of} \\ \text{unauthorized change in use} \end{array} \\
 & & \text{Recapture Amount}
 \end{array}$$

(iii) Any payments due to the Secretary pursuant to this subparagraph (d) shall be made within ninety (90) days after receipt of billing from the Secretary's Chief of Fiscal Services.

## ARTICLE VI

### FEDERAL REQUIREMENTS:

1. **Anti-Lobbying.** If the total value of this agreement exceeds \$100,000.00, a **Certification for Federal Aid Contracts and Accompanying Disclosure of Lobbying Activities Attachment** will be attached and made a part of this Agreement. Such certification must state the recipient of the federal grant will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. 2 C.F.R. § Pt. 200, App. II.

2. **Debarment & Suspension.** If the total value of this Agreement exceeds \$25,000.00, this Agreement is a covered transaction for purposes of 2 C.F.R. Parts 180 and 1200. Therefore, the LPA is required to verify that neither it nor its principals or agents is presently debarred, suspended, proposed for debarment, declared ineligible, disqualified, or voluntarily excluded from participation in this transaction by any federal department or agency. A **Certification as to Current History Regarding Debarment, Eligibility, Indictments, Convictions, or Civil Judgments Attachment** will be attached to and made a part of this Agreement. 2 C.F.R. § 200.213.

3. **System for Award Management.** The Project Sponsor has registered with the System for Award Management (<http://www.sam.gov>), which provides a Unique Entity Identifier (SAM). The Project Sponsor shall maintain such registration at all times during which it has active federal awards.

4. **Buy America Compliance.** The Parties agree to comply with the Buy America requirements of 23 CFR § 635.410, as applicable, when purchasing items using Federal funds under this Agreement. Buy America requires the Parties to purchase only steel and iron produced in the United States, unless a waiver has been granted by FHWA or the product is subject to a general waiver. Costs for applicable materials which are not certified either compliant or under waiver will not be reimbursed. Buy America requirements apply to all contractors/subcontractors and should be incorporated through appropriate contract provisions as needed.

5. **Prohibition on Certain Technologies.** All Parties agree that they will comply with 2 CFR § 200.216 and 2 CFR § 200.471 regulations. Such regulations provide that recipients and sub-recipients of federal funds are prohibited from obligating or expending loan or grant funds to 1) procure or obtain; 2) extend or renew a contract to procure or obtain, or; 3) or enter into a contract to procure or obtain telecommunication or video surveillance equipment, services, or systems produced by: Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); and Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). Any expenditures for such telecommunication or video surveillance equipment, services or systems are unallowable costs and will not be reimbursed.

## ARTICLE VII

### GENERAL PROVISIONS:

1. **Incorporation of Design Plans.** The final Design Plans for the Project are by this reference made a part of this Agreement.
2. **Civil Rights Act.** The **Civil Rights Attachment** pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.
3. **Contractual Provisions.** The provisions found in the current version of the **Contractual Provisions Attachment (Form DA-146a)**, which is attached, are hereby incorporated into and made a part of this Agreement.
4. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not to be deemed to control or affect the meaning or construction or the provisions herein.
5. **Termination.** If, in the judgment of the Secretary, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, the Secretary may terminate this Agreement at the end of its current fiscal year. The Secretary will participate in all costs approved by the Secretary incurred prior to the termination of the Agreement.
6. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the Project Sponsor and their successors in office.
7. **No Third-Party Beneficiaries.** No third-party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
8. **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.
9. **Severability.** If any provision of this Agreement is held invalid, the invalidity does not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of this Agreement are severable.

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:

THE CITY OF WINFIELD, KANSAS

\_\_\_\_\_  
CITY CLERK (Date)

\_\_\_\_\_  
MAYOR

(SEAL)

Kansas Department of Transportation  
Secretary of Transportation

By: \_\_\_\_\_  
Greg M. Schieber, P.E. (Date)  
Interim Deputy Secretary and  
State Transportation Engineer

Approved as to Form:

### **INDEX OF ATTACHMENTS**

- ☒ Certification for Federal Aid Contracts and Accompanying Disclosure of Lobbying Activities
- ☒ Certification as to Current History Regarding Debarment, Eligibility, Indictments, Convictions, or Civil Judgments Attachment
- ☒ Civil Rights Act
- ☒ Contractual Provisions Attachment (DA-146a)

\*Note – If left unchecked, then inapplicable.



## Request for Commission Action

**Date:** March 30, 2023

**Requestor:** Taggart Wall, City Manager

---

**Action Requested:** Consider authorizing the city manager to enter into agreements regarding the removal of existing and installation of playground improvements at Cochran Park in an amount of \$101,462.00.

**Analysis:** Updates to Cochran Park have been planned as part of the 2020-2040 Comprehensive Plan and were considered in the 2023 budget planning process.

Staff have met with vendors and have taken design options to the Park Board for consideration and recommendation to the Governing Body.

The initial design concept was approx. \$70,000 and would have added turf surfacing to the existing playground area, retained the existing slide and replaced the existing swings.

Feedback from the Park Board indicated that staff should consider other options to the park improvements.

The feedback datapoints that we used were:

- consider more climbing elements, consider zip line.
- something that is unique, creates a destination element
- consider removing swings to allow more play elements due to fall zone requirements

We examined a lot of different elements to create more of a uniquely designed destination piece, but we found that we were limited by budget to accomplish this.

Staff submitted to the Park Board the attached and proposed project as a compromise to meet feedback. Their review of the plan changes have been positive.

This change results in a project cost increase of about \$30,000. There is budget availability for this change.

The City has chosen to sole source this project with a vendor that is a trusted vendor that we have worked with on other projects and past bidding has shown them to be cost effective.

**Fiscal Impact:** Special Parks and Recreation Fund allocation of \$101,462.00. These funds are derived from alcoholic liquor tax dollars.

**Attachments:** Bidding documents

**A RESOLUTION**

**AUTHORIZING** and directing the City Manager and Clerk of the City of Winfield, Kansas to enter into an agreement between Versasport, LLC., Wichita, Kansas and the City of Winfield, Kansas, regarding playground improvements at Cochran Park.

**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 enter into an agreement between Versasport, LLC., Wichita, Kansas and the City of Winfield, Kansas, regarding playground improvements at Cochran Park in an amount not to exceed \$101,462.00.

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

**ADOPTED** this 3rd day of April 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



**Versasport LLC**  
 4957 N Ridge Rd  
 Wichita, KS 67205  
 (316) 259-8974  
 lee@versasportks.com



**ADDRESS**  
 Taggart Wall  
 City of Winfield  
 200 E 9th Avenue  
 Winfield, KS 67156

**SHIP TO**  
 Taggart Wall  
 City of Winfield  
 200 E 9th Avenue  
 Winfield, KS 67156

**Estimate VS-1797**

**DATE** 03/29/2023

**EXPIRATION DATE** 05/31/2023

**P.O. NUMBER**  
 Cochran Playground - 2

**SALES REP**  
 Lee Engler

**PHONE NUMBER**  
 316-259-8974

DESCRIPTION	QTY	RATE	AMOUNT
Demo - Remove existing play equipment, borders and safety surfacing (1) double bay swing set. (1) Slide 186 LF Wood Borders 2557 SF 6" EWF	1	3,750.00	3,750.00
Site Preparation - Strip Sod/ excavate soil for new playground shape. 532 SF	1	2,020.00	2,020.00
Concrete Sidewalk remove and replace for drain pipe 4'x4', 16 sqft Reinforced concrete pad, 4" thick. Wire reinforced Finish - light brush	1	284.00	284.00
Subsurface Drainage System 4" perforated pipe under turf (230 LF), 4" drain pipe (30') and mitered outlet (1) with concrete mow strip.	1	1,997.00	1,997.00
Concrete Border. Size: 12"x 8"d, LF: 190	1	5,143.00	5,143.00
Concrete Sidewalk 128 sqft Reinforced concrete pad, 4" thick. Wire reinforced Finish - light brush, Saw cut joints @ 15' centers	1	1,225.00	1,225.00
Play Equipment (1) The Gator Run NX-22052	1	43,270.00	43,270.00
Safety Surfacing/Synthetic Turf- SF: 2568 for up to 8' fall height. Includes geotextile separation fabric, gravel base, foam pad, IPEMA Certified XGrass Prime synthetic turf, Envirofill infill, freight and installation	1	43,269.00	43,269.00
Site Restoration - 6" Top Soil. Planting by others. 607 SF	1	504.00	504.00

Estimate per drawing dated: 3/20/23

**SUBTOTAL** 101,462.00  
**TAX** 0.00

Sales Tax NOT included. Organization must provide  
 Exemption Certificate and Project Exemption Certificate at time  
 of project acceptance. If not available, applicable sales tax will  
 be included.

Required permits, if any, to be paid by Owner. Public utilities will be located by local 811 One-Call before excavation. Any private utilities are to be located by and responsibility of Owner. Additional cost may incur if unforeseen conditions, such as buried rubble, bed rock or concrete hinders normal excavation.

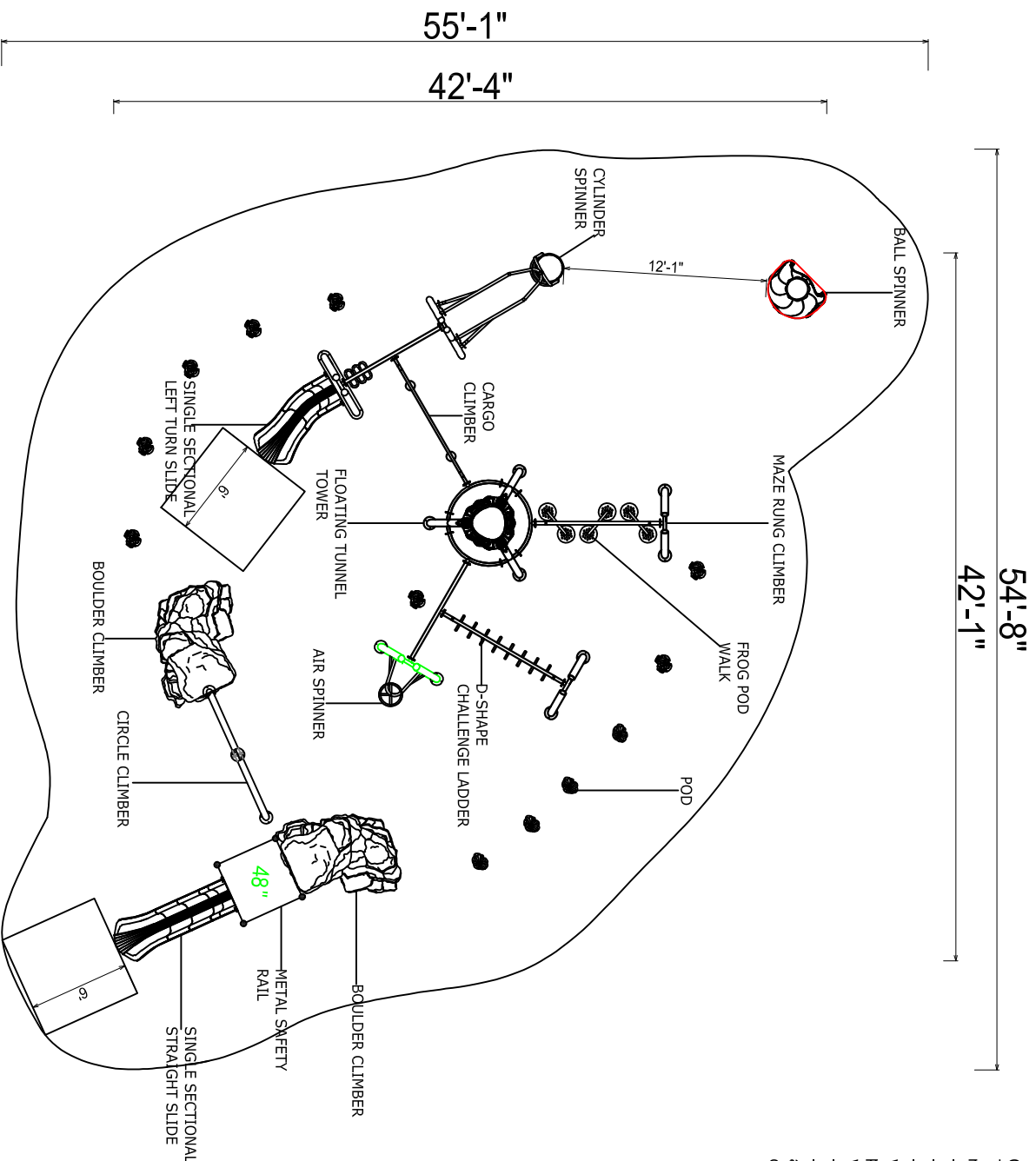
Down payment of 50% required. Remainder of project price will be invoiced at time of completion.

Approve this estimate and return to VersaSport LLC to make order. An invoice will be sent by QuickBooks to customer for online payment or other payment options. Please send check payments to address on invoice.

TOTAL	\$101,462.00
-------	--------------

Accepted By

Accepted Date



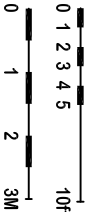
Compliance:  
This play structure has been designed to meet the safety requirements established in:

- 2010 ADA Standard
- ASTM F1487
- CPSC Pub #325

when the play structure is installed over a properly maintained surfacing material which is in compliance with:

- ASTM F1292
- ASTM F1951

and is appropriate for the highest designated play surface of the structure.



Cochran Park

Drawing No: NX-22052

Date: 21-03-2023

Scale: To Fit

**KIDSTALE**  
Imagination at play  
www.KidsTalePlaygrounds.com

Structure Size: 42'-1" x 42'-4" x 11'-6"

Recommended Use Zone: 54'-8" x 55'-1"

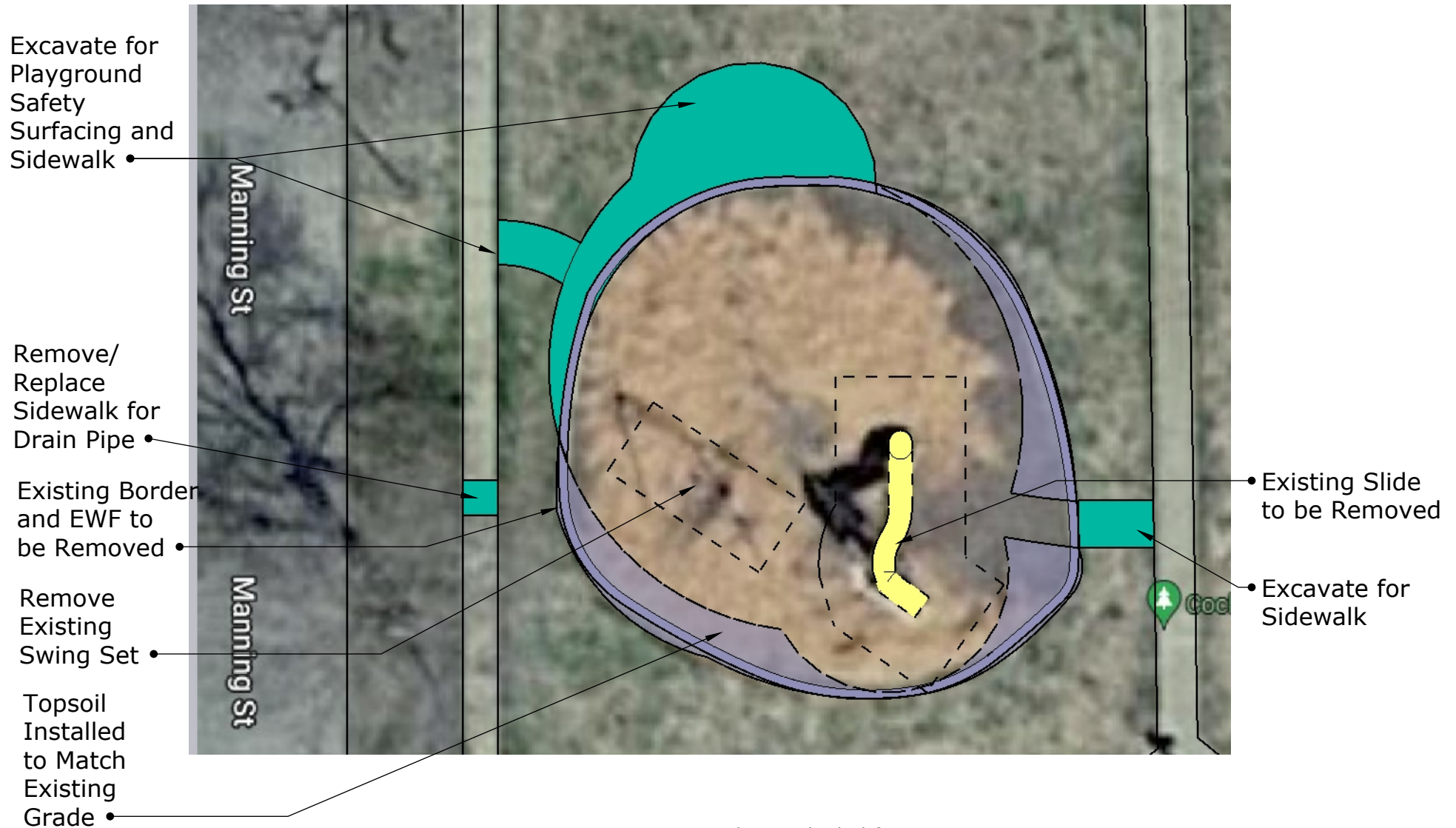
Surface Area: 3080 Sq Ft

HDPs: 7'-5"

Age Group: 5-12

Capacity: 50-54  
Weight: 2850 lbs

**VersaSport of  
Kansas**



Note: Existing EWF to be stockpiled for future use by others.

## Cochran Park

1600 Manning Street  
Winfield Kansas 67156  
Taggart Wall - 620-222-5495

### Playground Improvements - Demo

Drawn By: Lee Engler Date: March 30, 2023



## Cochran Park

1600 Manning Street  
Winfield Kansas 67156  
Taggart Wall - 620-222-5495

### Playground Improvements Concept #2

Drawn By: Lee Engler Date: March 30, 2023

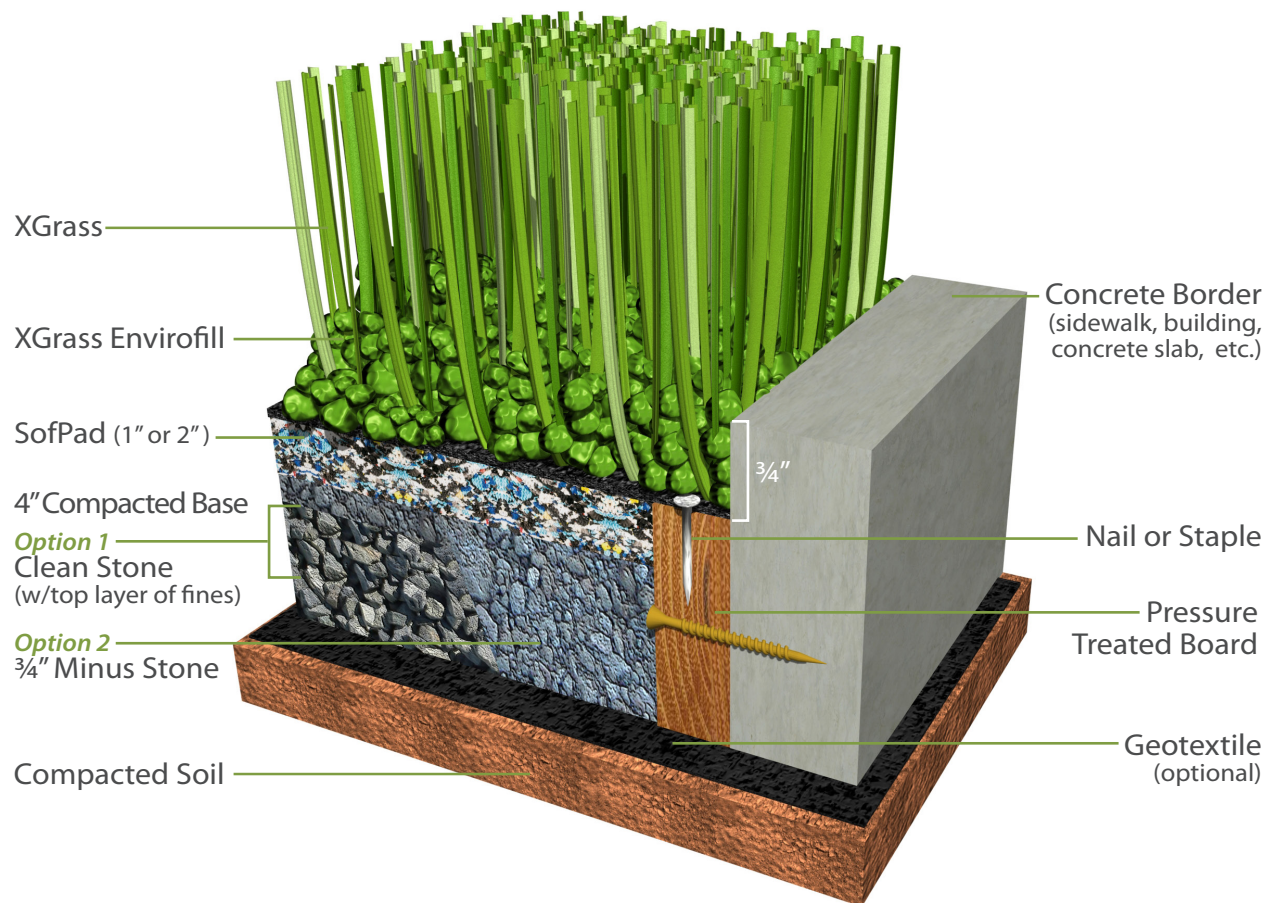








## Synthetic Turf for Play Areas With Concrete Border



Compacted Base Depth - 4"  
SofPad - 1", 2" or 4"  
Infill Depth - 3/4"

To accommodate this application prepare your site **5 3/4"** below grade with 1" SofPad,  
**6 3/4"** with 2" SofPad or **8 3/4"** with 4" SofPad.

*Components are not drawn to scale.*