

OSAWATOMIE CITY COUNCIL
AGENDA

March 8, 2012

7:00 p.m., Memorial Hall

1. Call to order
2. Roll Call
3. Pledge of Allegiance
4. Consent Agenda
 - Consent Agenda items will be acted upon by one motion unless a Council member requests an item be removed for discussion and separate action*
 - A. Approve Minutes of February 9 and February 23 Council Meetings
 - B. Approve March 8 Agenda
 - C. Appropriation Ordinances 12-3 & 12-4
5. Comments from the Public; Presentations
 - Citizen participation will be limited to 5 minutes. Please stand & be recognized by the Mayor.*
6. Public Hearing – none
7. Unfinished Business
 - A. Approve Invoice(s) for Pacific, 14th, Brown Streets Project – Request No. 18
 - B. Letter of Engagement for Bond Underwriter Services with George K. Baum & Co.
 - C. Ordinance Authorizing Additional Project Authorizations
 - D. Resolution Authorizing Sale of Bonds
8. New Business
 - A. Appointments - none
 - B. Tree City Recognition
 - C. Community Fisheries Program
9. Council Reports
10. Mayor's Report
11. City Manager's Report
12. Executive Session - none
13. Adjournment

MEETING/WORK SESSION – March 22, 2012

REGULAR MEETING – April 12, 2012

Osawatomie, Kansas. **February 9, 2012.** The Council meeting was held in Memorial Hall. Mayor Dudley called the meeting to order at 7:00 p.m. Council members present were Dickinson, Govea, Hunter, Klein, LaDuex, and Moon. Absent were Farley and Maichel. Also present were City Manager Cawby, City Attorney Wetzler, and City Clerk Elmquist. Visitors were Robert Kerr, Kenny Foulk, Jr., Kenny Harper, Michael Griffin, Joan Stevenson, Neil Phillips, Jim & Katie Mitzner, Travis Perry, and Kevin Grey.

CONSENT AGENDA. Approval of the minutes of January 12 and January 26 Council Meetings, approval of February 9 Agenda, and approval of Appropriation Ordinances 11-25, 12-1 & 12-2. Motion made by Hunter, seconded by Moon to approve the minutes of January 12 and January 26 Council Meetings as amended, the February 9 Agenda, and Appropriation Ordinances 11-25, 12-1 & 12-2. Yeas: All.

Public Participation; Presentations: none

Public Hearing:

FINAL PERFORMANCE HEARING CDBG STREETS GRANT. Mayor Dudley opened the hearing at 7:04 p.m. The purpose of the hearing was to evaluate the performance of the project and the completion of the work so the closeout packet can be submitted. The top layer of asphalt issue has not been resolved and because of the delay in closing the RDA loan the closeout cannot be completed. The public hearing was closed at 7:05 p.m.

Unfinished Business:

APPROVE INVOICE(S) FOR PACIFIC, 14TH, BROWN STREETS PROJECT – REQUEST No. 16. Motion made by Hunter, seconded by Moon to approve Pay Request No. 17. Yeas: All.

LETTER OF ENGAGEMENT FOR AUDITING SERVICES WITH JARRED, GILMORE & PHILLIPS. Audit services would be for 2011-2013 with the fee for 2011 at \$11,800. It will increase slightly for the next two years. Motion made by Moon, seconded by Hunter to authorize the Mayor to sign the Letter of Engagement with JGP. Yeas: All.

New Business:

APPOINTMENTS.

Economic Development	Thomas Burgin Ben Maimer
----------------------	-----------------------------

Motion made by LaDuex, seconded by Hunter to approve the appointments. Yeas: All.

Planning Commission	Thomas Burgin Jim Mitzner
---------------------	------------------------------

Motion made by Klein, seconded by Hunter to approve the appointments. Yeas: All.

Tourism Committee	Lewis Case Brian King Amanda Perry
-------------------	--

Motion made by Hunter, seconded by LaDuex to approve the appointments. Yeas: Dickinson, Govea, Hunter, Klein, and LaDuex. Nay: Moon.

Housing Authority

appointments made 6/9/11
assignment of 4-year terms expiring 12/31 of each year

Ben Maimer	2012
Jim Mitzner	2013
Larry Ratley	2014
Doug Singer	2015
Jeff Walmann	2015

Motion made by Moon, seconded by Hunter to approve the expiration date for terms. Yeas: All.

Parks & Recreation Committee

Kelly Callahan
Kenny Foulk, Jr.
Dave French
Jeff Gulley
Kenneth Harper
Brandon Olson

Even years – 2012	Kelly Callahan Kenneth Harper Brandon Olson
Odd years – 2013	Kenneth Foulk, Jr. Dave French Jeff Gulley
Councilmember	Mark Govea

Motion made by Hunter, seconded by Klein to approve the appointments. Yeas: Dickinson, Hunter, Klein, and LaDuex. Nays: Govea and Moon.

BURN PERMIT ISSUES. KDHE’S Regional Air Permit staff asked how the City gets rid of grass and leaves at the Forestry Site. They provided a copy of the site’s burn permit and learned that the State does not allow burning of these materials as part of the permit. Has been looking at different options along with the issues that each would bring.

PROPOSED WATER RATES. Revenues from the current rates are insufficient to sustain the water fund for the remainder of the year. The increase in rates would be about 7 percent in the first step in flattening the rates and moving away from the heavily tiered rate system. Motion made by Moon, seconded by Govea to approve the Annual Fee Resolution with the water rate increases. Yeas: Dickinson, Govea, Hunter, LaDuex, and Moon. Nay: Klein. Motion passed. The Resolution was assigned No 647.

DISCUSS LED LIGHTS FOR CITY STREET LIGHTS. A retro fit is needed.

Council Reports:

Hunter: April 21 is the Freedom Festival.

Moon: Attended the Public Safety Advisory Board. The Chamber of Commerce will be holding their Business Expo on March 3.

LaDuex: Disappointed that the Library expansion grant was denied.

Mayor’s Report: none

City Manager’s Report:

Projects:

Debt Issuance/Refinancing. There are still some issues that need to be worked out. The major holdup is the Brown and Pacific final numbers.

Issues:

Planning & Zoning. Scott Michie will be providing planning and zoning consulting services on an on-call basis. He will be conducting a training session on the role of planning and zoning boards and an overview of some of the more important issues. Would like Michie to staff the Planning Commission and Board of Zoning Appeals meetings to help work on the current zoning regulations to take into account the eliminations of the growth area and to tackle some the issued that have changed in the last 10 years. Also, would like his help with a future land use plan.

Motion made by Moon, seconded by Govea to adjourn. Yeas: All.

Ann Elmquist, City Clerk

Osawatomie, Kansas. **February 23, 2012.** The Council meeting was held in Memorial Hall. Mayor Dudley called the meeting to order at 7:30 p.m. Council members present were Dickinson, Farley, Govea, Hunter, Klein, LaDuex, Maichel, and Moon. Also present were City Manager Cawby, City Attorney Wetzler, and City Clerk Elmquist. Visitors were Webster Hawkins, Robert Kerr, Kirk and Shelagh Wright, Brian Kinsley, Larry Smith, Bryce Smith, Travis Perry, and Jeff Gulley.

APPROVAL OF AGENDA. Motion made by Hunter, seconded by Moon to approve the agenda. Yeas: All.

APPOINTMENTS TO MIAMI COUNTY AIRPORT ZONING BOARDS.

Airport Airspace Protection Commission (AAPC)	John Klein
Airport Board of Appeals	John Klein

Motion made by Hunter, seconded by Farley to approve the appointments. Yeas: All.

L&K TRASH AND RECYCLING PROPOSED CHANGES. KDHE last week notified the City that leaves and grass cannot be burned at the burn site where they issued a permit. Options discussed with Larry Smith and Bryce Smith were to have L&K Services haul the yard waste or the City do some composting but having to find land. The Council agreed to have L&K Services haul for several months to allow time to come up with a permanent plan. Starting April 1 recyclables will only be picked up on Mondays for the entire town. [Motion approved later in the minutes for addendum to contract]

City Manager Updates:

Planning Commission. A public hearing will be held March 14 at 7:00 p.m. to consider a special use permit. Afterwards, Scott Michie will begin training for the members and City staff. The Council was invited to attend.

Parks & Recreation. Interim Parks & Recreation Director Ryan Crowley was named the new Parks & Recreation Director.

Motion made by Moon, seconded by Hunter to allow the City Manager to modify the contract with L&K Services to add an addendum to change the days for pickup of recyclables to only Monday. Yeas: All.

Motion made by Hunter, seconded by Moon to adjourn. Yeas: All.

Ann Elmquist, City Clerk

Record of Ordinances

ORDINANCE NO. 12-3

DATE WARRANTS ISSUED:
February 29, 2012

Page No. 1

AN ORDINANCE MAKING APPROPRIATION FOR THE PAYMENT OF CERTAIN CLAIMS.

Be it ordained by the Governing Body of the City of Osawatomie, Kansas

Section 1. That in order to pay the claims hereinafter stated which have been properly audited and approved, there is hereby appropriated out of the respective funds in the city treasury the sum required for each claim.

CLAIMANT	NATURE OF CLAIM OR SERVICE	CLAIM NUMBER	AMOUNT
Payroll 02/10/12			82,295.11
Payroll 02/24/12			90,433.84
FICA 02/10/12			5,984.81
FICA 02/24/12			6,607.32
KPERS			13,111.94
Midwest Distributors	Miller, Coors	39076	88.80
Ace Pest Control LLC	pest control	39154	475.00
City of Osawatomie	utilities	39155	12,917.85
Dish Network	service	39156	180.03
Home Depot Credit Services	quikrete, lighting	39157	96.09
Kansas City Wilbert	grave openings	39158	1,200.00
KDHE-Bureau of Water	operator examination	39159	25.00
Kansas Municipal Utilities	membership dues, safety meetings	39160	6,644.00
League of Ks Municipalities	membership dues, journal	39161	1,832.12
Suddenlink	internet	39162	59.95
Airgas USA LLC	oxygen cylinder	39163	85.10
AT&T	RTU's	39164	221.24
Beachner Grain, Inc.	kerosene	39165	22.50
Kansas Gas Service	power plant	39166	42.42
L & K Services, Inc.	refuse	39167	29,636.83
Landmark National Bank	golf cart loan	39168	2,178.24
Suddenlink	internet	39169	79.15
Osawatomie Journal	legal's	39170	222.85
Ks Dept of Health & Environment	water revolving loan	39171	32,491.31
Kansas Dept of Revenue	compensating use tax	39172	333.59
Kansas Dept of Revenue	sales tax	39173	9,826.25
KMEA - Nearman	electricity	39174	57,209.52
Miami County Treasurer	vehicle tags	39175	1,093.50
Miami County Internet OnRamp	internet	39176	19.95
Reserve Account	postage meter	39177	1,200.00
Ricoh Americas Corp.	copier lease - Office	39178	289.00
Ricoh Americas Corp.	copier lease - P.D.	39179	183.90
Visa	magazine subscription, DVD's, toner	39180	577.51
Tess Newport	referee	39181	120.00
Courtney Kilbourn	referee	39182	120.00
Josh Criddle	referee	39183	100.00
Cole Rayl	referee	39184	100.00
Austin Chisam	referee	39185	100.00
Crawford Sales	Budweiser	39186	111.60
Bradley A/C & Heating	filters	39187	20.52

Record of Ordinances

DATE WARRANTS ISSUED:
February 29, 2012

Page No. 2

CLAIMANT	NATURE OF CLAIM OR SERVICE	CLAIM NUMBER	AMOUNT
Capitol Plaza Hotel	lodging	39188	127.19
Don Cawby	lodging	31989	108.77
Kansas City Power & Light	service	39190	1,150.14
Kansas Gas Service	service	39191	6,394.98
KMEA	annual dues	39192	843.00
Suddenlink	internet	39193	59.95
Brad Waggoner	Pro Shop	39194	154.80
Bob's Sales & Service	recharge fire extinguishers	39195	244.00
CenturyLink	RTU's	39196	236.56
CenturyLink	long distance	39197	380.26
CenturyLink	service	39198	2,311.30
Coventry	health insurance	39199	25,631.80
Delta Dental	dental insurance	39200	2,798.39
KACM	membership	39201	50.00
KMEA - EMP1	electric, transmission	39202	30,727.28
KMEA - Hydro	hydroelectric	39203	2,777.17
KMEA - GRDA	electricity	39204	57,573.03
Lybarger Oil	fuel	39205	7,780.15
Postmaster	utility billing	39206	1,000.00
Ricoh Americas Corp.	maintenance agreement	39207	81.00
Sprint	service	39208	18.83
Vision Service	vision insurance	39209	797.74
Wal-Mart Community	wireless mouse, USB	39210	84.70
Wichita State University	seminar	39211	125.00
City of Osawatomie	petty cash reimbursement	1271	161.69
Kansas State Treasurer	bond interest	121	57,516.25
			557,470.82
GO	130,979.65		
WT	58,452.32		
EL	204,334.29		
Emp Bn	38,999.02		
Refuse	29,811.83		
RF	1,731.75		
Inc	24.86		
Sp Pks	6,200.91		
St Imp	1,837.17		
B & I	57,516.25		
Sewer	13,446.20		
GC	13,903.02		
Trsm	233.55		
	557,470.82		

Record of Ordinances

ORDINANCE NO. 12-4

DATE WARRANTS ISSUED:
March 8, 2012

Page No. 1

AN ORDINANCE MAKING APPROPRIATION FOR THE PAYMENT OF CERTAIN CLAIMS.

Be it ordained by the Governing Body of the City of Osawatomie, Kansas

Section 1. That in order to pay the claims hereinafter stated which have been properly audited and approved, there is hereby appropriated out of the respective funds in the city treasury the sum required for each claim.

CLAIMANT	NATURE OF CLAIM OR SERVICE	CLAIM NUMBER	AMOUNT
Altec Industries, Inc.	replace bearing	39214	566.96
Americas Computers	laptop screen	39515	149.99
Analytical Services, Inc.	analytical service	39216	489.26
Atco International	deodorizers	39217	225.25
Baker & Taylor	books	39218	568.45
BG Consultants, Inc.	street improvements, engineer	39219	2,890.50
Bollings Bargain Bonanza	gloves, paper, supplies	39220	154.15
Brenntag Mid-South, Inc.	chemicals	39221	23,854.78
Brewers Automotive Repair	batteries, tow	39222	337.90
C & G Merchants Supply, Inc.	popcorn, candy bars	39223	110.66
Campbell Fire Protection LLC	repair backflow, annual recertification	39224	495.81
Champion Brands LLC	oil	39225	767.04
Coleman Equipment, Inc.	mower parts	39226	241.20
Corrosion Products, Inc.	couplings	39227	85.80
Demco	jacket covers, chairs	39228	381.52
Diamond International	oil filter	39229	93.65
Emedco, Inc.	signs	39230	212.73
Entersect Police Online	police online	39231	79.00
Environmental Laboratories, Inc.	analytical service	39232	434.00
Family Center	parts	39233	752.52
Void		39234	-
Richard M. Fisher, Jr. LLC	court appointed attorney	39235	1,825.00
Galls, LLC	baton, handcuff key	38236	170.55
GNC Enterprises, Inc.	chemical resistant gloves	39237	90.00
Graybar	clamps, cutouts	38238	1,397.42
Hach Company	chlorine reagent set	38239	329.87
Brad Henson	plan review for Penwell Gabel	39240	100.00
Inland Truck Parts & Service	air relay valve	39241	75.16
John Deere Financial	roller, locknut	39242	60.36
Ka-Comm, Inc.	mobile video system	39243	393.55
The Kansas City Star	subscription	39244	297.44
Kansas One Call Systems, Inc.	locates	39245	135.80
Kansas Rural Water Assoc.	consumer confidence report	39246	50.00
Kel-Con Technologies, Inc.	network service, basic support	39247	3,658.50
Killough Construction, Inc.	asphalt	39248	330.00
Kincaid Ready Mix	concrete	39249	1,030.01
Kriz-Davis, Co.	electric line supplies	39250	6,217.86
Lang Chevrolet	tail pipe	39251	459.44
League of Kansas Municipalities	ad - public safety officer	39252	65.00
Logan Contractors Supply, Inc.	fluorescent paint	39253	93.36

Record of Ordinances

DATE WARRANTS ISSUED:
March 8, 2012

Page No. 2

CLAIMANT	NATURE OF CLAIM OR SERVICE	CLAIM NUMBER	AMOUNT
Maceks, Inc.	windshield glass	39254	250.00
Martin Pringle Attorneys at Law	City attorney	39255	5,171.25
Miami County Sheriff's Office	prisoner care	39256	1,440.00
Miami County, Kansas	327th corridor study	39257	375.00
Void		39258	-
Moon's IGA	supplies	39259	201.05
National Sign Company, Inc.	signs	39260	98.85
NEKLS	shared automation, office supplies	39261	1,555.61
Void		39262	-
Nicholson Law Office, LC	court appointed attorney	39263	1,145.00
O'Reilly Auto Parts	belts, JB weld	39264	41.38
Old Dominion Brush	mobile gutter broom	39265	240.00
Oil Patch Pump & Supply, Inc.	couplers, flanges	39266	187.16
Olathe Medical Services	employment physical - Beaudry	39267	102.00
Osawatomie Journal	ads	39268	128.05
Paola Hardware	gate latch, timer	39269	31.94
Pat's Signs	window decals	39270	36.00
R.E. Pedrotti Co., Inc.	restart water plant computer	39271	1,087.00
Psychological Resources	psychological evaluation	39272	110.00
Quill	office supplies	39273	151.10
R & R Products, Inc.	tee towels, gasket set	39274	151.01
Rejis Commission	Leweb subscription service	39275	30.00
Rural Water District #1	service	39276	141.10
Rural Water District #3	ETI	39277	16.50
Scott A. Michie Planning Services	zoning for parking	39278	431.62
State Industrial Products	cleaners	39279	173.70
Superior Lamp	lighting supplies	39280	875.40
Supreme Turf Products, Inc.	pesticides	39281	7,849.50
Debbie Talley	Memorial Hall janitorial	39282	375.00
Tri County Ice	ice machine	39283	50.00
USA Blue Book	storage solution, freight	39284	81.25
U.S.A. Mechanical, Inc.	heater installed	39285	1,995.00
Van Wall Equipment	new reels, grind reels	39286	1,942.33
Vance Brothers	asphalt	39287	575.00
Viking Industrial Supply	trash bags, paper goods	39288	272.77
Westfall GMC Truck, Inc.	mirror, fenders	39289	578.10
Wilson & Company	levee assessment	39290	10,814.05
John A. Wilson	court appointed attorney	39291	150.00
Winkler, Dononey & Schultz	Municipal Court Judge	39292	2,000.00
WinPro Solutions	paper goods	39293	270.87
Void		39294	-
Void		39295	-
Winterscheid Auto Parts	parts	39296	676.39
YMCA	city share of wellness program	39297	37.50
Zep Sales & Service	deodorizers	39298	275.00



CITY OF OSAWATOMIE
439 Main Street
PO Box 37
Osawatomie, KS 66064
913-755-2146

PACIFIC, 14TH, BROWN STREETS PROJECT
CDBG GRANT # 10-PF-045
PAYMENT REQUEST
March 8, 2012
Payment Request No. 18

Claimant	Description	Document Number	Amount
Governmental Assistance Services 905 Joseph Drive Lawrence, KS 66049	administration		\$ -
BG Consultants 4806 Vue Du Lac Place Manhattan, KS 66503	design services	2/14/12	\$ -
BG Consultants 4806 Vue Du Lac Place Manhattan, KS 66503	inspector	2/14/12	\$ 1,045.50
Orr Wyatt Streetscapes 9812 E 56th Street Raytown, MO 64133-2804	construction	App #	\$ -
	TOTAL		\$ 1,045.50

Approved by the Osawatomie City Council this 8th day of March, 2012 contingent upon approval by the funding agencies.

Philip A. Dudley, Mayor



STAFF AGENDA MEMORANDUM

DATE OF MEETING: March 8, 2012

AGENDA ITEM: Debt Refinance

PRESENTER: Don Cawby, City Manager
Dave Arteberry, George K. Baum & Co., Financial Advisor

ISSUE SUMMARY: Several weeks ago, you gave me approval to proceed with refinancing some of our higher rated debt in order to achieve some long-term savings. There have been several changes since we last discussed this issue. First, the sewer revolving loan funds can be refinanced without a referendum. Second, we have worked out the issues related to refinancing the next 21 years of USDA Rural Development Loans from 2008 and can easily finance those issues. Third, we have made the decision to include the City's match portion of the Brown and Pacific project and forego the Rural Development Loan for this project. When these three items are included with the existing loans for the water system, it totals an estimated \$4,225,000. That is the number which we are using for the not to exceed number in the authorizing resolution.

Attached is a calendar which shows the current schedule for the issuance of these bonds.

Also, we had discussed the issuance of temporary notes for the Sewer Plant improvements that need to be made this year. However, I think the timing of the issues involved will be more difficult to accommodate than we had imagined earlier and our best option is to seek temporary notes later, or to seek State Revolving Loan Funds for this project.

Finally, we need to officially approve George K. Baum as the underwriter.

COUNCIL ACTION NEEDED: Vote on approval of the underwriter, the authorizing resolution and project authority ordinance.

STAFF RECOMMENDATION TO COUNCIL: Approve George K. Baum as the underwriter of this issuance and authorize the resolution and ordinance.



UNDERWRITER ENGAGEMENT LETTER

THIS AGREEMENT (“Agreement”) is made this ___ day of _____ 2012 between the City of Osawatomie, Kansas (“Issuer”), and George K. Baum & Company, with its principal offices at 4801 Main Street, Kansas City, Missouri (“Provider”).

PURPOSE: The Issuer has identified an opportunity to refinance certain outstanding general obligation bonds and state revolving fund loans to achieve interest cost savings. Additionally, the Issuer has identified a new capital project that requires permanent financing. The refinancing of the outstanding debt and the financing of the new project is hereinafter referred to as the “Financing Plan”. The Financing Plan will be accomplished through the issuance of general obligation bonds. The Issuer deems it in its best interest to engage and retain the Provider, a qualified investment banking firm, to provide underwriting services, including the preparation of supporting data and underwriting bonds.

CONSIDERATION: Consideration for this Agreement includes the services, compensation, and mutual exchange of promises of the parties specified herein.

SPECIFIC PROVISIONS: The provisions of the above “Purpose” section shall be material and binding to this Agreement.

1. **Provider’s Obligations.** The Provider shall provide the Issuer with investment banking services for the analysis of cost factors relative to the underwriting, including:
 - A. Work with the Issuer and others, as directed by the Issuer’s governing body, concerning the issuance of bonds for the Financing Plan;
 - B. Attend all meetings and make itself available to the Issuer, its staff, governing body, and other agents for consultation and conference at times and places mutually agreed upon throughout the proceedings;
 - C. Prepare financial information and schedules necessary to acquaint the Issuer with the benefits of the various forms of financing, including interest rates, marketing factors, credit enhancement, and user fee costs;
 - D. Advise the Issuer on the underwriting of its bonds, providing regular updates of bond market conditions, analysis of financial or accounting factors of importance to the proper placement of bonds, recommendations regarding appropriate maturity schedules, call features, registration provisions, paying agency and trusteeship responsibility, user rate covenants, any special sinking fund provisions, flow of tax or user fee funds, interest rate limitations, delivery procedures, and investment of idle funds;
 - E. Make recommendations as to the exact amount of the bonds to be issued, maturity schedules, redemption features and provisions, and other related items, in order to formulate the most attractive and appealing investment package to the purchasers of the bonds which will result in the maximum benefit and minimum net effective interest cost to the Issuer;

- F. Assist in the preparation of a credit presentation for rating agencies and bond insurance companies, if appropriate;
- G. Collect, format, and prepare information, in cooperation with the Issuer for a Preliminary Official Statement as appropriate, related contracts or agreements, and proceedings, all of which shall be appropriately executed and satisfactory to the Issuer;
- H. Engage in pre-marketing activities to announce and promote the sale of the Financing Plan bonds;
- I. Distribute the Preliminary Official Statement to potential investors;
- J. Provide for a pricing conference call, during which the related pricing levels for the Financing Plan bonds will be established prior to the offering of a purchase contract agreement;
- K. Arrange for closing and delivery of the Financing Plan bonds;
- L. Prior to the offering of any bonds for sale, provide an estimate to the Issuer of all underwriting profits and interest rates, and upon completion of the sale, provide the Issuer with a detailed accounting of actual total profits and expenses;
- M. It is expressly understood and agreed that this Agreement does not intend, and is not under any circumstances to be construed as requiring the Provider to perform services which may constitute the practice of law. The Provider is employed in an expert financial capacity only;
- N. It is expressly understood and agreed that, under this Agreement, the Provider is not acting as a financial advisor or fiduciary to the Issuer. The Provider is engaged and retained by Issuer to act as a principal in a commercial, arm's length transaction as the Issuer's underwriter. As such, the Provider has financial and other interests that differ from those of the Issuer;
- O. It is expressly understood and agreed that the Provider will not limit its work to the steps outlined but will extend its services as necessary to insure that the Financing Plan is brought to a successful conclusion on behalf of the Issuer in a professional and satisfactory manner.

2. **Issuer's Obligations.** The Issuer's obligations shall include the following:

- A. Retain the Provider as its Investment Banker to act as bonds underwriter;
- B. Cooperate with the Provider in the proper development of the Financing Plan and provide all pertinent information needed to support successfully underwritten bonds on behalf of the Issuer;
- C. Employ a nationally recognized firm of bond attorneys and utilize the services of the Issuer's attorney;
- D. Pay for all costs of legal advice, printed matter (informational brochures, bond printing, Preliminary and Final Official Statements), advertising, engineering, ratings, bond insurance premium, required audits and other professional services;

- E. Pay the Provider an underwriting fee equal to 0.85% of the par amount of bonds payable from proceeds of the sale of such bonds, or other available funds, and only upon successful closing and delivery.
- 3. **Term.** The term of this Agreement shall commence on the date of this Agreement, and shall expire on the earlier of either one year from such date, or the completion of the financing for the Financing Plan, subject to the termination provisions in Section 4 below.
- 4. **Termination.** Either party shall have the right to terminate this Agreement in full for any reason with at least ninety (90) days prior written notice to the other party. In addition, the Issuer shall provide written notice to the Provider of any violation or default of the terms of this Agreement and the Provider shall have thirty (30) days to cure such default. If the Provider is not able to cure the default to the Issuer's satisfaction by the end of such cure period, the Issuer thereafter shall have the right to immediately terminate this Agreement. At the termination of this Agreement, in any such manner, the Issuer shall pay the Provider such compensation earned to the date of such termination, which payment shall be in full satisfaction of all claims against the Issuer under this Agreement.
- 5. **Execution.** This Agreement may be executed in multiple counterparts and together such counterparts will be deemed an original.

IN WITNESS WHEREOF, the parties here have executed this Agreement the day and year first above written.

AGREED TO AND ACCEPTED:

GEORGE K. BAUM & COMPANY

By: _____

Title: _____

AGREED TO AND ACCEPTED:

CITY OF OSAWATOMIE, KANSAS

By: _____

Title: _____

ATTEST:

Title: _____

(Published in *the Osawatomie Journal* on March __, 2012)1t

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY OF OSAWATOMIE, KANSAS TO MAKE WATER SYSTEM IMPROVEMENTS, EXPAND AND IMPROVE THE WASTEWATER TREATMENT PLANT; PREPAY CERTAIN OUTSTANDING LOANS AND AUTHORIZING THE CITY TO ISSUE ITS GENERAL OBLIGATION BONDS IN THE AMOUNT NECESSARY TO PAY COSTS OF SUCH IMPROVEMENTS

WHEREAS, pursuant to K.S.A. 65-162a *et seq.*, and particularly K.S.A. 65-163d through 65-163u (the "Water Act"), the City of Osawatomie, Kansas (the "City") is a municipality that operates and maintains a public water supply system, as defined in the Water Act, and the City is authorized to acquire, construct, reconstruct, improve, equip, rehabilitate and extend all or any part of the public water supply system; provided such improvement is not related to the diversion or transportation of water acquired through a water transfer, as defined by K.S.A. 82a-1501; and

WHEREAS, the Governing Body of the City finds it necessary to improve the City's public water supply system by acquiring and constructing a water treatment plant upgrades and related facilities, all to serve the City's municipal water supply system, and all things necessary and incidental thereto (the "Water System Improvements"); and

WHEREAS, the estimated costs of the Water System Improvements to be financed by the City is \$901,478.72, plus necessary costs of issuing temporary and permanent financing to fund the Water System Improvements; and

WHEREAS, the Water System Improvements are not related to the diversion or transportation of water acquired through a water transfer defined in K.S.A. 82a-1501; and

WHEREAS, it is necessary to pay costs of the Water System Improvements by issuing general obligation bonds of the City; and

WHEREAS, K.S.A. 12-1736 to 12-1739, inclusive, as amended ("Building Act"), authorizes the Governing Body of the City to acquire and construct, make repairs, reconstruct, remodel, replace, make additions to, furnish or equip any public building and to issue general obligation bonds of the City for such purposes; and

WHEREAS, the Governing Body of the City has determined that it is necessary to improve, expand, modify and equip the waste water treatment plant and related structures and facilities in the City to comply with federal, state and local environmental regulations, at an estimated cost of \$3,932,831.66 (the "Public Building Improvements"); and

WHEREAS, it is necessary and desirable to pay costs of the Public Building Improvements by issuing general obligations bonds of the City; and

WHEREAS, the City has previously entered into loan agreements with the Kansas Department of Health and Environment to finance the Public Building Improvements and the Water System Improvements (the “Loans”) as follows:

<u>Loan</u>	<u>Original Loan Amount</u>	<u>Estimated Balance Outstanding for Prepayment</u>
A. PWS Loan # 2128 (Water Facilities)	\$ 901,478.72	\$ 567,460.34
B. WPC Loan #C20 1314-01 (Waste Water Plant and Related Structures)	\$ 1,518,928.96	\$ 413,160.60
C. WPC Loan #C20 1395-01 (Waste Water Plant and Related Structures)	\$ 2,413,902.70	\$ 999,691.42

WHEREAS, the City has determined it can achieve substantial interest cost savings by issuing general obligation bonds to finance the projects financed by the Loans and prepaying the Loans as permitted by the loan agreements between the City and KDHE; and

WHEREAS, pursuant to Article 12, §5 of the Kansas Constitution (the “Home Rule Amendment”), the City is authorized to determine its local affairs and government except when limited or prohibited by an enactment of the state legislature applicable uniformly to all cities of the same class; and

WHEREAS, no statutory authority exists to limit or prohibit the exercise of the City’s authority under the Home Rule Amendment to authorize issuance of its general obligation bonds to pre-pay the Loans; and

WHEREAS, it is necessary and desirable for the City to issue its general obligation bonds to finance the Water System Improvements, the Public Building Improvements and to prepay the Loans.

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

SECTION 1. The Water System Improvements and the Public Building Improvements (collectively, the “Projects”) are authorized and directed to be completed pursuant to the Water Act and the Building Act (collectively, the “Act”).

SECTION 2. To provide funds to pay costs of the Projects, and as authorized by the Act, the City authorizes the issuance of its general obligation bonds in an aggregate amount of not to exceed \$4,834,310.38, plus necessary costs of issuing temporary and permanent financing.

SECTION 3. Pursuant to the Act and the Home Rule Amendment the City authorizes issuance of its general obligation bonds in an amount necessary to prepay the outstanding balances of the Loans, and pay costs of issuing such bonds. The estimated principal amount of such bonds is \$2,030,000.

SECTION 4. The Mayor and City Clerk are authorized and directed to take such other action, including the execution of documents, as may be necessary to proceed with the intent of this Ordinance. The City Manager's execution and delivery of a notice to the Kansas Department of Health and Environment, complying with the Loan Agreements, stating the City's intention to prepay the Loans is ratified and confirmed.

SECTION 5. This Ordinance shall be in full force and effect after it is passed and approved by the City Governing Body and published one time in the official City newspaper.

[Remainder of Page Intentionally Left Blank]

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas on March 8, 2012.

CITY OF OSAWATOMIE, KANSAS

By _____
Philip A. Dudley, Mayor

(SEAL)

ATTEST:

By _____
Ann Elmquist, City Clerk

[Remainder of Page Intentionally Left Blank]

EXCERPT OF MINUTES

A regular meeting of the City Council of the City of Osawatomie, Miami County, Kansas was held on March 8, 2012 at Memorial Hall, Osawatomie, Kansas at 7:00 p.m. The meeting was called to order by Phillip A. Dudley, Mayor who presided, and Ann Elmquist acted as City Clerk of the meeting. Upon call roll the City Clerk reported that the following members were present:

Absent:

Among other business, there came for consideration and discussion the following:

AN ORDINANCE AUTHORIZING THE CITY OF OSAWATOMIE, KANSAS TO MAKE WATER SYSTEM IMPROVEMENTS, EXPAND AND IMPROVE THE WASTEWATER TREATMENT PLANT; PREPAY CERTAIN OUTSTANDING LOANS AND AUTHORIZING THE CITY TO ISSUE ITS GENERAL OBLIGATION BONDS IN THE AMOUNT NECESSARY TO PAY COSTS OF SUCH IMPROVEMENTS

After discussion, Council Member _____ moved that the issuance of bonds be in the estimated amount of not to exceed \$_____. Council Member _____ seconded the motion. The motion was voted upon and approved unanimously. Council Member _____ moved to authorize the _____ improvements within the city and authorize the issuance of bonds, as amended. Council Member _____ seconded the motion. The motion was voted upon. Those voting in favor of the motion were:

Opposed:

The motion carried by a vote of __ in favor to __ opposed being a majority vote of the members elect of the Governing Body. The Ordinance was assigned No. _____

Upon motion duly made to adjourn, seconded and unanimously carried, the meeting adjourned.

CERTIFICATE

I, the undersigned, City Clerk of the City of Osawatomie, Kansas, hereby certify that the above and foregoing is a true and correct copy of portions of the minutes of the meeting of the Governing Body held on March 8, 2012 as recorded on Page _____ of City Council Journal No. 19 of the City of Osawatomie, Kansas.

WITNESS MY HAND and THE SEAL of the City of Osawatomie, Kansas.

(SEAL)

Ann Elmquist, City Clerk

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF OSAWATOMIE, KANSAS AUTHORIZING AND PROVIDING FOR THE UNDERWRITING AND OFFERING FOR SALE OF THE CITY'S GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS, SERIES 2012A IN THE APPROXIMATE AGGREGATE PRINCIPAL AMOUNT OF \$4,225,000.

WHEREAS, the City of Osawatomie, Kansas (the "City") has selected the firm of George K. Baum & Co., Kansas City, Missouri (the "Underwriter") to underwrite approximately \$4,225,000 aggregate principal amount of the City's General Obligation Refunding and Improvement Bonds, Series 2012 (the "Bonds") to (1) provide for the partial refunding of the City's outstanding General Obligation Bonds, Series 2008A and the refunding of the City's outstanding General Obligation Bonds, Series 2003A (the "Refunded Bonds"), (2) to pay the costs of certain street and related improvements in the City (the "Project"), and (3) to pay the costs of certain improvements through prepayment of outstanding loan agreements between the City and the Kansas Department of Health and Environment described herein (the "Loans"); and

WHEREAS, the City desires to authorize the Underwriter to offer the Bonds for sale and take such other actions as are necessary to offer the Bonds.

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

SECTION 1. Authorization of Offering. The Underwriter is authorized to proceed with offering for sale of the General Obligation Refunding and Improvement Bonds, Series 2012A in the approximate principal amount of \$4,225,000.

SECTION 2. Authorization Preliminary Official Statement and Official Statement. The Underwriter is authorized and directed to prepare or provide for the preparation of a Preliminary Official Statement for the Bonds. The Mayor is authorized to execute the Preliminary Official Statement on behalf of the City. The City hereby consents to and authorizes the Underwriter to use and publicly distribute the Preliminary Official Statement (but only in its entirety) to prospective purchasers of the Bonds. Upon a successful offering of the Bonds, the Underwriter is authorized to prepare or provide for the preparation of a final Official Statement by amending, supplementing and completing the Preliminary Official Statement and the City authorizes the execution of the final Official Statement by its Mayor or acting Mayor, with such changes and additions as such officer deems appropriate. The final Official Statement is authorized to be distributed to the public (in its entirety) in connection with the offering and sale of the Bonds.

SECTION 3. SEC Rule Compliance; Continuing Disclosure. To permit the Underwriter to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission (the "SEC Rule") the Mayor or the City Clerk are authorized, if requested to do so, to certify that the City deems the information in the Preliminary Official Statement "final" as of its date except for the omission of information as permitted by the SEC Rule and to take such other actions as such officers find necessary to permit the Underwriter to comply with the SEC

Rule. The City agrees that, on or before the date the Bonds are delivered, it will enter into a written undertaking to provide continuing disclosure about the City while the Bonds remain outstanding, if required by the applicable sections of the SEC Rule.

SECTION 4. Authorization of Additional Actions as Required. The Mayor, the City Clerk, the Underwriter and Triplett, Woolf & Garretson, LLC, as Bond Counsel, are each authorized and directed to take all such other actions as are necessary to complete the offering and issuance of the Bonds, including but not limited to, providing any necessary notice of the City's intent to redeem the Refunded Bonds on their projected redemption date of June 1, 2012 and to prepay the Loans on May 8, 2012 or as soon thereafter as possible. The Loans are identified below:

<u>Loan</u>	<u>Original Loan Amount</u>	<u>Estimated Balance Outstanding for Prepayment</u>
A. PWS Loan # 2128 (Water Facilities)	\$ 901,478.72	\$ 567,460.34
B. WPC Loan #C20 1314-01 (Waste Water Plant and Related Structures)	\$ 1,518,928.96	\$ 413,160.60
C. WPC Loan #C20 1395-01 (Waste Water Plant and Related Structures)	\$ 2,413,902.70	\$ 999,691.42

SECTION 5. Effective Date. This Resolution shall be in force and take effect from and after its adoption and approval.

[Remainder of Page Intentionally Left Blank]

ADOPTED AND APPROVED by the governing body of the City of Osawatomie, Kansas on March 8, 2012.

CITY OF OSAWATOMIE, KANSAS

By _____
Philip A. Dudley, Mayor

(SEAL)

ATTEST:

By _____
Ann Elmquist, City Clerk

EXCERPT OF MINUTES

A regular meeting of the City Council of the City of Osawatomie, Miami County, Kansas was held on March 8, 2012 at Memorial Hall, Osawatomie, Kansas at 7:00 p.m. The meeting was called to order by Phillip A. Dudley, Mayor who presided, and Ann Elmquist acted as City Clerk of the meeting. Upon call roll the City Clerk reported that the following members were present:

Absent:

Among other business, there came for consideration and discussion the following:

A RESOLUTION OF THE CITY OF OSAWATOMIE, KANSAS AUTHORIZING AND PROVIDING FOR THE UNDERWRITING AND OFFERING FOR SALE OF THE CITY'S GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS, SERIES 2012 IN THE APPROXIMATE AGGREGATE PRINCIPAL AMOUNT OF \$4,225,000 .

After discussion, Council Member _____ moved that the issuance of bonds be in the estimated amount of not to exceed \$_____. Council Member _____ seconded the motion. The motion was voted upon and approved unanimously. Council Member _____ moved to authorize the _____ improvements within the city and authorize the issuance of bonds, as amended. Council Member _____ seconded the motion. The motion was voted upon. Those voting in favor of the motion were:

Opposed:

The motion carried by a vote of __ in favor to __ opposed being a majority vote of the members elect of the Governing Body. The Ordinance was assigned No. _____

Upon motion duly made to adjourn, seconded and unanimously carried, the meeting adjourned.

CERTIFICATE

I, the undersigned, City Clerk of the City of Osawatomie, Kansas, hereby certify that the above and foregoing is a true and correct copy of portions of the minutes of the meeting of the Governing Body held on March 8, 2012 as recorded on Page _____ of City Council Journal No. 19 of the City of Osawatomie, Kansas.

WITNESS MY HAND and THE SEAL of the City of Osawatomie, Kansas.

(SEAL)

Ann Elmquist, City Clerk

Debt Refinance and Issuance

City of Osawatomie

Debt Issuance	Series <u>2003 A</u>	Sewer SRF <u>Loan 1314</u>	Sewer SRF <u>Loan 1395</u>	Water SRF <u>Loan 2128</u>	USDA Sewer <u>Loan*</u>	Total <u>Refinance</u>	New Street <u>Bonds</u>	Total <u>Issuance</u>
Amount Refinanced	275,000	420,000	1,020,000	580,000	1,330,000	3,625,000	600,000	4,225,000
Years Left	7.0	4.5	7.5	11.0	21		20	
Current Avg. Debt Service	44,079	100,129	150,585	64,983	95,564	455,339	-	455,339
Proposed Avg. Debt Service	<u>41,318</u>	<u>96,413</u>	<u>144,836</u>	<u>59,038</u>	<u>84,628</u>	<u>426,233</u>	<u>35,292</u>	<u>461,525</u>
Avg Annual Savings	2,761	3,716	5,748	5,945	10,936	29,107	(35,292)	(6,185)
Lifetime Savings	19,328	16,724	43,111	65,395	229,654	374,213	(705,840.00)	(331,627.29)

** Only showing amount to be refinanced. Still \$2.169 million outstanding beginning in 2031.*

6-Mar-2012

**CITY OF OSAWATOMIE, KANSAS
GENERAL OBLIGATION BONDS
SERIES 2012-A**

REVISED CALENDAR OF EVENTS

- FEB** 27 Draft of Resolution Authorizing Sale of Bonds (“Sale Resolution”) Distributed
Draft New Project Authorizing Resolution Distributed
- MAR** 2 Comments Due on Sale Resolution
Preliminary Official Statement Distributed for Comment
Final Sale Resolution Forwarded to City
Final New Project Authorizing Resolution Forwarded to City
8 City Council Updated on Financing Plan
City Adopts Additional Project Authorizations, if Needed
City Passes Resolution Authorizing Sale of Bonds
19 Notice of Bond Redemption (USDA Loan) Forwarded to State Treasurer
22 Notice of Bond Sale (Private Placement) Sent to Local Paper and Kansas Register, if needed
23 Draft Bond Ordinance and Resolution Distributed
28 & 29 Notice of Bond Sale (Private Placement) Published in Local Paper and Kansas Register, Respectively, if needed
30 Finalize New Project Borrowing Amount
- APR** 2 Comments Due on Preliminary Official Statement
3 Preliminary Official Statement Sent to Potential Investors
6 Comments Due on Draft Bond Ordinance and Resolution
11 Bonds Offered to Investors
12 Pass Bond Ordinance and Resolution
13 Bond Ordinance Forwarded to Local Paper
Transcript Assembly Begins
16 Final Official Statement to Printer
Receive Final Official Statement from Printer
18 Bond Ordinance Published in Local Paper
30 Registration Instructions to State Treasurer
Bond Printing Complete - Bonds Forwarded to State Treasurer
Transcript Assembly Complete
Transcript Forwarded to Attorney General
- MAY** 1 Closing Memorandum Distributed
7 Transcript Approved
Bond Registration Complete - Bonds Forwarded to DTC
8 Closing and Delivery of Funds
Prior Bonds (USDA Loan) Repaid

FEBRUARY						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29			

MARCH						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

APRIL						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

MAY						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

February 13, 2012

Note: Bold items indicate actions of City Council

Kansas Forest Service

1901 E. 95th St. S.
Haysville, KS 67060-8351
316-788-0492, ext. 202
Fax: 316-788-3844
<http://www.kansasforests.org>

February 20, 2012

TO: Kansas TCUSA Communities

FROM: Tim McDonnell, Comm. Forestry Coordinator, Kansas Forest Service *mt*

RE: 2011 Kansas TCUSA Community Recognition Day

I first would like to congratulate your community for being recognized as an Arbor Day Foundation's Tree City USA Community for the year 2011. The Kansas Forest Service appreciates your participation in this program and the importance you continue to place on our Community Forestry resources. This year marks the 36th anniversary of the TCUSA program in Kansas.

Secondly, I would like to invite you to attend the upcoming TCUSA Recognition Day and Pre-Tours in Derby, KS on March 27- 28th. It is titled "Celebrating Kansas Community Forestry" and will be held at the Derby Community Center (Derby City Hall) and the John C. Pair Horticulture Center in Haysville, KS. On March 27th, we will meet at the John C. Pair Horticulture Center at 1 pm and will tour the centers tree trials till 3:30 pm. On March 28th the TCUSA Recognition Day will begin with registration and continental breakfast at 8:00 to 9:00 am. Along with the usual lunch (catered) and the awards ceremony we will have presentations by Dr. Jason Griffin, Woody Plant Specialist with KSRE; Kim Bomberger, Sabina Dhungana and Tim McDonnell from KFS; and Eric Berg, Community Forestry Program Leader with NFS. You will find more details and the agenda in the registration brochure that is enclosed. When registering, please note whether you are attending one or both days. You will notice that this is a two day event, and a block of 20 rooms have been reserved for the night of the 27th at the Haysville Sleep Inn at 651 E. 71st St. South, Haysville, KS, for a special state rate of \$75.00 plus tax. To make reservations call 316-425-6077 and be sure to mention Tree City USA. Rooms will be held till March 13th. This is a brand new hotel at the intersection of 71st St. South and the Haysville KTA exit # 39 and provides a free breakfast and wifi.

Please consider joining the other 100 plus TCUSA communities in Kansas for the day. Hope to see you in Derby for the meals, sharing with peers, speaker's presentations, and TCUSA awards. **Please be sure to have your registration form in by the due date of March 20th.** If you have any questions please give Tim McDonnell a call at 316-788-0492 or timcdonne@ksu.edu. Again, I would like to say 'Thank You' for all that you do for our Community Forestry resource in Kansas.



2011 Kansas - Tree City & Tree Line USA's

Tree City USA

Abilene	20	Junction City	36	Sedgwick	13
Anthony	27	Kansas City	4	Shawnee	15
Arkansas City	18	Kiowa	16	Spring Hill	16
Atchison	30	Lake Quivira	17	St. John	16
Atwood	16	Lansing	12	Topeka	26
Augusta	7	Lawrence	34	Troy	15
Baldwin City	9	Leavenworth	18	Udall	2
Bel Aire	16	Leawood	16	Valley Center	17
Beloit	35	Lenexa	24	Valley Falls	17
Blue Rapids	30	Liberal	29	Wakeeney	23
Bonner Springs	26	Lindsborg	27	Waterville	35
Burlingame	1	Louisburg	15	Westwood	24
Burlington	19	Lyons	7	Westwood Hills	15
Chanute	33	Lyndon	11	Wichita	26
Chapman	4	Maize	14	Windom	19
Clay Center	36	Manhattan	35	Winfield	32
Clyde	10	Marquette	17		
Colby	9	Marysville	32		
Council Grove	16	McConnell AFB	18		
De Soto	10	McPherson	34		
Derby	19	Merriam	27		
Dodge City	36	Mission	10		
Effingham	17	Mission Hills	20		
El Dorado	19	Morrill	7		
Emporia	26	Mount Hope	6		
Fairway	27	Mulvane	21		
Formoso	27	Newton	36		
Ft. Riley	25	Olathe	29		
Garden City	34	Osage City	21		
Gardner	9	Osawatomie	7		
Goodland	33	Oskaloosa	17		
Great Bend	29	Oswego	22		
Greensburg	4	Ottawa	13		
Halstead	34	Overland Park	33		
Harper	15	Paola	8		
Haven	32	Park City	13		
Hays	33	Parsons	23		
Haysville	12	Phillipsburg	25		
Herington	23	Pittsburg	7		
Hesston	27	Prairie Village	15		
Hiawatha	12	Roeland Park	19		
Hutchinson	18	Rose Hill	8		
		Russell	26		
		Salina	22		

Tree Line USA

Westar Energy 13

Campus Line USA

Baker University 2



“Kansas Communities Celebrating Trees”





STAFF AGENDA MEMORANDUM

DATE OF MEETING: March 8, 2012

AGENDA ITEM: **Community Fisheries Assistance Program**

PRESENTER: Don Cawby, City Manager

ISSUE SUMMARY: Last week, we received a letter from the Kansas Department of Wildlife, Parks and Tourism (KDWPT) requesting our full participation in the Communities Fisheries Assistance Program. We currently have 24 acres of water enrolled in the program between City Lake and Beaver Lake. However, we participate at the “Basic” level, which allows us to continue to charge permits for fishing the lake. KDWPT is requesting our participation at the “Enhanced” level which would allow the City to receive an annual lease payment of \$1,030. The City would also receive greater priority for competitive grant funding.

To participate at the “Enhanced” level, the City would have to waive all local fishing permits and open the lakes to the general public. In 2010, the City collected \$744.50 in fishing permits and \$966.00 in 2011.

I have attached two letters I have received from the Department’s District Fisheries Biologist, Andrew Jansen.

COUNCIL ACTION NEEDED: Review, discuss and provide direction to staff.

STAFF RECOMMENDATION TO COUNCIL: Approve the request and direct staff to draft the necessary documents for inclusion in the program.

Kansas City District Office
8304 Hedge Lane Terr.
Shawnee, KS 66227



Phone: 913-422-1314
Fax: 913-422-1439
www.kdwpt.state.ks.us

Robin Jennison, Secretary

Sam Brownback, Governor

February 28, 2012

Don Cawby
P.O. Box 37
Osawatomie, KS 66064

Mr Cawby:

The City of Osawatomie currently has 24 acres of water enrolled in Kansas Department of Wildlife, Parks & Tourism's (KDWPT) Basic Community Fisheries Assistance Program. Under this program, KDWPT assists the city of Osawatomie with fisheries management of Osawatomie City Lake and Beaver Lake, but the city still charges a city fishing permit for anglers to fish these waters. Due to the required city fishing permit, these lakes receive less priority for fisheries management activities, grant consideration, and fish stocking by KDWPT. We are hoping that you will consider upgrading your involvement from a Basic program cooperator to an Enhanced program cooperator.

As an Enhanced program cooperator, you will receive an annual lease payment from KDWPT to remove your fishing fees and allow public fishing access. The lease payment amount is based upon the current revenue generated from your city fishing permit or a calculated rate based upon surface acreage of your waters. The minimum annual lease payment you would receive would be \$1,030. In addition to the annual lease payment, you would receive more priority for fisheries management activities such as fish population sampling, habitat management, and fish stocking. You would also receive more priority for KDWPT's competitive grant funding. For example, in 1997 KDWPT partnered with the City on a \$7500 project that resulted in the fishing pier at Osawatomie City Lake. We believe the benefits of the Enhanced Community Fisheries Assistance Program far outweigh the revenue generated from the city fishing permits.

We hope that you will consider upgrading your involvement in the Community Fisheries Assistance Program. We would like the opportunity to discuss this endeavor with you further. Please feel free to contact me at anytime to set up an appointment.

Thank you for your consideration and we look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script that reads "Andrew C. Jansen".

Andrew C. Jansen
Kansas City District Fisheries Biologist
Kansas Department of Wildlife, Parks & Tourism
8304 Hedge Lane Terrace
Shawnee, KS 66227
913-422-1314 ext. 111
andrew.jansen@ksoutdoors.com

Kansas City District Office
8304 Hedge Lane Terr.
Shawnee, KS 66227



Phone: 913-422-1314
Fax: 913-422-1439
www.kdwpt.state.ks.us

Robin Jennison, Secretary

Sam Brownback, Governor

March 5, 2012

Don Cawby
P.O. Box 37
Osawatomie, KS 66064

Mr Cawby:

RE: Community Fisheries Assistance Program

Thank you for getting back to me in regards to the Community Fisheries Assistance Program (CFAP). I hope that we can work together to upgrade the City of Osawatomie's involvement in the CFAP program.

You mentioned that there may be some concern in regards to a small group that is trying to establish a swimming beach at Osawatomie City Lake. The City's involvement in CFAP would have no impact on establishment of a swimming beach. CFAP only leases the fishing rights to the property; development of the property around the lake is up to your discretion. If you would like insight from a fisheries perspective on the establishment of a swimming beach at Osawatomie City Lake, we would be happy to discuss our suggestions with you.

The other concern about the CFAP program was control of the water usage. The City of Osawatomie would maintain control of the water usage despite involvement in CFAP. The only potential problem with water use would be if the lake water level was drained to the point where it could no longer support a fishery. Regular water level fluctuations in regards to golf course management are acceptable.

Thank you for your consideration and if you have any additional questions or concerns, please feel free to contact me at anytime.

Sincerely,

Andrew C. Jansen
Kansas City District Fisheries Biologist
Kansas Department of Wildlife, Parks & Tourism
8304 Hedge Lane Terrace
Shawnee, KS 66227
913-422-1314 ext. 111
andrew.jansen@ksoutdoors.com



MEMORANDUM

To: Mayor and City Council
From: Don Cawby, City Manager
Re: **Projects & Issues Update**
Date: March 8, 2012

Projects

Mold Abatement. We have received a proposal from American Metropolitan Environmental, Inc., a mold inspection company from Wichita. We are currently evaluating the proposal and the price. If we think it is reasonable, we will move forward. If not, we will look into other options.

Street Rating. The street rating is completed and I plan to start CIP and street discussions in April. At the next meeting, I plan to have a spreadsheet for you with the basic rating information.

Grass and Leaves Disposal and Recycling Changes. I will get a press release out tomorrow or the next day about the changes in the grass and leaves disposal and the move to Monday only recycling. I signed an addendum to the contract with L&K late last week to implement these changes.

Storm water. Today I attended a web/phone conference in Lawrence hosted by BG Consulting. They discussed the current storm water regulations and the changes that may be coming. I found it very educational and it will help me as we plan our budget and future projects.

Issues

Golf Course Lease-Purchase Refinancing. I bumped this issue back to the next meeting so we can make sure we get the paperwork right on our end.

CIP Plan/2013 Budget. At the next meeting I will present a budget calendar for this year, so you can plan around the discussions and process for getting everything done by early August.

Auditors. The auditors will be in the office next week and I hear that they work out of my office. So I want to offer all of you fair warning that I probably will be finding other places to work or try to get out of the office a little more next week.

Reorganization. Although I don't have an organization chart ready for you yet, we have made significant strides in trying to reorganize to accommodate the planned operational changes. One of those changes is the retirement of Dennis Davey from the sewer plant. Dennis will have a reception next Thursday and his last day will be Friday the 16th. For the short term, Bruce Hurt will be in charge of the plant since he is the only licensed operator we have. As part of our reorganization, Stewart Kasper

will move over the sewer plant three days a week and Johnny Rayl will assist Bruce at the plant the other two days. Stewart will be taking the classes and tests to get his Wastewater Operator 3 license within the next year. We also may seek some level of licensure for Johnny as a backup as well.

In order to implement full changes, I have asked our staff to look at what automation we can do at the water plant to eliminate some on-site staffing hours at the water plant. There are varying degrees of automation, so we will look at numerous options and see what we can do to free up resources at the plant to improve our efficiency.

Also, we have moved Eric Draper from the golf course to become the Parks Supervisor under the Parks and Recreation Department. Eric will be in charge of all the City's parks and will operate a large mowing crew this summer which will be over most of the City's mowing responsibilities. We hope that by bringing some contract mowing in house, along with using 8-10 temporary positions with the City this summer for mowing and some street work, we will be maximizing our workload during the time when we need bodies.

Key Account-Energy Consulting Agreement. For the next meeting, I will be bringing in Scott Shreve, and possibly his partner, Greg Wright, from EMG, Inc. Scott's background was 16 years with Westar Energy where he managed wholesale municipal accounts in the southern half of Kansas and he has negotiated several new contracts for municipals in Kansas. Greg worked for Westar for 17 years in the retail key account program and with the main utility negotiator with large industrial customers.

As an electric utility provider we have three primary responsibilities to our customers. First, we must have reliable, affordable and efficient power. This includes operating our utility so that we are making the necessary improvements for the long-term viability of the utility. Two, we must work to minimize our expenses and maximize our efficiency to be competitive in the market place. Three, we must do our best to help our customers to reduce their energy usage and to reduce the amount of power we all buy.

With EMG's help, I believe we will have an educated voice to represent the City's interest at all EMP1 (Power Pool) meetings and to make sure we are getting the best deal possible for Osawatomie. Also, EMG can help us to evaluate the Sawvel study and assist us in the "business" decisions regarding the improvements that are recommended in the study. Finally, EMG will be able to help us work with some of our larger customers to find ways to manage loads and possibly reduce usage or demand charges. Called key account management in the industry, this is a service that is offered by most large utility providers but is also a service that EMG provides on a private basis to companies as well.

I have asked EMG to come meet with us on March 14 to do a walkthrough of our facilities and to meet with our staff. Without going into any more detail, I would like the Council to discuss an agreement with EMG and have provided a draft copy of that agreement tonight for your review in advance of the next meeting.

Recognition

Tree Board. Included in the packet is information on the City's designation for the 7th straight year as a Tree City USA. Our thanks go out to all the community volunteers and City staff that have worked for this designation.

Upcoming Meetings/Dates

March 14 Planning Commission Meeting and Training (7:00)
March 15 Dennis Davey Retirement Reception (1:00 – 3:00)
March 22 City Council Meeting/Work Session
April 12 City Council Meeting
April 26 City Council Meeting/Work Session

Manager's Out-of-town Schedule

March 19-21 Vacation (I hope!)

**KEY ACCOUNT AND ENERGY CONSULTING
AGREEMENT**

This Agreement entered into this ____ day of _____, 2012, by and between the CITY OF OSAWATOMIE ("City") and EMG ("EMG"):

WITNESSETH:

WHEREAS, the City of Osawatomie, hereinafter referred to as City, and EMG, hereinafter referred to as EMG, wish to document a consulting agreement by which EMG will provide certain services to City; and

WHEREAS, the City owns and operates a municipal electric and/or other municipal utility system and purchases electrical power from other utilities under contract and is in need of a consultant to advise the City on various utility issues plus assist the City in evaluating and optimizing their wholesale electric generation asset options; and

WHEREAS, the City owns and operates a municipal electric and/or other municipal utility system and provides these services to their retail customers and is in need of developing and implementing a Key Account program to advise the City on the terms of said relationships and to assist the City in finding new revenue sources; and

WHEREAS, EMG has experience in this area and has agreed to provide these services under the following terms and conditions:

1. Length of Agreement. The initial term of this Agreement shall be for a one (1) year period and then continue from year to year unless cancelled by either party with written notice prior one hundred twenty (120) days before the expiration of any term.
2. Scope of Services. EMG will use its best efforts to assist in the optimization of all City utilities. EMG will provide assistance in determining the cost of producing electricity from each City generating unit; review and summarize the City's load profile and the use of various scheduled energy resources; develop and implement Key Account strategies; support Supply Side management issues; provide energy audit support; and assist the organization and implementation of any "EMP 1" work.

The effort at the City power plant will encompass several aspects of the plant. One will be working with City personnel to determine the cost per mWh of each generator during the first hour, "full" run cycle, and last hour of operation. Lastly, EMG will collect data to determine load profile and review the scheduling pattern of the City's outside resources, and summarize the findings in a report to City personnel.

EMG will become involved with the City's retail rates and fuel adjustment calculations to verify the City's revenue requirements are being met on a monthly and yearly basis. Along the way, the Key Account effort will, in concert with City, enhance the existing marketing program to solidify City/customer relationships prior to deregulation of any certificated territory changes, increase the City's revenue base while improving their annual system load factor, and establish communication mechanisms to help streamline access to the City.

The Supply Side management work will include attracting and evaluating various short-term and long-term wholesale electrical power agreements capable of transmitting energy to the City of Osawatomie. EMG will review and analyze all proposals received by the City, whether EMG generates the proposals or not. The supply side support will also include reviewing the current suppliers monthly bills, marketing any of the City's excess generating resources, optimize current agreements, and help manage any power pool activities the City has involvement. EMG will support the City's natural gas management, both for operation of the City's generating plants and for the City's other customers.

EMG can perform energy audits on City customer(s) facilities to determine source of high-energy use equipment plus evaluate State sales tax exemption status for all qualified City customers. EMG will investigate the opportunities to increase the City's annual load factor by suggesting incentives to particular groups of customers that will benefit both the customer and the City. EMG will organize the "one point" of contact for the specific class of customers.

EMG is required under this agreement to disclose to the City if EMG has any ownership or other interest in any of the contracts that EMG either brings to the City or is asked to review on behalf of the City. Also, if a seller of either electricity or natural gas is paying any additional compensation to EMG, then EMG needs to disclose that arrangement to the City as part of the contract analysis.

3. Compensation for Services. Base fee for services for EMG will be the sum of \$1,000 a month. For this monthly retainer, EMG will perform all contract analysis, phone conferences with City staff, and provide each month, up to ten hours of work, at the City of Osawatomie or at another site on behalf of the City. If during the course of the month EMG performs more work than described above, then additional compensation will be paid by the City if authorized by the City on an hourly basis of \$120 per hour. In addition, mileage will be billed at the current Federal approved rate per mile for travel that is conducted solely for the benefit of City business.

4. Payment. The City shall process EMG's invoices for payment on a timely basis, which in a normal course of the City's business would be no more than 30 days.

Financial obligations incurred hereunder shall be paid from revenues derived from the electric and/or gas systems.

5. Termination and/or Default. An occurrence of any of the following events or conditions shall constitute an "Event of Default" providing for termination of the Agreement by either party:

(a) Failure of the City to pay or perform any obligation as required in this Agreement in a timely manner.

(b) Failure of EMG to perform any requested service within a reasonable period of time upon request by the City. It shall be deemed reasonable that the EMG can schedule a meeting or perform analysis of the contract within two (2) weeks of the requested analysis or scheduling of the meeting.

(c) Filing by EMG or City of a voluntary petition or any answer seeking a reorganization, arrangement, readjustment of its debts or for any other relief under any applicable bankruptcy law, act or insolvency action, now or hereafter existing.

(d) Filing of an involuntary petition against EMG or City in bankruptcy or seeking reorganization, arrangement or readjustment of its debts or for any other relief under any applicable bankruptcy law, act or insolvency action, now or hereafter existing.

6. Indemnification and Notice. EMG shall indemnify and hold City harmless for and against, and pay or reimburse City for any and all losses which are actually sustained or incurred as a result of and breach or non-performance of any obligation by EMG hereunder.

City shall indemnify and hold EMG harmless for and against, and pay or reimburse EMG for any and all losses, which are actually sustained or incurred as a result of and breach or non-performance of any obligation by City hereunder.

7. Waiver. A waiver by either party of any one or more defaults by the other hereunder shall not operate as a waiver of any other existing or future default or defaults, whether of a like or of a different character.

8. Assignment. This Agreement shall be binding upon and inure to the benefit of the successors, assigns and legal representatives of the parties hereto.

Neither party may assign its rights nor delegate its obligations under this Agreement without the prior written consent of the other party.

9. Notices. Except as herein otherwise provided, (specifically including Section 7.3) any notice, request, demand, statement, bill or payment provided for in this Agreement shall be deemed given when deposited in the United States mail, postage prepaid, directed to the post office address of the parties as follows:

To the City: City of Osawatomie
439 Main Street
Osawatomie, KS 66064
Attn: Don Cawby

To EMG: EMG
420 NE Lyman
Topeka, Kansas 66608
Attn: Scott S. Shreve

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF OSAWATOMIE, KANSAS

By: _____
Mayor

ATTEST:

City Clerk

EMG, Inc.

By: _____
Member

ATTEST:

Secretary

OSAWATOMIE CITY COUNCIL
WORK SESSION / MEETING AGENDA
March 22, 2012
7:00 p.m., Memorial Hall

WORK SESSION

- A. Call to Order
- B. Roll Call
- C. Work Session Items
 - 1. Budget Calendar (available at meeting)
- D. Adjournment of Work Session

REGULAR MEETING – 7:30 p.m.

- E. Call to Order
- F. Roll Call
- G. Approval of Agenda
- H. Council Items
 - 1. Refinancing of Golf Course Lease/Purchase Loan
 - 2. Location of City Fireworks Display at City Lake – Dan Macek & Mark Marquez
- I. City Manager Updates
- J. Adjournment of Regular Meeting

City of Osawatomie 2013 BUDGET CALENDAR

April 10 – CIP Plans Due to City Manager

Departments prepare prioritized 5-year CIP requests and 2013 equipment requests.

April 12 – Review Street Assessments at Regular Meeting

April 27 – Review CIP Plans in Work Session

APRIL 2012						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

May 10 – Budget Work Session #1 – General Funds Review

May 15 – Dept budget requests to City Manager

City Departments prepare requests for current services and enhancements

May 24 – Budget Work Session #2 – Utility Funds Review

MAY 2012						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

June 14 – Budget Work Session #3 – Other Funds, Revenue Estimates & Finance Policies

June 28 – Budget Work Session #4 – Follow-up, Salaries

Council reviews items flagged for follow up, plus items salary and wages issues.

JUNE 2012						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

July 12 – City Manager’s 2013 Recommended Budget Presentation

July 26 – Council Final Review

City Council makes any changes and publishes notice in paper to set public hearing.

JULY 2012						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Aug 5 – Last Day for Publishing Budget and Hearing Notice

Aug 15 – Last Day for Public Hearing on Budget

Aug 16 – Special Meeting – Public Budget Hearing

Aug 25 – Last Day for filing levies and budget with County Clerk

AUGUST 2012						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

	Admin Deadline
	Regular Meeting
	Special Meeting
	Statutory Deadline



STAFF AGENDA MEMORANDUM

DATE OF MEETING: March 22, 2012

AGENDA ITEM: **Golf Course Lease Purchase**

PRESENTER: Don Cawby, City Manager

ISSUE SUMMARY: In 2003, the City entered into a lease-purchase agreement with First Option Bank in the amount of \$170,000 for the purchase of irrigation equipment at the Osawatomie Golf Course. The original agreement was for 10 years at a rate of 6.0% with an annual payment of \$23,143.96.

In 2006, the principal amount of \$142,600.75 for the lease was refinanced with the following changes: (1) the amount of \$51,925 was added to the principal balance, (2) the interest rate was lowered to 5.75%, and (3) the term was extended to 15 years from the refinance date, essentially adding eight years to the original loan term. The payment under these terms was lowered to \$19,692.82.

With this refinance of the lease-purchase, the City will refinance a principal amount of \$147,514.11 at a rate of 3.25%. This refinance will not change the length of the term and the payment will be reduced by \$2,402.50 annually, for a total savings of \$22,565 over the remaining 10 years, including the additional loan origination fees.

COUNCIL ACTION NEEDED: Vote on the ordinance approving the lease purchase agreement.

STAFF RECOMMENDATION TO COUNCIL: Pass the ordinance authorizing the agreement.

LEASE WITH OPTION TO PURCHASE AGREEMENT

The Lease with Option to Purchase Agreement, dated as of March 23, 2012, by and between FIRST OPTION BANK, of Osawatomie, Kansas, hereinafter referred to as LESSOR, and CITY OF Osawatomie, KANSAS, a municipal Corporation, hereinafter referred to as LESSEE. Lessor desires to lease the Equipment described in Exhibit "A" to Lessee, and Lessee desires to lease the Equipment from Lessor subject to the terms and conditions of this Agreement which are set forth below.

I. Lessee Warranties

Section 1.1. Lessee represents, warrants and covenants as follows for the benefit of Lessor or its assignees:

- (a) Lessee is a public body corporate and politic and is duly organized and existing under the Constitution and laws of the State. Lessee will do or cause to be done all things necessary to preserve its existence as a body corporate and politic. Lessee is a political subdivision of the State within the meaning of Section 103(a) of the Internal Revenue Code of 1986, as amended, (the "Code") or a constituted authority authorized to issue obligations on behalf of a state or local government unit within the meaning of Treasury Regulation 1.103-1(b).
- (b) Lessee is authorized under the Constitution and laws of the State to enter into this Agreement. Lessee has duly authorized the execution and delivery of this Agreement by appropriate official action. Lessee has complied with all the proper procedures, regulations, requirements and actions of its governing body. The Officer of Lessee executing this Agreement has the authority to execute and deliver this Agreement. This Agreement constitutes a legal, valid, binding and enforceable obligation of the Lessee in accordance with its terms.
- (c) Lessee has complied with all public bidding laws and requirements and all other similar State or Federal laws which may be applicable to this Agreement.
- (d) Lessee will take no action that would cause the Interest Portion of the Rental Payments it pays to Lessor to become includible as gross

income for federal income tax purposes under the Internal Revenue Code of 1986.

- (e) Lessee shall use the Equipment only for traditional government purposes. Lessee shall not make any use the Equipment or any proceeds associated with the Equipment in any manner that would cause the creation of an unqualified "Private Activity Bond" as defined under Section 103(b)(1) of the "Code" or an "Arbitrage Bond" as defined under Section 103(b)(2) of the "Code".
- (f) Should Lessee fail to use the Equipment for traditional government purposes and IRS disallows the tax-exempt status of the Interest Portion of the Rental Payments as a result of such failure, then Lessee shall be required to pay additional sums to the Lessor or its assignees so as to bring the after tax yield on this Agreement to the same level as the Lessor or its assignees would attain if the transaction continued to be tax-exempt.
- (g) Lessee hereby designates the Agreement as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Internal Revenue Code of 1986. The aggregate face amount of all tax-exempt obligations (excluding private activity bonds other than qualified 501 (c)(3) bonds issued or to be issued by the Lessee and all subordinate entities thereof during the Issuance Year is not reasonably expected to exceed ten million (\$10,000,000) dollars.
- (h) Upon request by Lessor, Lessee will annually provide Lessor with current financial statements, budgets, proofs of appropriation for the ensuing budget year and such other financial information relating to the ability of Lessee to continue this Agreement.
- (i) Lessee has never non-appropriated funds under an Agreement similar to this Agreement.
- (j) Lessee warrants that there is no pending litigation in any tribunal which challenges Lessee's authority to enter into this agreement.

II. Acquisition of Equipment, Rental Payments, and the Purchase Option

Price

Section 2.1. Acquisition. Lessee shall order the Equipment, cause the Equipment to be delivered and installed and pay all costs connected therewith.

Section 2.2. Rental Payments. Lessee shall pay Rental Payments exclusively to Lessor or its assignees in lawful, legally available money of the United States of America. The payments shall be sent to the location specified by the Lessor or its assignees. The amount and date of each Rental Payment shall be paid as set forth on Exhibit "B".

Section 2.3. Rental Payments Constitute a Current Expense. Lessor and Lessee understand and intend that the obligations of the Lessee to pay Rental Payments under this Agreement shall constitute a current expense of Lessee for such budget year and shall not constitute an indebtedness under the statutory laws of the State. Nothing herein shall constitute a pledge by Lessee of any taxes or other moneys other than the moneys lawfully appropriated by Lessee in Lessee's annual budget.

Section 2.4 Purchase Option Price. Upon 30 days written notice and provided there is no Event of Default, Lessee shall have the option to pay the Purchase Option Price which corresponds to the current Payment Date set forth on Exhibit "B". If Lessee chooses this option and pays the Purchase Option Price to Lessor, then Lessor will transfer any and all of its rights, title and interest in the Equipment to Lessee as is, without warranty, express or implied, except that Lessor will warrant to Lessee that the Equipment is free and clear of any liens created by Lessor.

III. Non-Appropriation

Section 3.1. Non-Appropriation. If insufficient funds are available in Lessee's budget for the next budget year to make the Rental Payments for the next Renewal Term and the funds to make such Rental Payments are otherwise

unavailable by any means whatsoever, then Lessee shall have the option to non-appropriate the funds to pay the Rental Payments for the next Renewal Term. If Lessee chooses this option, then all obligations of the Lessee under this Agreement regarding Rental Payments for all remaining Renewal Terms shall be terminated at the end of the then current Original Term or Renewal Term without penalty, liability or expense to the Lessee of any kind. Lessee agrees that its Budget Officer or other person(s) in charge of preparing the annual budget shall include in its tentative budget the appropriation request for the funds to make the Rental Payments for the Equipment for the next Renewal Term.

Section 3.2. Notice. Lessee shall notify Lessor or its assignees ninety (90) days before the end of the then current Original Term or Renewal Term if Lessee has chosen not to appropriate the funds for the Rental Payments for the next Renewal Term. If Lessee chooses to non-appropriate the funds within ninety (90) days of the then current Original Term or Renewal Term, then Lessee shall notify Lessor or its assignees immediately after such decision is made.

Section 3.3. Lessee Intent. Lessee fully intends to budget and appropriate the funds necessary to pay all the Rental Payments for the original Term and each successive Renewal Term until all Rental Payments listed on Exhibit "B" have been paid. Lessee will use all reasonable and lawful means available to secure the appropriation of money for each successive Renewal Term.

IV. Insurance, Damage to Equipment, Insufficiency or Proceeds, Lessee Liability, Indemnification

Section 4.1. Insurance. Lessee shall maintain both casualty insurance and liability insurance at its own expense. Lessee shall be solely responsible for

selecting the insurer(s) and for making all premium payments and ensuring that all policies are continuously kept in effect during the period when Lessee is required to make Rental Payments.

- (a) Lessee shall insure the Equipment against any loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonable required by Lessor in an amount at least equal to the then applicable Purchase Price of the Equipment. Alternatively, Lessee may insure the Equipment under a blanket insurance policy or policies which cover not only the Equipment but also other properties.
- (b) The liability insurance shall insure Lessor from liability and property damage in any form and amount satisfactory to Lessor.
- (c) With Lessor's prior written consent, Lessee may self-insure against the casualty risks and liability risks described above.
- (d) All insurance policies issued or affected by this Section shall be so written or endorsed such that the Lessor and its assignees are named insureds and loss payees and that all losses are payable to Lessee and lessor or its assignees as their interests may appear. Each policy issued or affected by this Section shall contain a provision that the insurance company shall not cancel or materially modify the policy without first giving thirty (30) days advance notice to Lessor or its assignees. Lessees shall furnish to Lessor certificates evidencing such coverage throughout the Lease Term.

Section 4.2. Damage to or Destruction of Equipment. Lessee assumes the risk of loss or damage to the Equipment. If the Equipment or any portion thereof is lost, stolen, damaged or destroyed by fire or other casualty, Lessee will immediately report all such losses to all possible insurers and take the proper procedures to attain all insurance proceeds. Lessee and Lessor will cause the Net Proceeds of any insurance claim to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment. Alternatively, Lessee may apply the Net Proceeds towards the Purchase Option Price. Any balance of the Net Proceeds remaining after such work has been completed or after the Purchase

Option Price has been paid shall belong to Lessee. The term "Net Proceeds" shall mean the amount remaining from gross proceeds of any insurance payment after deducting all expenses, including attorney's fees, incurred in the collection thereof.

Section 4.3. Insufficiency of Net Proceeds. If there are no Net Proceeds for whatever reason or if the Net Proceeds are insufficient to pay in full the cost of any replacement, repair, restoration, modification or improvement of the Equipment, then lessee shall complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds. If Lessee chooses to apply the Net Proceeds to the Purchase Option Price and the Net Proceeds are insufficient to pay the Purchase Option Price, then Lessee shall pay the deficiency.

Section 4.4. Lessee Liability. Lessee assumes all risks and liabilities for injury to or death of any person or damage to any property in any manner arising out of the installation, operation, possession, storage or use of the Equipment whether such injury or death or property damage be with respect to agents or employees of Lessee or with respect to third parties.

Section 4.5. Indemnification. To the extent permitted by law, Lessee shall protect, hold harmless and indemnify Lessor and its assignees from all liability, obligation, losses, claims and damage whatsoever, regardless of the cause thereof arising out or as a result of the entering into this Agreement, the ownership of the Equipment and the ordering, acquisition, installation, operation, possession, storage, or use of any item of the Equipment. This would include all expenses incurred by Lessor in defending any claims or actions filed against them

including attorney fees. The indemnification arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

V. Maintenance, Permits, Licenses, Liens and Personal Property

Section 5.1. Maintenance. Lessee shall keep the Equipment in good repair and working order. Lessor shall have no obligation to inspect, test, service, maintain, repair or make improvements or additions to the Equipment under any circumstances. Upon the request of Lessor, Lessee will enter into a maintenance contract for the Equipment with Vendor. Lessee will be liable for all damage to the Equipment, other than normal wear and tear, caused by Lessee, its employees or its agents.

Section 5.2. Permits, Licenses, Taxes and Utilities. Lessee shall obtain all permits and licenses necessary for the installation, operation, possession, storage or use of the Equipment. Lessee shall pay all taxes and other charges of any kind which are lawfully assessed against or with respect to the Equipment. Lessee shall pay all gas, water, steam, electricity, heat, power and other charges incurred in the installation operation, possession, storage or use of the Equipment. Lessee shall pay all other charges lawfully made by and governmental body that may be secured by a lien or encumbrance of the Equipment.

Section 5.3 Liens or Encumbrances. Lessee shall not during the term of this Agreement create, incur or assume any levies, liens and encumbrances of any kind except those created by this Agreement. Lessee shall take all proper measures to promptly release any levies, liens or encumbrances against the

Equipment. Lessee shall be liable to Lessor for any costs incurred by Lessor in discharging such levies, liens or encumbrances.

Section 5.4. Personal Property. The Equipment is and shall at all times be and remain personal property regardless whether Equipment or any part thereof may become in any manner affixed or attached to real property.

Section 5.5 Inspection of Equipment. Lessee shall allow Lessor to examine and inspect the Equipment at all reasonable times.

VI. Title and Security Interest

Section 6.1. Title. Title to the Equipment shall vest in Lessee when Lessee acquires and accepts the Equipment. Title to the Equipment will automatically revert back to the lessor in the event Lessee non-appropriates or in the event Lessee defaults. In either of such events, Lessee shall execute and deliver to lessor such documents as Lessor may request to evidence the passage of legal title to the Equipment to Lessor. Once title reverts back to Lessor, lessee has no further interest in the Equipment.

Section 6.2 Security Interest. To secure the payment of all Lessee's obligations under this Agreement, Lessee hereby grants to Lessor a Security Interest under this Agreement, Lessee hereby grants to Lessor a Security Interest under the Uniform Commercial Code constituting a first lien on the Equipment described more fully on Exhibit "A". The security interest established by this section includes not only all additions, attachments, repairs and replacements to the Equipment, but also all proceeds therefrom. Lessee agrees to execute such additional documents which Lessor deems necessary or appropriate to establish

and maintain its security interest and the security interest of any assignee of Lessor in the Equipment.

VII. Warranties.

Section 7.1. Lessee Assumes Responsibility. The Equipment and the Vendor have been selected by Lessee. Lessor shall have no responsibility for the selection of the Equipment, its suitability for the use intended by Lessee, the acceptance by the Vendor or its sales representative of the order submitted, or any delay or failure by the Vendor or its sales representative to manufacture, deliver or install the Equipment for use by Lessee.

Section 7.2. Disclaimer of Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE ARISING OUT OF THE INSTALLATION, OPERATION, POSSESSION, STORAGE OR USE OF THE EQUIPMENT BY LESSEE. LESSEE'S SOLE REMEDY FOR THE BREACH OF SUCH WARRANTIES SHALL BE AGAINST THE VENDOR OF THE EQUIPMENT AND NOT THE LESSOR.

VII. Default

Section 8.1. Events of Default Defined. The following events shall constitute an "Event of Default" under this Agreement:

- (a) Failure by Lessee to pay any Rental Payment listed on Exhibit "B" for ten (10) days after such payment is due according to the Payment Date listed on Exhibit "B".
- (b) Failure to pay any other payment required to be paid under this Agreement at the time specified herein and a continuation of said failure for a period of three (3) days after telephonic notice by Lessor that such payment must be made. If Lessee continues to fail to pay any payment after the three day telephonic notice by Lessor that such payment must be made. If Lessee continues to fail to pay any payment after the three day telephonic notice expires, then Lessor may, but will not be obligated to, make such payments and charge Lessee for all costs incurred plus interest at the highest lawful rate.
- (c) Failure by Lessee to observe and perform any covenant, condition, promise or duty under this Agreement for a period of thirty (30) days after written notice specifying such failure is given to Lessee by Lessor, unless Lessor agrees in writing to an extension of time. Lessor will not unreasonably withhold its consent to an extension of time if corrective action is instituted by lessee. Subsection (c) does not apply to Rental Payments and other payments discussed above.
- (d) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement which proves to be false, incorrect or misleading on the date when made regardless of Lessee's intent and which materially adversely affects the rights or security of Lessor under this Agreement.
- (e) Any provision of this Agreement which ceases to be valid for whatever reason and the loss of such provision would materially adversely affect the rights or security of Lessor.
- (f) Lessee admits in writing its inability to pay its obligations. Lessee defaults on one or more of its other obligations. Lessee applies or consents to the appointment of a receiver or a custodian to manage its affairs. Lessee makes a general assignment for the benefit of creditors.

Section 8.2. Remedies on Default. Whenever any Event of Default exists, Lessor shall have the right to take one or any combination of the following remedial steps:

- (a) With or without terminating this Agreement, Lessor may declare all Rental Payments and other amounts payable by Lessee hereunder to the end of the then current Budget Year to be immediately due and payable.

(b) With or without terminating this Agreement, Lessor may require Lessee to promptly redeliver any or all of the Equipment to Lessor. For such portions of the Equipment freight prepaid on board a carrier as Lessor shall specify to the location specified by Lessor. For equipment which cannot be easily packaged and shipped, Lessee shall deliver the Equipment at Lessee's cost to such place within the State as Lessor shall specify. If Lessee fails to redeliver the Equipment, Lessor may enter the premises where the Equipment is located and retake possession of the Equipment and charge Lessee for cost incurred. Notwithstanding that Lessor has taken possession of the Equipment, Lessee shall still be obligated to pay the remaining Rental Payments due up until the end of the then current Original Term or Renewal Term. Lessee will be liable for any damage to the Equipment caused by Lessee or its employees or agents.

(c) Lessor will have the right to resell or release the Equipment. If Lessor releases the Equipment for an amount less than the amount they received from Lessee, then Lessor can continue to hold the Lessee liable for the difference in payments up until the end of the then current Original Term or Renewal Term. If Lessor sells the Equipment for an amount less than the then applicable Purchase Option Price, then Lessor can hold Lessee liable for as much of the deficiency as can be paid from the aggregate of the remaining payments in the then current Original Term or Renewal Term.

(d) Lessor may take whatever action at law or in equity that may appear necessary or desirable to enforce its rights as the owner of the Equipment.

Section 8.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or shall be construed to be a waiver thereof.

Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives.

Section. 8.4. Kansas Statutory Requirements.

- (A) The amount or capital cost required to purchase the Equipment if paid for by cash is \$147,514.11.
- (B) The annual average effective interest cost is 3.25% (3.513% APR).
- (C) The amount included in the payments for service, maintenance, insurance or other charges exclusive of the capital cost and interest cost is \$-0-.

Philip A. Dudley, Mayor

Ann Elmquist, City Clerk

Mark K. Fuchs, Senior Vice President

FIRST OPTION BANK
Osawatomie, Kansas

Exhibit "A"
To Lease with Option to Purchase

City of Osawatomie

All Equipment; whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and accounts proceeds)

EXHIBIT B AMORTIZATION SCHEDULE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$147,514.11	03-23-2012	10-01-2021	17316	054		MKF	
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.							

Borrower: City of Osawatomie, Kansas
439 Main
Osawatomie, KS 66064

Lender: FIRST OPTION BANK
601 MAIN
P O BOX 277
OSAWATOMIE, KS 66064

Disbursement Date: March 23, 2012
Interest Rate: 3.250

Repayment Schedule: Installment
Calculation Method: 365/360 U.S. Rule

Payment Number	Payment Date	Payment Amount	Interest Paid	Principal Paid	Remaining Balance
1	10-01-2012	17,290.32	2,556.91	14,733.41	132,780.70
2	10-01-2013	17,290.32	4,375.31	12,915.01	119,865.69
3	10-01-2014	17,290.32	3,949.74	13,340.58	106,525.11
4	10-01-2015	17,290.32	3,510.15	13,780.17	92,744.94
5	10-01-2016	17,290.32	3,064.45	14,225.87	78,519.07
6	10-01-2017	17,290.32	2,587.31	14,703.01	63,816.06
7	10-01-2018	17,290.32	2,102.83	15,187.49	48,628.57
8	10-01-2019	17,290.32	1,602.38	15,687.94	32,940.63
9	10-01-2020	17,290.32	1,088.41	16,201.91	16,738.72
10	10-01-2021	17,290.32	551.60	16,738.72	0.00
TOTALS:		172,903.20	25,389.09	147,514.11	

NOTICE: This is an estimated loan amortization schedule. Actual amounts may vary if payments are made on different dates or in different amounts.

GOVERNMENTAL CERTIFICATE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$147,514.11	03-23-2012	10-01-2021	17316	054		MKF	
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.							

Entity: City of Osawatomie, Kansas
439 Main
Osawatomie, KS 66064

Lender: FIRST OPTION BANK
601 MAIN
P O BOX 277
OSAWATOMIE, KS 66064

I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT:

THE ENTITY'S EXISTENCE. The complete and correct name of the governmental entity is City of Osawatomie, Kansas ("Entity"). The Entity is a governmental entity which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws and regulations of the State of Kansas. The Entity has the full power and authority to own its properties and to transact the business and activities in which it is presently engaged or presently proposes to engage. The Entity maintains an office at 439 Main, Osawatomie, KS 66064. The Entity shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of the Entity and any other governmental or quasi-governmental authority or court applicable to the Entity and the Entity's business activities.

CERTIFICATES ADOPTED. At a meeting of the appropriate governing body of the Entity, duly called and held on **March 9, 2012**, at which a quorum was present and voting, or by other duly authorized action in lieu of a meeting, the resolutions set forth in this Certificate were adopted.

OFFICIALS. The following named persons is an Officials of City of Osawatomie, Kansas:

<u>NAMES</u>	<u>TITLES</u>	<u>AUTHORIZED</u>	<u>ACTUAL SIGNATURES</u>
Philip A. Dudley	Mayor	Y X	
Ann Elmquist	City Clerk	Y X	

ACTIONS AUTHORIZED. Any one (1) of the authorized persons listed above may enter into any agreements of any nature with Lender, and those agreements will bind the Entity. Specifically, but without limitation, any one (1) of such authorized persons is authorized, empowered, and directed to do the following for and on behalf of the Entity:

Borrow Money. To borrow, as a cosigner or otherwise, from time to time from Lender, on such terms as may be agreed upon between the Entity and Lender, such sum or sums of money as in their judgment should be borrowed, without limitation.

Execute Notes. To execute and deliver to Lender the promissory note or notes, or other evidence of the Entity's credit accommodations, on Lender's forms, at such rates of interest and on such terms as may be agreed upon, evidencing the sums of money so borrowed or any of the Entity's indebtedness to Lender, and also to execute and deliver to Lender one or more renewals, extensions, modifications, refinancings, consolidations, or substitutions for one or more of the notes, any portion of the notes, or any other evidence of credit accommodations.

Grant Security. To mortgage, pledge, transfer, endorse, hypothecate, or otherwise encumber and deliver to Lender any property now or hereafter belonging to the Entity or in which the Entity now or hereafter may have an interest, including without limitation all of the Entity's real property and all of the Entity's personal property (tangible or intangible), as security for the payment of any loans or credit accommodations so obtained, any promissory notes so executed (including any amendments to or modifications, renewals, and extensions of such promissory notes), or any other or further indebtedness of the Entity to Lender at any time owing, however the same may be evidenced. Such property may be mortgaged, pledged, transferred, endorsed, hypothecated or encumbered at the time such loans are obtained or such indebtedness is incurred, or at any other time or times, and may be either in addition to or in lieu of any property theretofore mortgaged, pledged, transferred, endorsed, hypothecated or encumbered.

Execute Security Documents. To execute and deliver to Lender the forms of mortgage, deed of trust, pledge agreement, hypothecation agreement, and other security agreements and financing statements which Lender may require and which shall evidence the terms and conditions under and pursuant to which such liens and encumbrances, or any of them, are given; and also to execute and deliver to Lender any other written instruments, any chattel paper, or any other collateral, of any kind or nature, which Lender may deem necessary or proper in connection with or pertaining to the giving of the liens and encumbrances. Notwithstanding the foregoing, any one of the above authorized persons may execute, deliver, or record financing statements.

Negotiate Items. To draw, endorse, and discount with Lender all drafts, trade acceptances, promissory notes, or other evidences of indebtedness payable to or belonging to the Entity or in which the Entity may have an interest, and either to receive cash for the same or to cause such proceeds to be credited to the Entity's account with Lender, or to cause such other disposition of the proceeds derived therefrom as they may deem advisable.

Further Acts. In the case of lines of credit, to designate additional or alternate individuals as being authorized to request advances under such lines, and in all cases, to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements, including agreements waiving the right to a trial by jury, as the Officials may in their discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Certificate.

ASSUMED BUSINESS NAMES. The Entity has filed or recorded all documents or filings required by law relating to all assumed business names used by the Entity. Excluding the name of the Entity, the following is a complete list of all assumed business names under which the Entity does business:
None.

NOTICES TO LENDER. The Entity will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (A) change in the Entity's name; (B) change in the Entity's assumed business name(s); (C) change in the structure of the Entity; (D) change in the authorized signer(s); (E) change in the Entity's principal office address; (F) change in the Entity's principal residence; or (G) change in any other aspect of the Entity that directly or indirectly relates to any agreements between the Entity and Lender.

CERTIFICATION CONCERNING OFFICIALS AND CERTIFICATES. The Officials named above is duly elected, appointed, or employed by or for the Entity, as the case may be, and occupy the positions set opposite their respective names. This Certificate now stands of record on the books of the Entity, is in full force and effect, and has not been modified or revoked in any manner whatsoever.

CONTINUING VALIDITY. Any and all acts authorized pursuant to this Certificate and performed prior to the passage of this Certificate are hereby ratified and approved. This Certificate shall be continuing, shall remain in full force and effect and Lender may rely on it until written notice of its revocation shall have been delivered to and received by Lender at Lender's address shown above (or such addresses as Lender may designate from

**GOVERNMENTAL CERTIFICATE
(Continued)**

Loan No: 17316

Page 2

time to time). Any such notice shall not affect any of the Entity's agreements or commitments in effect at the time notice is given.

IN TESTIMONY WHEREOF, I have hereunto set my hand and attest that the signatures set opposite the names listed above is their genuine signatures.

I have read all the provisions of this Certificate, and I personally and on behalf of the Entity certify that all statements and representations made in this Certificate are true and correct. This Governmental Certificate is dated March 23, 2012.

CERTIFIED TO AND ATTESTED BY:

X _____
Philip A. Dudley, Mayor of City of Osawatomie,
Kansas

NOTE: If the Officials signing this Certificate is designated by the foregoing document as one of the officials authorized to act on the Entity's behalf, it is advisable to have this Certificate signed by at least one non-authorized official of the Entity.

DISBURSEMENT REQUEST AND AUTHORIZATION

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$147,514.11	03-23-2012	10-01-2021	17316	054		MKF	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.

Borrower: City of Osawatomie, Kansas
439 Main
Osawatomie, KS 66064

Lender: FIRST OPTION BANK
601 MAIN
P O BOX 277
OSAWATOMIE, KS 66064

LOAN TYPE. This is a Fixed Rate (3.250%) Nondisclosable Loan to a Government Entity for \$147,514.11 due on October 1, 2021.

PRIMARY PURPOSE OF LOAN. The primary purpose of this loan is for:

- Personal, Family, or Household Purposes or Personal Investment.
- Business (Including Real Estate Investment).

SPECIFIC PURPOSE. The specific purpose of this loan is: refinance loan that was to refinance golf course equipment.

DISBURSEMENT INSTRUCTIONS. Borrower understands that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of \$147,514.11 as follows:

Other Disbursements:	\$146,054.11
\$146,054.11 Outstanding Principal and Interest	
Total Financed Prepaid Finance Charges:	\$1,460.00
\$1,460.00 Origination	
Note Principal:	\$147,514.11

FINANCIAL CONDITION. BY SIGNING THIS AUTHORIZATION, BORROWER REPRESENTS AND WARRANTS TO LENDER THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT AND THAT THERE HAS BEEN NO MATERIAL ADVERSE CHANGE IN BORROWER'S FINANCIAL CONDITION AS DISCLOSED IN BORROWER'S MOST RECENT FINANCIAL STATEMENT TO LENDER. THIS AUTHORIZATION IS DATED MARCH 23, 2012.

BORROWER:

CITY OF OSAWATOMIE, KANSAS

By: _____
Philip A. Dudley, Mayor of City of Osawatomie,
Kansas

By: _____
Ann Elmquist, City Clerk of City of Osawatomie,
Kansas

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OSAWATOMIE, KANSAS,
AUTHORIZING THE EXECUTION OF A LEASE PURCHASE AGREEMENT
BY THE CITY TO PROVIDE FOR THE FINANCING OF CERTAIN
EQUIPMENT

WHEREAS, the Governing Body of the City of Osawatomie, Kansas (the "City"), according to K.S.A. 12-101 *et seq.* and K.S.A. 10-1116, has found it necessary to enter into a Lease Purchase Agreement to finance a portion of the costs of irrigation equipment on the municipal golf course (the "Equipment"), as more fully described in the Lease Purchase Agreement authorized by this Ordinance.

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

SECTION 1. Authorization of Lease Purchase Agreement. The Lease Purchase Agreement between the City and First Option Bank and providing for financing of the Equipment in substantially the form presented to the Governing Body on this date, is authorized and approved with such additions, revisions or corrections as may be approved by the Mayor and City Clerk. Their approval of any such changes shall be evidenced by their execution of the Lease Purchase Agreement.

SECTION 2. Execution of Lease Purchase Agreement. The Mayor and the City Clerk are authorized and directed to execute the Lease Purchase Agreement on behalf of the City and to execute any ancillary certificates or documents necessary to accomplish the purposes of this Ordinance and the Lease Purchase Agreement.

SECTION 3. Rental Payments. The Rental Payments required by the Lease Purchase Agreement shall be made from funds budgeted and appropriated for that purpose during the City's current budget year and other funds lawfully available to the City for such purpose, in accordance with the Lease Purchase Agreement, and as provided by law, and shall not be paid from any other moneys or sources (except to the extent paid from moneys attributable to proceeds from insurance policies, condemnation awards or awards resulting from defaults under certain circumstances).

SECTION 4. Non-Arbitrage Covenant. The City hereby covenants that so long as any of the Rental Payments remain outstanding and unpaid under the Lease Purchase Agreement, it will not make or permit use made of the proceeds from the Lease Purchase Agreement which, if such use had been reasonably expected on the date of execution and delivery, would have caused the Rental Payments to constitute "arbitrage bonds" within the meaning of Section 103(b)(2) of the Internal Revenue Code of 1986, as amended (the "Code"); and that it will comply with all applicable requirements of Section 148 of the Code and the applicable rules and regulations of

the United States Treasury Department for so long as any of the Rental Payments under the Lease Purchase Agreement remain outstanding and unpaid. The City hereby further covenants to take all such action in its power as may be required from time to time in order to assure the continued exclusion from gross income for the purpose of Federal income taxation of the interest component on the Rental Payments, and to comply with all provisions of the Code, as the same be amended, and any applicable rules and regulations of the United States Treasury Department under the Code.

SECTION 5. Designation as Qualified Tax-Exempt Obligations. The Governing Body of the City designates the Lease as a “qualified tax-exempt obligation” as defined in Section 265(b)(3) of the Code.

SECTION 6. Effective Date. This Ordinance shall be in force and take effect from and after its adoption and approval and its publication one time in the City’s official newspaper.

[Remainder of Page Intentionally Left Blank]

ADOPTED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas on March 22, 2012.

CITY OF OSAWATOMIE, KANSAS

By _____
Philip A. Dudley, Mayor

(SEAL)

ATTEST:

By _____
Ann Elmquist, City Clerk



STAFF AGENDA MEMORANDUM

DATE OF MEETING: March 22, 2012

AGENDA ITEM: Key Account and Energy Consulting Agreement with EMG

PRESENTER: Don Cawby, City Manager

ISSUE SUMMARY: As an electric utility provider we have three primary responsibilities to our customers. First, we must have reliable, affordable and efficient power. This includes operating our utility so that we are making the necessary improvements for the long-term viability of the utility. Two, we must work to minimize our expenses and maximize our efficiency to be competitive in the market place. Three, we must do our best to help our customers to reduce their energy usage and to reduce the amount of power we all buy.

Based upon my previous experience in running an electric utility and the numerous issues facing us both from a business and infrastructure perspective, I believe that it is imperative for us to bring into the City an advisor with significant experience in this very technical and ever-changing world of power markets. For these reasons, I recommend that we bring in EMG, to serve as the City's energy advisor.

Because we are such a small provider and don't have the ability to hire a full-time Utilities Director with the background necessary to advise the Council and me on these very difficult decisions, I am recommending we bring this capacity to our City through a contract with EMG. I consider this much the same as having a City Attorney that serves in an on-call capacity but is responsible to us to look out for our interests and bring issues to us.

With EMG's help, I believe we will have an educated voice to represent the City's interest at all EMP1 (Power Pool) meetings and to make sure we are getting the best deal possible for Osawatomie. Also, EMG can help us to evaluate the Sawvel study and assist us in the "business" decisions regarding the improvements that are recommended in the study. Finally, EMG will be able to help us work with some of our larger customers to find ways to manage loads and possibly reduce usage or demand charges.

At tonight's meeting, EMG will be represented by its two principals, Scott Shreve and Greg Wright. Scott's background was 16 years with Westar Energy where he managed wholesale municipal accounts in the southern half of Kansas and he has negotiated several new contracts for municipals in Kansas. Greg worked for Westar Energy for 17 years in the retail key account program and with the main utility negotiator with large industrial customers.

On March 14, Scott Shreve came to Osawatometie, met with City staff, visited the power plant, and met with Councilman Moon to discuss the advantages of an energy management contract for large power users. At the March 8 meeting, I provided you with a copy of the EMG contract for your review in advance of this meeting.

COUNCIL ACTION NEEDED: Review the contract and provide direction to staff.

STAFF RECOMMENDATION TO COUNCIL: Authorize the City Manager to enter into the agreement with EMG subject to the contract's review by the City Attorney.

**KEY ACCOUNT AND ENERGY CONSULTING
AGREEMENT**

This Agreement entered into this ____ day of _____, 2012, by and between the CITY OF OSAWATOMIE ("City") and EMG ("EMG"):

WITNESSETH:

WHEREAS, the City of Osawatomie, hereinafter referred to as City, and EMG, hereinafter referred to as EMG, wish to document a consulting agreement by which EMG will provide certain services to City; and

WHEREAS, the City owns and operates a municipal electric and/or other municipal utility system and purchases electrical power from other utilities under contract and is in need of a consultant to advise the City on various utility issues plus assist the City in evaluating and optimizing their wholesale electric generation asset options; and

WHEREAS, the City owns and operates a municipal electric and/or other municipal utility system and provides these services to their retail customers and is in need of developing and implementing a Key Account program to advise the City on the terms of said relationships and to assist the City in finding new revenue sources; and

WHEREAS, EMG has experience in this area and has agreed to provide these services under the following terms and conditions:

1. Length of Agreement. The initial term of this Agreement shall be for a one (1) year period and then continue from year to year unless cancelled by either party with written notice prior one hundred twenty (120) days before the expiration of any term.
2. Scope of Services. EMG will use its best efforts to assist in the optimization of all City utilities. EMG will provide assistance in determining the cost of producing electricity from each City generating unit; review and summarize the City's load profile and the use of various scheduled energy resources; develop and implement Key Account strategies; support Supply Side management issues; provide energy audit support; and assist the organization and implementation of any "EMP 1" work.

The effort at the City power plant will encompass several aspects of the plant. One will be working with City personnel to determine the cost per mWh of each generator during the first hour, "full" run cycle, and last hour of operation. Lastly, EMG will collect data to determine load profile and review the scheduling pattern of the City's outside resources, and summarize the findings in a report to City personnel.

EMG will become involved with the City's retail rates and fuel adjustment calculations to verify the City's revenue requirements are being met on a monthly and yearly basis. Along the way, the Key Account effort will, in concert with City, enhance the existing marketing program to solidify City/customer relationships prior to deregulation of any certificated territory changes, increase the City's revenue base while improving their annual system load factor, and establish communication mechanisms to help streamline access to the City.

The Supply Side management work will include attracting and evaluating various short-term and long-term wholesale electrical power agreements capable of transmitting energy to the City of Osawatomie. EMG will review and analyze all proposals received by the City, whether EMG generates the proposals or not. The supply side support will also include reviewing the current suppliers monthly bills, marketing any of the City's excess generating resources, optimize current agreements, and help manage any power pool activities the City has involvement. EMG will support the City's natural gas management, both for operation of the City's generating plants and for the City's other customers.

EMG can perform energy audits on City customer(s) facilities to determine source of high-energy use equipment plus evaluate State sales tax exemption status for all qualified City customers. EMG will investigate the opportunities to increase the City's annual load factor by suggesting incentives to particular groups of customers that will benefit both the customer and the City. EMG will organize the "one point" of contact for the specific class of customers.

EMG is required under this agreement to disclose to the City if EMG has any ownership or other interest in any of the contracts that EMG either brings to the City or is asked to review on behalf of the City. Also, if a seller of either electricity or natural gas is paying any additional compensation to EMG, then EMG needs to disclose that arrangement to the City as part of the contract analysis.

3. Compensation for Services. Base fee for services for EMG will be the sum of \$1,000 a month. For this monthly retainer, EMG will perform all contract analysis, phone conferences with City staff, and provide each month, up to ten hours of work, at the City of Osawatomie or at another site on behalf of the City. If during the course of the month EMG performs more work than described above, then additional compensation will be paid by the City if authorized by the City on an hourly basis of \$120 per hour. In addition, mileage will be billed at the current Federal approved rate per mile for travel that is conducted solely for the benefit of City business.

4. Payment. The City shall process EMG's invoices for payment on a timely basis, which in a normal course of the City's business would be no more than 30 days.

Financial obligations incurred hereunder shall be paid from revenues derived from the electric and/or gas systems.

5. Termination and/or Default. An occurrence of any of the following events or conditions shall constitute an "Event of Default" providing for termination of the Agreement by either party:

(a) Failure of the City to pay or perform any obligation as required in this Agreement in a timely manner.

(b) Failure of EMG to perform any requested service within a reasonable period of time upon request by the City. It shall be deemed reasonable that the EMG can schedule a meeting or perform analysis of the contract within two (2) weeks of the requested analysis or scheduling of the meeting.

(c) Filing by EMG or City of a voluntary petition or any answer seeking a reorganization, arrangement, readjustment of its debts or for any other relief under any applicable bankruptcy law, act or insolvency action, now or hereafter existing.

(d) Filing of an involuntary petition against EMG or City in bankruptcy or seeking reorganization, arrangement or readjustment of its debts or for any other relief under any applicable bankruptcy law, act or insolvency action, now or hereafter existing.

6. Indemnification and Notice. EMG shall indemnify and hold City harmless for and against, and pay or reimburse City for any and all losses which are actually sustained or incurred as a result of and breach or non-performance of any obligation by EMG hereunder.

City shall indemnify and hold EMG harmless for and against, and pay or reimburse EMG for any and all losses, which are actually sustained or incurred as a result of and breach or non-performance of any obligation by City hereunder.

7. Waiver. A waiver by either party of any one or more defaults by the other hereunder shall not operate as a waiver of any other existing or future default or defaults, whether of a like or of a different character.

8. Assignment. This Agreement shall be binding upon and inure to the benefit of the successors, assigns and legal representatives of the parties hereto.

Neither party may assign its rights nor delegate its obligations under this Agreement without the prior written consent of the other party.

9. Notices. Except as herein otherwise provided, (specifically including Section 7.3) any notice, request, demand, statement, bill or payment provided for in this Agreement shall be deemed given when deposited in the United States mail, postage prepaid, directed to the post office address of the parties as follows:

To the City: City of Osawatomie
439 Main Street
Osawatomie, KS 66064
Attn: Don Cawby

To EMG: EMG
420 NE Lyman
Topeka, Kansas 66608
Attn: Scott S. Shreve

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF OSAWATOMIE, KANSAS

By: _____
Mayor

ATTEST:

City Clerk

EMG, Inc.

By: _____
Member

ATTEST:

Secretary



MEMORANDUM

To: Mayor and City Council
From: Don Cawby, City Manager
Re: **Projects & Issues Update**
Date: March 22, 2012

Projects

Grass and Leaves Disposal. Yesterday, we hosted a joint meeting with KDHE, Miami County, Louisburg, Paola and us to discuss each jurisdiction's plans on disposal of grass and leaves. The meeting was at the request of KDHE and we learned a little more information about what might be possible locally for a composting site. However, it doesn't appear that any single jurisdiction can make this happen without some cooperative agreements. Furthermore, composting is going to cost us money whether done locally or hauled to the metro area. What we all seemed to agree to was to get through this year to see what are costs really are and then discuss later in the year to see what cost savings can be generated.

Brown & Pacific. Today, we had a meeting with our engineer, contractor, subcontractor and the City on the Brown & Pacific asphalt job. It was a very productive conversation and the result is that we expect to have a proposal back to us before the April 12 Council Meeting on how to resolve the asphalt issues. The contractor is looking at some options on the manhole issues, the excess asphalt in the gutters and general ride-ability issues.

Cemetery. We are down to only a couple of blocks (8 sites per block) available for sale at the cemetery. We sold two blocks this week. Steve Coffelt gave me a bid of around \$10,000 to finish the road around the new section. This is not something that was budgeted for this year or anticipated by me in my budget rework. During our CIP process for this year, I hope to identify a way to finance this project and make sure we still have lots available for sale.

Issues

Mosquito Spraying. In the next couple of weeks we will be putting the mosquito spraying notice in the paper. We will only run it once at the beginning of the season but we will get advanced notices on Facebook and the website throughout the summer.

Auditors. The auditors were here last week and things went very well for the first year with an auditor. We will be making some changes to our operations to accommodate some of the findings. Once we have those solutions figured out internally, we will share them with you.

Planning Commission. We conducted the first part of our two-part training for the planning commission last week. Because the discussion on the Special Use Permit went long, we ended up cutting this session short.

Legislative Issues. There have been a number of legislative issues this session that impact local government. I have tried not to get too worked up until something really started taking shape. Unfortunately, some of these issues are starting to get traction. A concealed carry change that passed the House would keep local governments from prohibiting guns at City facilities or at City meetings. Should this get passed we will have several big issues to consider, including staffing at City Council meetings, increasing security at City Hall, and several other changes.

The House also passed an exemption for sales tax on food and provided a local option to keep our tax on it. However, doing so would probably not be feasible. Also, the House passed a property tax lid, but approved LAVTR funding to offset it. Unfortunately, no local government would be eligible for the LAVTR funding unless the taxes levied by the City actually went down. It's hard to say what will really happen, but these will both have a fairly significant impact on our revenues in the future. The sales tax hit could be as much as 15% of our revenues.

The one positive change that actually passed was Sub HB 2166, a bill allows for summary publication of ordinances. It is expected to be signed by the Governor.

Upcoming Meetings/Dates

- April 3 City Elections
- April 12 City Council Meeting
- April 25 Planning Commission (tentative)
- April 26 City Council Meeting/Work Session

Manager's Out-of-town Schedule

- April 18-20 Transforming Local Government (TLG)/KACM Conference in Kansas City