OSAWATOMIE CITY COUNCIL
<u>REVISED</u> AGENDA
September 13, 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 August 9 & August 23 Council Meetings
   B. Approve September 13 Agenda
   C. Appropriation Ordinances 12-15 & 12-16

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. Ward Realignment

8. New Business
   A. Appointments
      i. Parks & Recreation Committee
      ii. League Voting Delegates & Alternates
   B. Proclamation – National Rehabilitation Awareness Week, September 16-22
   C. Resolution – Library Operations
   D. Ordinance – Summary Publication of Ordinances
   E. 2012 Standard Traffic Ordinance
   F. 2012 Uniform Public Offense Code
   G. Approve Bids for Skid Trencher

9. Council Reports
10. Mayor's Report
11. City Manager's Report
12. Executive Session – Non-elected Personnel
13. Adjournment

MEETING/WORK SESSION – September 27, 2012
REGULAR MEETING – October 11, 2012

Osawatomie, Kansas. **August 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, Farley, Govea, Hunter, LaDuex, Maichel, and Moon. Absent was Klein. Also present were City Manager Cawby and City Attorney Wetzler. Visitors were Kirk and Shelagh Wright, Robert Kerr, Webster Hawkins, Amanda Perry, and Travis Perry.

CONSENT AGENDA. Approval of the minutes of July 11, July 19, and July 26 Council Meetings, approval of August 14 Agenda, and approval of Appropriation Ordinances 12-13 & 12-14. Motion made by Hunter, seconded by LaDuex to approve the minutes of July 11, July 19, and July 26 Council Meetings, approval of August 14 Agenda, and approval of Appropriation Ordinances 12-13 & 12-14. Yeas: Dickinson, Farley, Govea, Hunter, LaDuex, and Maichel. Abstained: Moon. Motion passed.

Public Participation; Presentations:

Public Hearing:

PROPOSED 2013 BUDGET. Mayor Dudley opened the public hearing at 7:04 p.m. There were no comments from the public. Hearing was closed at 7:05 p.m.

Unfinished Business:

APPROVE INVOICE(S) FOR PACIFIC, 14TH, BROWN STREETS PROJECT – none.

New Business:

APPOINTMENTS. none

PROCLAMATION – BLACK TIES TO OSAWATOMIE–HONORING 100-YEARS. Proclamation was to declare the second weekend of August as Black Ties to Osawatomie – a Legacy of Reunions. Motion made by Moon, seconded by Hunter to approve the proclamation. Yeas: All.

PRESENTATION OF THE OSAWATOMIE CHAMBER ANNUAL REPORT. The Council reviewed and acknowledged receipt of the Chamber's annual report July 2012.

City Clerk Elmquist arrived at 7:13 p.m.

PROCLAMATION – HONORING RUTH WRENCH. Proclamation was to declare August 11 as "Grandma Ruth" Wrench Day. Motion made by Hunter, seconded by Govea to approve the proclamation. Yeas: All.

2012 AUDIT AGREEMENT WITH JARRED, GILMORE & PHILLIPS. The cost of the 2012 audit is $8,350, plus $1,900 if a single audit is required. Motion made by Maichel, seconded by LaDuex to authorize the Mayor to sign the Letter of Engagement with JGP. Yeas: All.

ADOPT RESOLUTION FOR 2012 GAAP WAIVER. Motion made by Hunter, seconded by LaDuex to approve the resolution for the 2012 GAAP Waiver. Yeas: All. The Resolution was assigned No. 653.

ADOPTION OF THE PROPOSED 2013 BUDGET. Motion made by Maichel, seconded by Hunter to approve the budget as presented. Yeas: All.

2013 BUDGET ORDINANCE. Motion made by Hunter, seconded by LaDuex to approve the ordinance approving the increase of tax revenues for the 2013 Budget year. Yeas: All. The Ordinance was assigned No. 3700.

STREET SIGNS. The old City street signs were the four-sided concrete posts but no longer meet safety standards. Since then the signs have had black letters on a white background and placed on a post. The downtown streetscape project, because of new sign standards, has street signs that are green with white letters and placed on top of the stop signs. There has been a respite in the requirements, with some of the issues that existed being scrapped. The options now are to continue with the white signs (or any other color scheme) on separate posts, or implement the new design standard by placing street signs on top of traffic control signs, which would mean lack of uniformity for some time. The City will stay with black on white signs but will go to a 9" sign with 6" letters.

Council Reports:

Hunter: The Freedom Festival is September 16-18.

LaDuex: The Library hours have changed. On Tuesdays it is now open until 7:00 p.m.

Govea: August 29 the Parks & Recreation Committee will be interviewing candidates for the vacancy on the Committee. Baseball is over and the City hosted 5 district tournaments. Youth soccer, football, and flag football signups will begin after school starts.

Moon: The PSAB meetings will begin next month. Forgot and arrived late to the Chamber of Commerce meeting. The work on the bridge south of town is moving along faster than planned. It should be done in a few weeks.

Mayor's Report:

The historical museum was toured by a radio reporter with Radio Netherlands. He had come to Kansas due to the drought.

The Golf Course was hit by a microburst. Fifty-two trees were downed with 82 damaged. The City crews went to work and everything was cleaned up in a few days. There are a few trees that will be removed during the winter.

Black Ties to Osawatomie will meet and greet Friday at Tailgators. Saturday 10:00-10:30 a.m. there will be prayers and recognitions. The concert is 6:00-8:00 p.m. Saturday in the Auditorium.

Attended the County Candidates Forums. There was discussion about Mill Street bridge and the feasibility of reopening it.

City Manager's Report:

Library. There needs to be an amendment to the joint resolution with the Library board to pacify the State Library Board that the City's board still has authority.

Big Brothers and Sisters. Their golf tournament will be next Saturday and he will be barbequing.

Trees and Bushes. They have taken a hit without the rain. Chief Stiles will have his officers help with some of the watering.

Projects:

Brown & Pacific. Public Works Director Steve Coffelt and he checked the final work project and will sign off on it. A maintenance warranty with a bond has been received. The project should be wrapped up at the next Council meeting.

Issues:

Planning & Zoning Updates. At the next meeting, Scott Michie, the City's on-call planner, will present his proposal for managing the updates to planning and zoning regulations. The cost is around $13,000 and his ideas for a finished product will make administering the process much simpler and efficient.

Sunday Sales. The election for upholding the prohibition of Sunday liquor sales was defeated. The ordinance passed in April will go into effect as of the certification of the votes on August 15. [Note: The certification of the votes by the County Clerk shows that it was defeated 466-239]

Ward Realignment. This issue is planned for discussion at the first meeting in September so that it can be passed and in effect before the end of the year.

Criminal Defense. An RFP is being developed which would establish one contract attorney to provide court-appointed criminal defense for municipal court.

Mutual Aid. KMEA has joined with KMU to partner in the Kansas Mutual Aid Program. The program is designed for public and private utilities to assist each other in times of emergency.

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

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Ann Elmquist, City Clerk

Osawatomie, Kansas. **August 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, Hunter, LaDuex, Maichel, and Moon. Absent were Govea and Klein. Also present were City Manager Cawby, City Attorney Wetzler, and City Clerk Elmquist. Visitors were Robert Kerr, Shelagh Wright, Garrett Nordstrom, Web Hawkins, and Coleen Truelson.

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

Appointment to the Parks & Recreation Committee. Tabled.

FINAL PERFORMANCE HEARING – CDBG PACIFIC, 14TH, BROWN STREETS PROJECT GRANT. Mayor Dudley opened the hearing at 7:31 p.m. The proposed upgrades were for the reconstruction of Pacific Ave from 12th to 14th, 14th from Pacific to Main, and Brown Ave from 14th to 18th Street. The purpose of the hearing was to evaluate the performance of the project and the completion of the work so the closeout packet could be submitted. The original project was approved at $1,702,700. The Council determined to borrow not more than $750,000 for the project. The project was scaled back to around $1.25 million by removing the reconstruction of Brown Ave from 16th to 18th. After the contractor's bid was awarded, the project budget was changed to $1,102,160. The funding was $500,000 from CDBG funds and $600,000 from USDA loan funds. Ultimately, the City went with general bonds in lieu of a USDA loan. According to the City's CDBG administrator, the final project cost was $1,017,290 million, with $500,000 from our CDBG grant and $517,290 from loan funds. There being no comments from the public the hearing was closed at 7:40 p.m.

APPROVE CHANGE ORDER NO. 1 ON PACIFIC, 14TH, BROWN STREETS PROJECT. Motion made by Moon, seconded by Hunter to approve Change Order No. 1 for a net decrease of $14,150.10 to the original contract price. Yeas: All.

APPROVE INVOICE(S) FOR PACIFIC, 14TH, BROWN STREETS PROJECT – No. 22. Motion made by Moon, seconded by Hunter to approve Pay Request No. 22. Yeas: All.

AUTHORIZE MAYOR TO SIGN CDBG STREETS PROJECT GRANT CLOSEOUT DOCUMENTS. Motion made by Moon, seconded by Hunter to authorize the Mayor to sign the necessary closeout documents. Yeas: All.

ORDINANCE AMENDING RETAIL LIQUOR HOLIDAY SALES TO COMPLY WITH KANSAS STATUTES. The petition and the ballot question both were accurately written to follow state statutes. This ordinance corrects the language regarding retail liquor holidays to allow sales on Memorial Day, Independence, and Labor Day. Motion made by Hunter, seconded by Maichel to approve the ordinance to fix the drafting error in the original ordinance. Yeas: All. The Ordinance was assigned No. 3701.

ZONING REGULATIONS UPDATE PROPOSAL FROM SCOTT MICHIE. Scott Michie has been serving as the City's on-call planner. The City Manager asked Michie to put together a proposal for a rework of the zoning regulations. This process would include input from the codes staff, the Planning Commission and the Governing Body. The proposal for the several-month project is $13,960. Motion made by Maichel, seconded by Hunter to approve the contract addendum with Scott A. Michie Planning Services for a fee of $13,960 to update the zoning and subdivision regulations. Yeas: All.

KANSAS MUTUAL AID PROGRAM (KSMAP) AGREEMENT. The City is currently a member of a mutual aid program with the Kansas Municipal Energy Agency (KMEA). KMEA decided

that the Kansas Mutual Aid Program (KSMAP) offers a better and more streamlined service. It is designed primarily for public and private utilities including electric, gas, water and wastewater utilities. Motion made by Hunter, seconded by LaDuex to approve the resolution authorizing the Mayor and City Manager to execute the necessary documents to participate in the KSMAP. Yeas: All. The Resolution was assigned No. 654.

City Manager Updates:

Projects:

Streets. The Street Crew has completed chip-sealing almost the entire east side of the City. They have gotten very busy with fixing water leak cuts

Cabin Windows. The work on the windows has been completed. The final inspection by the Kansas Historical Society architect is tomorrow.

Internet Upgrade. An offer was received from Civics Plus to upgrade the City's website to a newer software version for $2,000. There are only a few Civics Plus clients still on the old version. It is cheaper for them to offer the upgrade at their cost for their time to convert it, rather than support the old version. The website committee will be meeting next week to review the upgrades and to find new ways to improve the City's communication with the public.

Issues:

Library CDBG. The Department of Commerce decided to require a community survey to be conducted in order to submit an application for a CDBG grant this year. The cost of this survey would be about $20,000 because the Library serves serves the entire community. It would be next to impossible to complete it within the time limits required. Therefore, the City will not have a CDBG application this year. The City will likely submit the Library application in 2013.

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

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Ann Elmquist, City Clerk

Record of Ordinances

ORDINANCE NO. 12-15

DATE WARRANTS ISSUED:
August 31, 2012

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 08/10/12			88,922.62
Payroll 08/24/12			94,447.10
FICA 08/10/12			6,448.06
FICA 08/24/12			6,874.84
KPERS			13,380.67
KMEA Nearman	electricity	1283	22,538.72
City of Osawatomie	petty cash reimbursement	1284	1,930.14
Suddenlink	internet	39981	59.95
Coventry	health insurance	39982	28,976.50
Crawford Sales	Budweiser	39983	299.40
Midwest Distributors	Miller	39984	204.60
KMEA GRDA	electricity	1285	89,398.73
KMEA Hydro	hydroelectric	1286	2,631.58
Ace Pest Control LLC	pest control	40176	475.00
Airgas	oxygen cylinder	40177	85.10
BG Consultants, Inc.	street improvements	40178	430.50
City of Osawatomie	utilities	40179	15,382.35
First Option Bank	overpaid on restitution	40180	36.00
Joshua Gettino	overpaid on fine	40181	200.00
KS Assoc of Chiefs of Police	training conference	40182	125.00
Kansas Wilbert Vault	grave openings	40183	6,074.75
Ramada	lodging Butters	40184	251.22
Suddenlink	internet	40185	59.95
Beth Vandeventer	lodging - ball tournament	40186	122.46
Crawford Sales	Budweiser	40187	370.90
Analytical Services, Inc.	analytical service	40188	530.16
AT&T	RTU's	40189	221.15
Beachner Grain	concrete, supplies	40190	69.87
Dish	service	40191	94.01
Hasty Awards	awards for Jamboree	40192	476.85
KS Assoc.. For Court Management	fall conference	40193	50.00
Kansas Gas Service	power plant	40194	27.50
L & K Services, Inc.	dumpster, refuse	40195	30,757.01
Suddenlink	internet	40196	74.24
Visa	computer, DVD's, supplies	40197	885.92
KMEA - EMP	electricity, transmission	1287	110,800.96
Indelco Plastics Corp.	PVC pipe	40198	212.99
KDHE Bureau of Water	wastewater permit	40199	185.00
Kansas Dept. of Revenue	sales tax	40200	11,054.11
Kansas Dept. of Revenue	compensating use tax	40201	241.59

KS Employment Security Fund	unemployment	40202	1,240.57
MRWAD No. 2	water assurance	40203	32,504.63

Record of Ordinances

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August 31, 2012

CLAIMANT	NATURE OF CLAIM OR SERVICE	CLAIM NUMBER	AMOUNT
Oldcastle Architectural	mulch	40204	80.66
Ricoh Americas	copier lease - P.D.	40205	183.90
Ricoh Americas	copier lease - office	40206	289.00
S & R Enterprise	mowing weed lots	40207	990.00
Crawford Sales	Budweiser	40208	296.00
Midwest Distributors	Miller	40209	148.80
Home Depot	electric supplies, service charge	40210	390.68
ICC	certification exam	40211	110.00
Kansas City Power & Light	services	40212	2,425.66
Kansas Gas Service	services	40213	206.58
Kansas Municipal Utilities	registration for classes	40214	345.00
Suddenlink	internet	40215	59.95
Brad Waggoner	Pro Shop	40216	1,170.58
Crawford Sales	Budweiser	40217	388.80
Midwest Distributors	Miller	40218	111.60
City of Osawatomie	streets grant	40219	135,767.72
KMEA Nearman	electricity	1288	31,591.97
Cable Dahmer Collision	car repaired - Trisha Redenbaugh	40220	1,428.12
CenturyLink	long distance	40221	368.03
CenturyLink	services	40222	2,387.22
CenturyLink	RTU's	40223	236.56
Coventry	health insurance	40224	30,602.87
Delta Dental	dental insurance	40225	8,674.40
John Deere Financial	springs	40226	12.98
League of Kansas Municipalities	conference registration	40227	350.00
Lybarger Oil, Inc.	fuel	40228	7,989.70
Macek Photography	banner for Freedom Festival	40229	280.00
NEKLS	lodging - Elizabeth	40230	75.00
Postmaster	utility billing	40231	1,000.00
Ricoh USA, Inc.	copies	40232	143.51
Sprint	service	40233	15.17
Suddenlink	internet	40234	119.90
Surrency	vision insurance	40235	822.76
Wal-Mart Community	supplies	40236	264.63
City of Osawatomie	petty cash reimbursement	1289	1,223.72
Kansas State Treasurer	bond principal & interest	122	316,497.07
			1,116,201.24

Record of Ordinances

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August 31, 2012

CLAIMANT		NATURE OF CLAIM OR SERVICE	CLAIM NUMBER	AMOUNT
GO	135,333.58			
WT	52,299.50			
EL	307,626.15			
Emp Bn	89,787.52			
Refuse	30,751.51			
Lib	202.59			
RF	4,100.37			
Ind	39.96			
SP&R	13,347.92			
St Imp	2,219.84			
B&I	316,497.07			
Sewer	10,031.57			
GC	16,847.39			
Trsm	918.05			
Cap St	136,198.22			
	1,116,201.24			

Record of Ordinances

ORDINANCE NO. 12-16

DATE WARRANTS ISSUED:
September 13, 2012

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
AES Lawn Parts	gear assembly	40267	66.56
Altec Industries	replace interlock cable	40268	728.22
Am. Safety Utility Corp.	muletape	40269	266.80
Apparatus Services	test pumps	40270	355.25
Arctic Glacier Premium Ice	ice - Golf Course	40271	185.00
ASC Pumping Equipment	float switch	40272	50.00
Atco International	bullseye	40273	158.40
Baker & Taylor	books	40274	843.45
Bearing Headquarters Company	bearings, parts	40275	1,585.50
Bollings Bargain Bonanza	paper, supplies	40276	87.35
Boresow Chemical Company	belt	40277	46.45
Brenntag Mid-South, Inc.	alum, chemicals	40278	21,881.17
Brewer's Automotive Repair	tires	40279	438.68
BSN Sports	mouth guards	40280	147.51
C & G Merchants Supply, Inc.	chips, candy bars, misc.	40281	393.70
Champion Brands, LLC	cleaner, oil. Supplies	40282	418.66
Coleman Equipment, Inc.	parts for backhoe	40283	293.72
Cross-Midwest Tire Co.	tires	40284	1,646.40
Cullum & Brown, Inc.	oil	40285	220.03
DEMCO	albums, sleeves	40286	111.15
Easton Sod	sod	40287	201.60
Elliott Insurance, Inc.	insurance	40288	182.00
EMG	energy consulting agreement	40289	1,000.00
Entersect	police online	40290	158.00
Environmental Compliance Solutions	PCB compliance audit	40291	775.00
Environmental Laboratories, Inc.	analytical service	40292	292.00
Evco Wholesale Food Corp.	Gatorade, hotdogs, supplies	40293	688.76
Family Center	parts	40294	273.30
Richard M. Fisher, Jr. LLC	Court Appointed Attorney	40295	900.00
Gerken Rental	portable restrooms, pumping	40296	203.00
Grainger	batteries, solenoid	40297	1,113.65
Graybar	supplies	40298	147.47
Hach	chemicals, colorimeter assembly	40299	821.17
Helena Chemical Co.	fertilizer	40300	211.50
Holliday Sand & Gravel Co.	sand	40301	169.37
JCI Industries, Inc.	multitrode	40302	1,531.00
John Deere Landscapes	grass seed, fertilizer	40303	1,065.01
KS Dept. of Health & Environment	water & wastewater permit	40304	60.00
Kansas One Call	locates	40305	46.20
Kansas State Treasurer	training funds	40306	492.00

KC Golf Cart Company, LLC	tournament	40307	450.00
KelCon Technologies, Incl.	troubleshooting	40308	202.50

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CLAIMANT	NATURE OF CLAIM OR SERVICE	CLAIM NUMBER	AMOUNT
Killough Construction, Inc.	asphalt	40309	2,796.21
Kincaid Ready Mix	concrete	40310	1,731.38
Kriz Davis Co.	electric line supplies	40311	2,811.47
Kustom Signals, Inc.	shipping	40312	68.00
Lacal Equipment	drag shoes	40313	371.32
The Law Office of Bryan Meyer	Court Appointed Attorney	40314	440.00
Louisburg Ford	bushing, parts	40315	14.82
Martin, Pringle Attorneys at Law	City Attorney	40316	16,201.04
Miami County Sheriff's Office	prisoner care	40317	920.00
Miami County Solid Waste	tires	40318	75.00
Miami County, Kansas	regional bikeway plan	40319	300.00
Miami Lumber, Inc.	lumber, supplies	40320	195.34
Mid American Signal, Inc.	green stop light	40321	158.00
Mississippi Lime Company	hydrated lime	40322	1,812.50
Void		40323	-
Moon's IGA	supplies	40234	1,046.23
National Sign Company, Inc.	signs	40325	396.35
Navrat's	A/P checks	40326	334.38
ND&H	Court Appointed Attorney	40327	600.00
NEKLS	books	40328	33.00
Northern Tool & Equipment	trash pump	40329	1,542.85
NPG Newspapers	ads	40330	908.42
Oil Patch	bushings, pipe	40331	64.39
Olathe Tractor & Equipment	gear case assembly	40332	179.69
Olathe Winwater works	pipe, meter pit	40333	165.00
Orscheln Farm & Home	anchors	40334	7.74
Paola Hardware	scrapers, adapter set	40335	45.14
Pat's Signs	yard signs - Freedom Festival	40336	87.50
Pepsi Beverages Company	Pepsi	40337	642.86
Quill	copy paper, supplies	40338	64.25
R&R Products, Inc.	bearings, washers	40339	169.36
Read It Free	ad - Golf Course	40340	67.50
Rejis Commission	web subscription service	40341	30.00
Ruan Logistics Corp.	freight for lime	40342	1,441.28
Rural Water Dist. #1	service	40343	172.64
Rural Water Dist. #3	ETI	40344	16.50
Scott A. Michie Planning Services	zoning	40345	517.45
Sensus	software support	40346	1,654.96
Smitty's Lawn & Garden Equipment	tire, wheel bearings	40347	69.10
State Industrial Products	deodorizers, cleaning supplies	40348	298.53
Superior Lamp	electric line supplies	40349	911.78
T&R Electric Supply Company	transformers	40350	4,715.00
Debbie Talley	Memorial Hall janitorial	40351	375.00

Tech Air	steel metal	40352	40.00
Tri County Ice	ice machine	40353	50.00
UPS Store	shipping	40354	40.09
UZ Engineered Products	safety glasses	40355	335.63

Record of Ordinances

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CLAIMANT	NATURE OF CLAIM OR SERVICE	CLAIM NUMBER	AMOUNT
Viking Industrial Supply	trash bags	40356	136.89
Wade Quarries	rock	40357	510.40
Water Products, Inc.	repair clamps, supplies	40358	1,654.18
Wilson & Company	levee assessment	40359	11,772.19
Winfield Solutions, LLC	fertilizer	40360	351.24
Winkler, Domoney & Schultz	Municipal Court Judge	40361	2,000.00
Void		40362	-
Winterscheid Auto Parts	parts	40363	1,053.49
YMCA	City share wellness program	40364	22.50
Zep Sales & Service	paper goods, hornet spray	40365	245.00
			103,571.12
GO 41,836.49			
WT 31,990.83			
EL 14,770.90			
Lib 30.25			
Ind 16.50			
SP&R 2,688.39			
St Imp 3,794.19			
Sewer 3,119.65			
GC 4,249.69			
Trsm 1,003.45			
Cap St 70.78			
103,571.12			

City of Osawatomie
www.osawatomieks.org

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STAFF AGENDA MEMORANDUM

DATE OF MEETING: September 13, 2012

AGENDA ITEM: **Ward Realignment**

PRESENTER: Don Cawby, City Manager

ISSUE SUMMARY: Last year you asked about the process for realigning the wards based upon the newest census data. At the first presentation in November there was some confusion about the boundary between the wards. Since that time, I have investigated the issue and discovered the root of the problem. I have also provided two new scenarios which comply with state statutes on precincts so that the County should be able to adjust to our ward boundaries to match.

Current Boundaries. Currently, by our ordinance, the boundary between the Second Ward and the Third Ward on the west end is Main Street extended and not Parker. Also, the boundary on the east end between the First and Second Wards is Mill Street extended to the City limits, without a jog on O'Neal Street up to Main Street. I have attached a copy of the code for reference. I traced this ordinance back to the 1970s and what is in our code is correct.

The confusion seems to have begun in 1989 when the County changed our voting precincts, apparently because some of the lines went through a census blocks instead of around it. State statute requires that precinct lines follow census blocks. At that time, the county voting precincts were changed to what we now observe. However, there was no ordinance passed to incorporate those changes to our wards so they would sync with the precincts. No matter how it occurred, since then the current precincts have been used for ward elections.

Methodology. My goal in creating these maps was to move boundary lines as little as possible and to try to keep current councilmembers in their current wards. Originally, I had hoped to keep 6th & Main as my center point, but that proved to be difficult. For any ward, I tried to make boundaries as clear a line as possible. Also, when redistricting, case law has been that the new boundaries should be no more than 5% from the average size for all districts.

Also, attached to this memo is a table showing the current population breakdown between our wards. The numbers shown are based upon the current map (red lines) in the packet.

Purple Map. On the purple map, no ward deviates more than 3.7% from the average size. The only ward that increases size is the Fourth, where it gains 175 people (noted by the areas shaded in purple)

Orange Map. On the orange map, all the wards change slightly; however, the center point for all wards is close to the downtown area. In this scenario, Councilwoman LeDeux's residence would move to the 2nd ward. If you were to choose this map, we would have to consider the implications of that change on the next election.

Implementation. In order to get this change in place for the next election cycle in early 2013, we need to pass an ordinance and provide these changes to the County Clerk in the next couple of months. I will ask the clerk to review them to make sure the precincts can be synced with the wards to avoid any election issues.

COUNCIL ACTION NEEDED: Review and discuss.

STAFF RECOMMENDATION TO COUNCIL: Review, discuss and provide direction to staff. Should you favor one scenario over another, we can begin drafting the ordinance for a future meeting.

ARTICLE 2. WARDS

6-201. WARDS. The city is hereby divided into four wards, to be designated the First Ward, Second Ward, Third Ward and Fourth Ward. (Code 1977, 6-201)

6-202. FIRST WARD. The First Ward shall consist of that part of the city lying east of the centerline of Sixth Street and north of the centerline of Brown Avenue between Sixth Street and Fourth Street and north of the centerline of Mill Street between Fourth Street and the east city limits. (Code 1977, 6-202)

6-203. SECOND WARD. The Second Ward shall consist of that part of the city lying west of the centerline of Sixth Street and north of the centerline of Brown Avenue between Sixth Street and Twelfth Street and north of the centerline of Main Street between Twelfth Street and north of the centerline of Main Street between Twelfth Street and the west city limits. (Code 1977, 6-203)

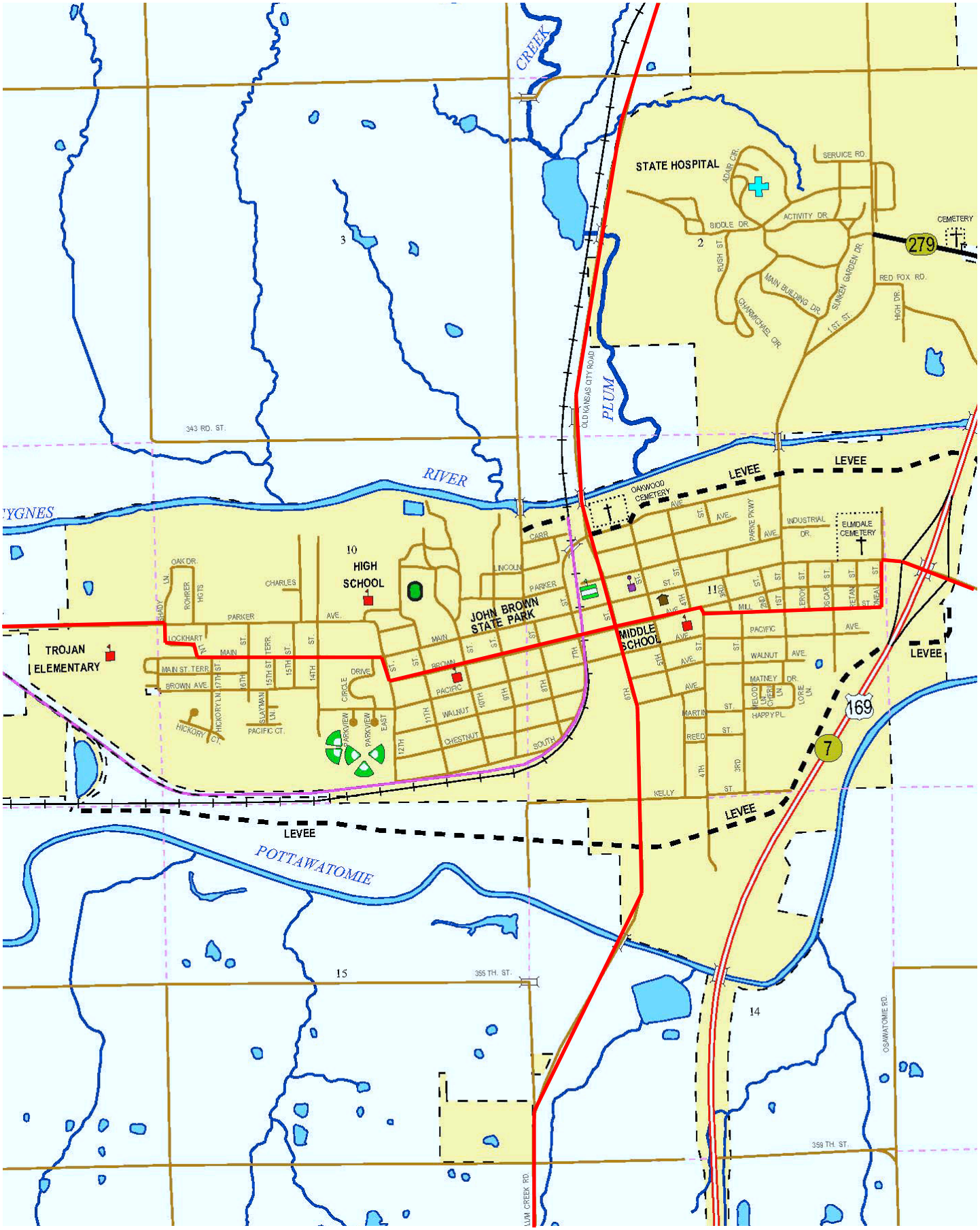
6-204. THIRD WARD. The Third Ward shall consist of that part of the city lying west of the centerline of Sixth Street and south of the centerline of Brown Avenue between Sixth Street and south of the centerline of Main Street between Twelfth Street and the west city limits. (Code 1977, 6-204)

6-205. FOURTH WARD. The Fourth Ward shall consist of that part of the city lying east of the centerline of Sixth Street and south of the centerline of Brown Avenue between Sixth Street and Fourth Street and south of the centerline of Mill Street between Fourth Street and the east city limits. (Code 1977, 6-205)

Census By Ward

Ward	Population	Difference from Avg	%
1	1,131	19	1.71%
2	1,078	(34)	-3.06%
3	1,276	164	14.75%
4	962	(150)	-13.49%
Total	**4,447**	***Avg***	***1,112***

Current Ward Boundaries



Purple Proposal

CHANGES

Ward	1&2	2&3	3&4	4&1	Total
1	-	-	-	(52)	(52)
2	-	-	-	-	-
3	-	-	(123)	-	(123)
4	-	-	123	52	175

Ward	Pop. Change	New Population	Difference from Avg	Percent from Avg
1	(52)	1,079	(33)	-2.97%
2	-	1,078	(34)	-3.06%
3	(123)	1,153	41	3.69%
4	175	1,137	25	2.25%
Total	**-**	**4,447**	**-**	**-**

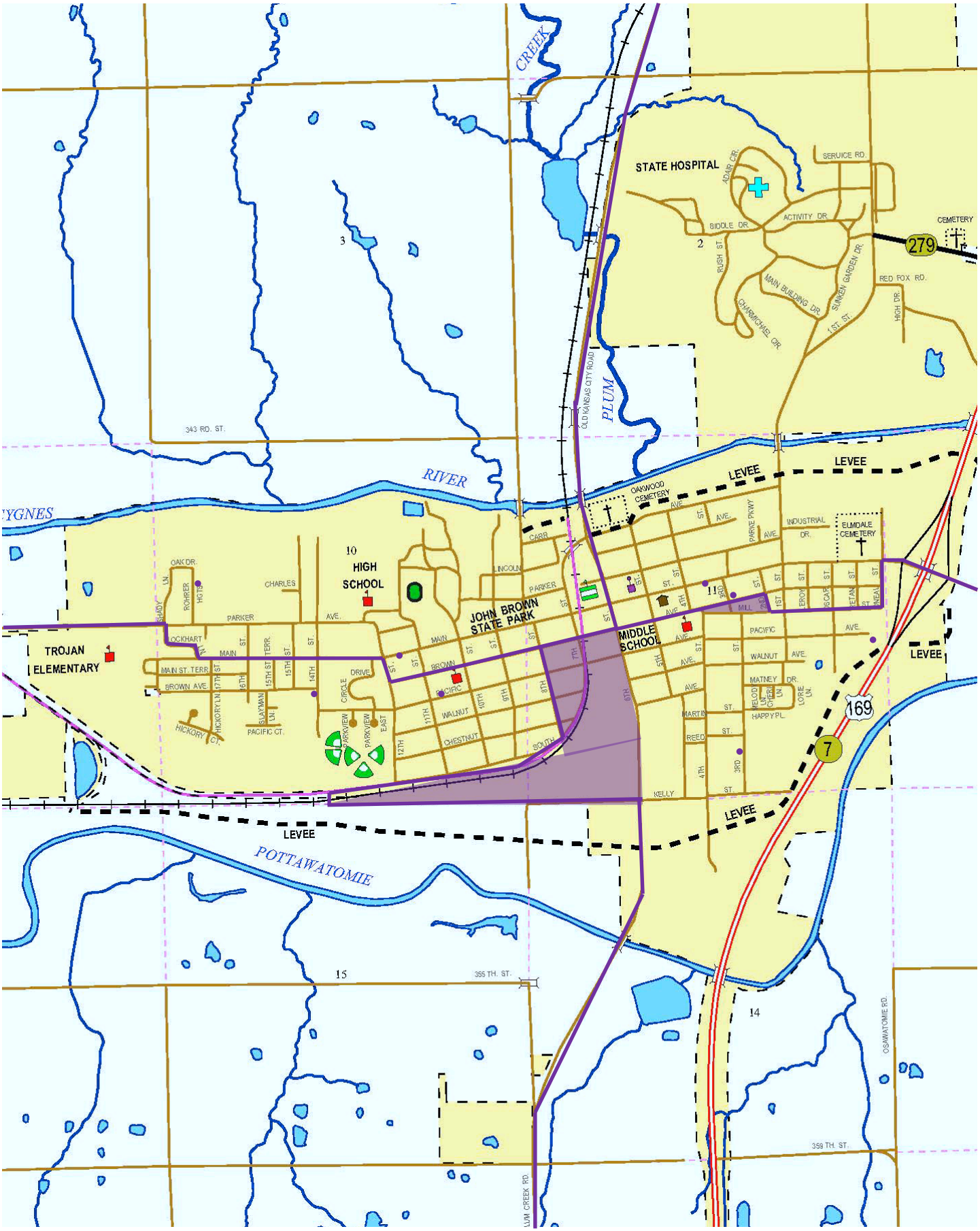
Orange Proposal

CHANGES

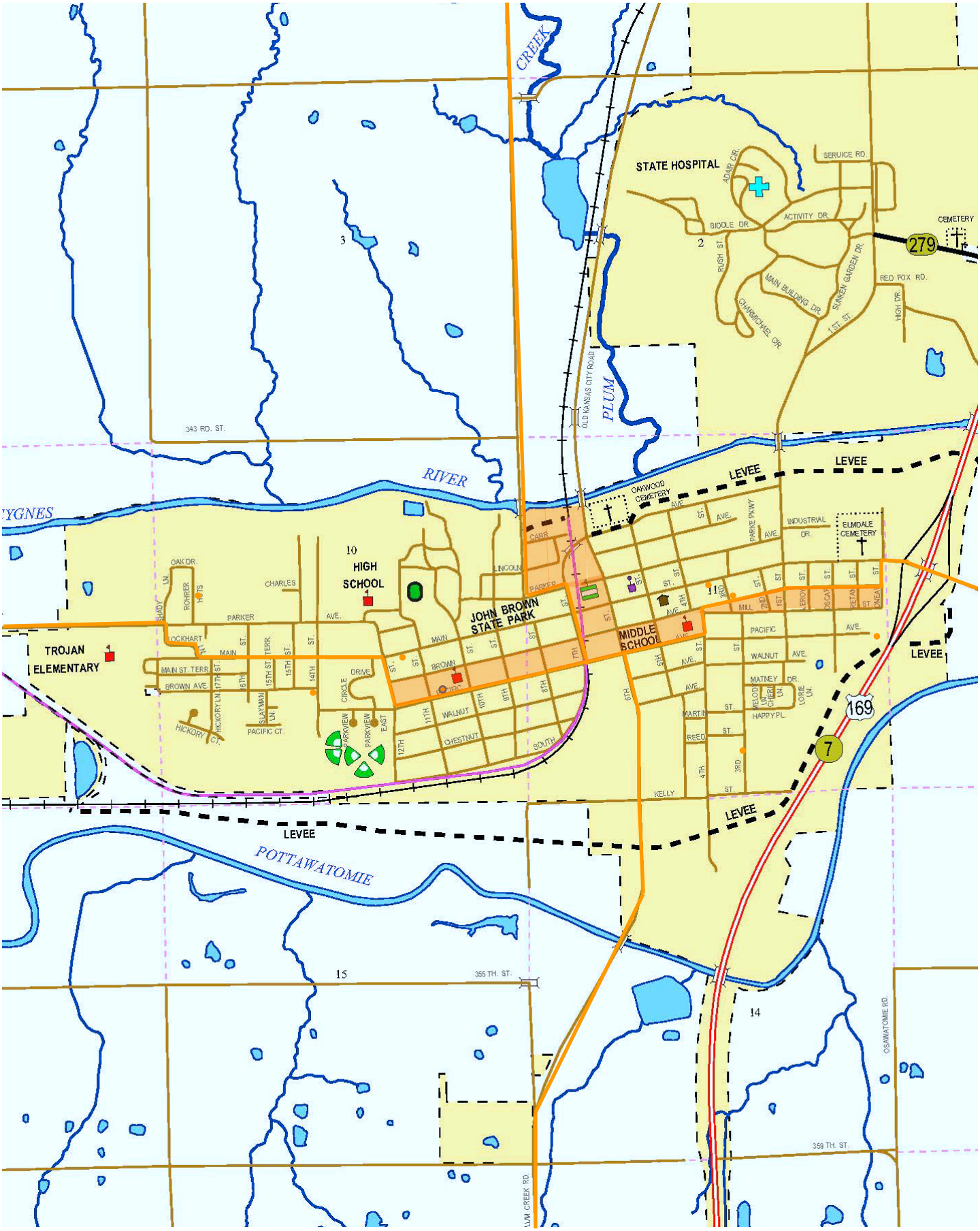
Ward	1&2	2&3	3&4	4&1	Total
1	71			(106)	(35)
2	(71)	144			73
3		(144)	-		(144)
4			-	106	106

Ward	Pop. Change	New Population	Difference from Avg	Percent from Avg
1	(35)	1,096	(16)	-1.44%
2	73	1,151	39	3.51%
3	(144)	1,132	20	1.80%
4	106	1,068	(44)	-3.96%
Total	**-**	**4,447**	**-**	**-**

Purple Proposal - Ward Boundaries



Orange Proposal - Ward Boundaries



Proclamation
Issued by the Mayor of Osawatomie

WHEREAS, the Miami County Medical Center Rehabilitation professionals' promise of excellence to patients is "Great Recoveries, Great People;" and

WHEREAS, Miami County Medical Center, is observing and celebrating National Rehabilitation Awareness Week to recognize those professionals whose caring, empathetic and motivating attributes help guide patients through recovery; and

WHEREAS, Miami County Medical Center rehabilitation professionals, including Physical Therapists, Physical Therapist Assistants, Occupational Therapists, Speech Language Pathologists, Certified Athletic Trainers and support staff work with citizens of all ages to provide services in the hospital, in outpatient settings, at home and at school to help restore citizens to independent, productive and fulfilling lives; and

WHEREAS, the City of Osawatomie is proud and honored to have Osawatomie Rehabilitation and Miami County Medical Center Rehabilitation Services serving the community; and

NOW, THEREFORE, I, Philip A. Dudley, Mayor of the City of Osawatomie, on behalf of its citizens, do hereby proclaim the week of September 16 through September 22, 2012 as

National Rehabilitation Awareness Week

and encourage all citizens to recognize the significant contributions of rehabilitation professionals and to renew their commitment to people with disabilities and to the efforts of rehabilitative medicine to improve quality of life.

Proclaimed this 9th day of September, 2012.

_____
Philip A. Dudley, Mayor

City of Osawatomie
www.osawatomieks.org

Osawatomie City Hall
439 Main Street • PO Box 37
Osawatomie, KS 66064
Phone: (913)755-2146
Fax: (913)755-4164

STAFF AGENDA MEMORANDUM

DATE OF MEETING: September 13, 2012

AGENDA ITEM: **Joint Resolution with the Library**

PRESENTER: Don Cawby, City Manager

ISSUE SUMMARY: Early in 2011, the director of the Northeast Kansas Library System (NEKLS) voiced his displeasure with the "consolidation" of the Library with the City in 2010. The primary complaints were that the new arrangement violated the statutory rights and responsibilities of the Library Board and therefore, the relationship put the Osawatomie Library's state grant funds in jeopardy. Late in 2011 the issue was brought before the State Library Board and no action was taken on our grant funding. However, the Osawatomie Library Board believes that time was given to "fix" our current agreement.

While I am doubtful that any written agreement or arrangement will completely satisfy the state officials, the Library Board has drafted a revised agreement that they hope will put this issue to rest. The current version of the agreement has been edited by me and the city attorney from the version provided by the Library Board. However, none of those edits were intended to be substantive, but only to update the context of the agreement and to hopefully clarify responsibilities.

COUNCIL ACTION NEEDED: Review, discussion and consider options.

STAFF RECOMMENDATION TO COUNCIL: None at this time.

RESOLUTION NO. _____

A JOINT RESOLUTION REPEALING RESOLUTION 617 AND CREATING A NEW OPERATON AGREEMENT BETWEEN THE OSAWATOMIE PUBLIC LIBRARY AND THE CITY OF OSAWATOMIE PURSUANT TO K.S.A. 12- 3903.

WHEREAS, the Governing Body of the City of Osawatomie, Kansas and the Osawatomie Public Library Board each agreed in Resolution 617 passed on June 11th, 2009, that it was their mutual desire to consolidate their operations, procedures and functions so as to provide for operational efficiency and the best possible library service to the Osawatomie community; and

WHEREAS, for many years, both before and after the adoption of Resolution 617, the City of Osawatomie and the Osawatomie Public Library have operated cooperatively to serve the interests of the residents of the City of Osawatomie; and

WHEREAS, the Northeast Kansas Library System and the Kansas State Library have relayed their concerns over some of the language in Resolution 617 where the governance of the library is concerned; and

WHEREAS, it is the intent of both parties to comply with state statutes concerning the operation of the Osawatomie Public Library, and

WHEREAS, K.S.A. 12 -3903(a) authorizes consolidation of operations, procedures and functions of the two entities;

NOW, THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OSAWATOMIE, KANSAS and by the BOARD OF THE OSAWATOMIE PUBLIC LIBRARY:

SECTION 1. The parties agree that in order to provide the best possible service to the citizens of the City of Osawatomie, it is necessary for the parties to consolidate the management and operation of the Osawatomie Public Library. Furthermore, both parties acknowledge that the current arrangement and relationship of the Library Board to the City of Osawatomie should be more clearly defined.

SECTION 2. The parties agree to the following:

A. The Executive Director of the Library and other staff shall be employees of the City of Osawatomie and shall be subject to all personnel regulations of the City, except where otherwise specifically stated by this resolution.

B. The City shall provide for personnel administration of library employees, including payroll, benefits administration, personnel record keeping, and other related human resources functions.

C. The City shall provide for the financial administration of operations of the Osawatomie Public Library and the Library agrees to abide by the financial policies except where otherwise specifically stated by this resolution.

D. The City of Osawatomie shall accept assignment of such duties and responsibilities specified herein to be performed under the supervision and direction of the City Manager.

E. The Library shall be considered and operate as a department of the City of Osawatomie and shall have adequate funds budgeted for it.

F. The Library Board will directly supervise the Library Director. Supervision of all other employees will be performed by the Library Director with the approval of the Library Board.

G. The Library Board agrees, except as provided in this agreement, to exercise the duties and powers set forth in K.S.A. 12-1225, including but not limited to maintaining the library board's status as a body corporate and politic with authority to adopt library policies and regulations; employ and set compensation of a librarian; accept, administer, and invest gifts received; approve disbursal of grant monies; approve payment of funds collected for the operation of the library, and other board authorities as provided in statutes.

H. The Library Board shall operate within the budget established by the City of Osawatomie.

SECTION 3. This resolution may be reviewed from time to time as the Library Board and the Governing Body of the City of Osawatomie deem necessary. This resolution may be repealed at any time by either party, in its sole discretion, at such time as it may determine that such termination would benefit the community as a whole. Any such termination shall be in writing and shall be given no later than June 15 of any calendar year, so that the City may have adequate time to include such changes in the adopted budget for the upcoming fiscal year. Furthermore, the dissolution of this agreement will not take effect until the following year in which the notification of termination is given.

SECTION 4. Resolution 617, passed jointly by both the Governing Body of the City of Osawatomie and the Governing Body of the Osawatomie Public Library Board, is hereby repealed.

SECTION 5. This Resolution shall take effect on approval by both of the parties.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas, this 13th day of September, 2012.

APPROVED AND SIGNED by the Mayor.

By: _____ Attest: _____
Phil Dudley, Mayor Ann Elmquist, City Clerk

PASSED AND APPROVED by the Osawatomie Public Library Board, Osawatomie, Kansas, this ____ day of September, 2012.

APPROVED AND SIGNED by the Chairman of the Board.

By: _____ Attest: _____
Sarah Dorsett, Chairwoman Jan Sanders, Secretary

City of Osawatomie
www.osawatomieks.org

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STAFF AGENDA MEMORANDUM

DATE OF MEETING: September 13, 2012

AGENDA ITEM: **Summary Publication of Ordinances**

PRESENTER: Don Cawby, City Manager

ISSUE SUMMARY: On July 1, 2012 HB 2166 went into effect. It amends K.S.A. 12-3007, the law that required cities to publish ordinances before they are effective. Instead of publishing the full ordinance in the local newspaper, cities have another option… a city may opt to publish a summary of the ordinance so long as:

1. The publication is identified as a ''summary'' and contains notice that the complete text of the ordinance may be obtained or viewed free of charge at the office of the city clerk;
2. the city attorney certifies the summary of the ordinance prior to publication to ensure that the summary is legally accurate and sufficient; and
3. the publication contains the city's official website address where a reproduction of the original ordinance is available for a minimum of one week following the summary publication in the newspaper.

I am proposing that we consider an ordinance that allows for the summary publication of ordinances pursuant to state statute. I have also inserted language that allows us to publish an entire ordinance, should the governing body decide direct the City Clerk to do so.

Also, as a matter of procedure and to make sure the governing body is not surprised by a notice, I would recommend that the summary statement to be published be included in the packet when the ordinance is being considered. I don't believe this provision needs to be in ordinance, but I think it would be a smart practice to use.

I have attached the League's notice to City Clerks for reference and information.

COUNCIL ACTION NEEDED: Review and discussion.

STAFF RECOMMENDATION TO COUNCIL: Adopt the ordinance.

(Published in the Osawatomie Graphic, Sept 19, 2012) 1t

ORDINANCE NO. ____

AN ORDINANCE ALLOWING FOR SUMMARY PUBLICATION OF ORDINANCES; AMENDING AND REPEALING CHAPTER I, ARTICLE 1, SECTION 110 OF THE CITY OF OSAWATOMIE MUNICIPAL CODE.

WHEREAS, K.S.A. 12-3001 and 12-3007 address consideration and publication of ordinances of a city, respectively; and

WHEREAS, the 2012 Kansas Legislature enacted House Bill No. 2166 amending K.S.A. 12-3001 and 12-3007; and

WHEREAS, House Bill 2166 amended K.S.A. 12-3001 to make it uniformly applicable to all cities; and

WHEREAS, House Bill No. 2166 amended K.S.A. 12-3007 to allow for publication of summaries of regular ordinances in the official city newspaper as long as the summary explains: (1) that it is a "summary" and that the full text of the ordinance may be obtained from the office of the city clerk; (2) the city attorney certifies that the summary is legal accurate and sufficient; and (3) the publication includes the city's official website address where a copy of the of the original ordinance is available to the public for a minimum of one week following the summary publication in the newspaper; and

WHEREAS, House Bill No. 2166 is intended to reduce publication costs incurred by cities; and

WHEREAS, the Governing Body desires to provide for the consideration and publication of ordinances consistent with state law as amended by House Bill No. 2166 enacted by the 2012 Kansas Legislature.

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

SECTION ONE: CODE AMENDED. Pursuant to K.S.A. 12-3001 AND 12-3007, as amended by 2012 House Bill No. 2166, Section 1-110 of the Code of the City of Osawatomie is hereby amended to read as follows:

1-110 SAME; PUBLICATION. No ordinance, except those appropriating money, shall be in force until the ordinance, or its summary as prescribed in this section, is published in the official city newspaper by the city clerk.

a. The city clerk shall cause to be published in their entirety and for the number of times required by state law, all charter ordinances or other ordinances required by state law to be published in their entirety and for a specified number of times. The publisher of the newspaper shall prefix such published ordinance by a line in brackets stating the month, day and year of such publication.

b. In the case of all other ordinances, except appropriation ordinances which shall take effect upon passage or upon other specific direction of the governing body, the city clerk shall cause to be published a summary of the ordinance as soon as practicable after it has been passed and signed by the mayor, so long as:

1. The ordinance includes a section setting forth the summary to be published in the following format:

Ordinance No. _____ Summary

"On (date) , the City of Osawatomie, Kansas, passed Ordinance No. _____. The ordinance ___(description)____. A complete copy of the ordinance is available at www.osawatomieks.gov or in the office of the city clerk, 439 Main Street, free of charge. This summary is certified by the city attorney."

2. The publication is identified as a "summary" and contains notice that the complete text of the ordinance may be obtained or viewed free of charge at the office of the city clerk;

3. The city attorney certifies the summary of the ordinance prior to publication to insure that the summary is legally accurate and sufficient;

4. The publication contains the city's official website address where a reproduction of the original ordinance is available for a minimum of one week following the summary publication in the newspaper; and

5. If the ordinance is subject to petition pursuant to state law, then the summary shall contain a statement that the ordinance is subject to petition.

SECTION TWO. REPEALED. Section 1-110 of the Code of the City of Osawatomie, Kansas as adopted prior to the passage of this Ordinance is hereby repealed.

SECTION THREE. EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its passage and one publication in the official City newspaper.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas, a majority being in favor thereof, this 13th day of September, 2012.

APPROVED and signed by the Mayor.

_____

Philip A. Dudley
Mayor

(SEAL)

ATTEST:

_____
Ann Elmquist
City Clerk

City of Osawatomie
www.osawatomieks.org

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STAFF AGENDA MEMORANDUM

DATE OF MEETING: September 13, 2012

AGENDA ITEM: **Standard Offense Code and Uniform Public Offense Code**

PRESENTER: Don Cawby, City Manager

ISSUE SUMMARY: The *Standard Traffic Ordinance (STO) for Kansas Cities* and the *Uniform Public Offense Code (UPOC) for Kansas Cities* have been published by the League of Kansas Municipalities for decades. They are designed to provide a comprehensive traffic code (STO) and criminal code (UPOC) for Kansas Cities.

The STO, in large part, parallels the state traffic act, just as the UPOC parallels the state criminal code. They do not take effect in a city until the governing body has passed and published an ordinance incorporating each of them by reference. The incorporating ordinance may delete articles or sections which the governing body considers unnecessary or may change language as long as it does not conflict with state statute.

For public records purposes, there must be at least three official copies of each on file with the City Clerk. We also make sure that enforcing officers each have a copy.

The following represent the changes in the STO from the 2011 edition to the 2012 edition:

Section 1. Definitions.

Section 30. Driving Under the Influence of Intoxicating Liquor or Drugs; Penalties.

Section 30.1. Driving Commercial Motor Vehicle Under the Influence of Intoxicating Liquor or Drugs; Penalties.

Section 30.2.1 Refusal to Submit to Alcohol or Drug Test.

Section 194. Driving While License Canceled, Suspended or Revoked; Penalty.

Section 195.1 Operation of a Motor Vehicle When a Habitual Violator.

The following represents the changes in the UPOC from the 2011 edition to the 2012 edition:

Section 1.1	Definitions.
Section 2.2	Conspiracy.
Section 3.1.1	Domestic Battery.
Section 3.8	Violation of Protection From Abuse Order.
Section 3.8.1	Violation of a Protective Order.
Section 5.6	Purchase or Possession of Cigarettes or Tobacco products By a Minor.
Section 5.7	Selling, Giving or Furnishing Cigarettes or Tobacco Products to a Minor.
Section 6.25	Unlawfully Buying Scrap Metal.
Section 7.2	Interference With a Law Enforcement Officer.
Section 7.3	Escape From Custody.
Section 7.7	Simulating Legal Process.
Section 10.9	Carrying Concealed Explosives.
Section 10.10	Endangerment.
Section 10.20	Unlawfully Obtaining a Prescription-Only Drug.
Section 10.24	Smoking Prohibited.
Section 10.26	Smoking Prohibited, Penalties.

COUNCIL ACTION NEEDED: Vote on the ordinances to adopt the 2012 STO and the 2012 UPOC.

STAFF RECOMMENDATION TO COUNCIL: Adopt both ordinances to incorporate the STO and the UPOC by reference.

(Published in the Osawatomie Graphic, September 19, 2012) 1t

ORDINANCE NO. _____

AN ORDINANCE REGULATING TRAFFIC WITHIN THE CORPORATE LIMITS OF THE CITY OF OSAWATOMIE, KANSAS; INCORPORATING BY REFERENCE THE **"STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES"** EDITION OF 2012; AMENDING AND REPEALING CHAPTER XIV, ARTICLE 1, SECTIONS 101-103 OF THE CITY OF OSAWATOMIE MUNICIPAL CODE; AND REPEALING ORDINANCE NO. 3683.

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

SECTION ONE: CODE AMENDED. Sections 14-101 to 14-103 of the City of Osawatomie Municipal Code are hereby amended to read as follows:

14-101. INCORPORATING STANDARD TRAFFIC ORDINANCE. There is hereby incorporated by reference for the purpose of regulating traffic within the corporate limits of the City of Osawatomie, Kansas, that certain standard traffic ordinance known as the "Standard Traffic Ordinance for Kansas Cities," Edition of 2012, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than three copies of said Standard Traffic Ordinance shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Osawatomie," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours. The Police Department, Municipal Judge and all administrative departments of the City charged with the enforcement of the ordinance shall be supplied, at the cost of the City, such number of official copies of such Standard Traffic Ordinance similarly marked, as may be deemed expedient.

14-102. SAME; AMENDMENTS. Section 33 of the Standard Traffic Ordinance as adopted is amended to read as follows:

Sec. 33. Maximum Speed Limits.

(a) Except as provided in subsection (b) and except when a special hazard exists that requires lower speed for compliance with K.S.A. 8-1557, and amendments thereto, the limits specified in this subsection or established as authorized by law shall be maximum lawful speeds, and no person shall operate a vehicle at a speed in excess of such maximum limits:
   (1) In any business district, 20 miles per hours;
   (2) In any urban district, 30 miles per hour;
   (3) On any separated multilane highway, as designated and posted by the secretary of transportation 70 miles per hour;
   (4) On any county or township highway, 55 miles per hour; and
   (5) On all other highways, 65 miles per hour.

(b) No person shall drive a school bus to or from school, or interschool or intra-school functions or activities, at a speed in excess of the maximum speed limits provided in subsection (a), except that the board of education of any school district may establish by board policy lower maximum speed limits for the operation of such district's school buses. The provisions of this subsection relating to school buses shall apply to buses used for the transportation of students enrolled in community colleges or

area vocational schools, when such buses are transporting students to or from school, or functions or activities. (K.S.A. Supp. 8-1558)

(c) The maximum speed limits in this section may be altered as authorized in K.S.A 8-1559 and K.S.A 8-1560, and amendments thereto.

(d) The governing body having determined upon the basis of a traffic investigation that the speed limits permitted under state law and Section 33 of the Standard Traffic ordinance are less than reasonable and safe on some streets and are more than reasonable and safe on other streets, and does determine and declare that the speed limit (except when a special hazard exists that requires lower speed for compliance with Section 32) on the streets hereinafter set forth be the limits specified in this section, and no person shall drive a vehicle at a speed in excess of such maximum limits:

(1) Speed not in excess of 20 miles per hour shall be lawful on the following streets:

(A) Main Street between 15th Street and 18th Street.

14-103. SAME; AMENDMENTS. Section 93 of the Standard Traffic Ordinance as adopted is amended to read as follows:

Sec. 93. Parking Disabled and Other Vehicles.

(a) No person shall park or store any farm machinery, trailer or semi-trailer of any kind, or parts of the same, or any dead, damaged or disabled motor vehicle or farm machinery, trailer or semi-trailer of any kind, in the roadway of any highway, or between the property line or sidewalk and the curb line of any street. No person shall park or store any operable motor vehicle between the property line or sidewalk and the curb line of any street except on a designated driveway.

(b) A person shall not use the public highway to abandon vehicles or use the highway to leave vehicles unattended in such a manner as to interfere with public highway operations. When a person leaves a motor vehicle on a public highway or other property open to use by the public, the city having jurisdiction of such highway or other property open to use by the public, after 48 hours or when the motor vehicle interferes with public highway operations, may remove and impound the motor vehicle. (K.S.A. 8-1102)

SECTION TWO: EXISTING SECTIONS OF CODE REPEALED. Sections 14-101 to 14-103 of the Code of the City of Osawatomie, Kansas are hereby repealed.

SECTION THREE: EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its publication in the official City Newspaper.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas, this 13th day of September, 2012.

APPROVED AND SIGNED by the Mayor.

_____
Philip A. Dudley, Mayor

(SEAL)

ATTEST:

_____
Ann Elmquist, City Clerk

(Published in the Osawatomie Journal, September 19, 2012) 1t

ORDINANCE NO. _____

AN ORDINANCE REGULATING PUBLIC OFFENSES WITHIN THE CORPORATE LIMITS OF THE CITY OF OSAWATOMIE, KANSAS; INCORPORATING BY REFERENCE THE **"UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES"** EDITION OF 2012; AMENDING AND REPEALING CHAPTER XI, ARTICLE 2, SECTION 201 OF THE CITY OF OSAWATOMIE MUNICIPAL CODE; AND REPEALING ORDINANCE NO. 3684.

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

SECTION ONE: CODE AMENDED. Section 11-201 of the City of Osawatomie Municipal Code is hereby amended to read as follows:

> 11-201. INCORPORATING UNIFORM PUBLIC OFFENSE CODE. There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Osawatomie, Kansas, that certain code known as the "Uniform Public Offense Code," Edition of 2012, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than three copies of said Uniform Public Offense Code shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Osawatomie, Kansas," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this section, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

SECTION TWO: EXISTING SECTION OF CODE REPEALED. Section 11-201 of the Code of the City of Osawatomie, Kansas and Ordinance No. 3684 are hereby repealed.

SECTION THREE: EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its publication in the official City Newspaper.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas, this 13th day of September, 2012.

APPROVED AND SIGNED by the Mayor.

_____
Philip A. Dudley, Mayor

(SEAL)

ATTEST:

_____
Ann Elmquist, City Clerk

City of Osawatomie
www.osawatomieks.org

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STAFF AGENDA MEMORANDUM

DATE OF MEETING: September 13, 2012

AGENDA ITEM: **Skid Trencher**

PRESENTER: Don Cawby, City Manager

ISSUE SUMMARY: When we approved the 2013 budget we included $25,000 for a mini-skid trencher which would allow our staff to access some hard to reach places and allow us to undertake burying electric lines on the west side of town. However, as we started looking at doing our trenching at the ball fields for our installation of the irrigation system and replacing the electric line for the outfield lights at the ball diamonds, we realized that we needed this piece of equipment earlier.

Because of this time line change, I asked our line crew to go ahead and get bids for a new trencher. I also approved rental of a trencher for the ball diamond light project, but asked them to make sure that any rental cost would be applied to our purchase price. Ditch Witch was willing to do that and it is the piece of equipment we used to spec the cost for our budget.

I am recommending that we move the purchase of the mini-skid steer, with a bucket and trencher, forward to 2012 so that we can take advantage of the price reduction for rental. Also, it will let our staff get started on work trenching work as early next year as the weather allows.

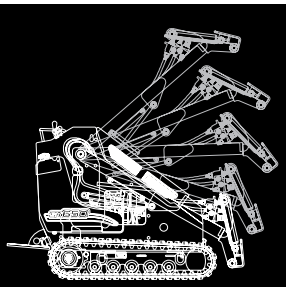
Finally, this piece of equipment will provide us with some flexibility. It will let us get into back yards with a bucket to smooth out yards and areas where we have trenched. It can be used for snow removal on smaller sidewalks and paths. With this mini-skid steer trencher, we have the option of purchasing attachments in the future, such as an auger, blade, broom, rake or many other attachments.

COUNCIL ACTION NEEDED: Review the bids.

STAFF RECOMMENDATION TO COUNCIL: Approve the low bid, which will be adjusted for machine rental already paid.

DITCH WITCH SK650 Mini Skid Steer

The SK650's powerful 31.5-hp (23.5-kW) Kubota diesel engine and hydraulic system give it more power for its size than any machine in its class—in a compact package that's easy to tow and easy to maneuver. And with a formidable 20 net horsepower (15 kW) to the front end, attachments are more productive, too.



SPECIFICATIONS

DIMENSIONS	U.S.	METRIC
Overall Length	82 in	2.08 m
Overall Height	53 in	1.35 m
Width, min. to max.	35 in - 42 in	889 mm - 1.07 m

KEY FEATURES

• *(Photograph A)* Auxiliary valve contains a float section for better performance of attachments that follow the contour of the ground.

• Pilot-operated ground drive controls provide highly responsive steering with little or no vibration feedback, increasing operator comfort and productivity.

• Equipped with quick-disconnect manifold so attachments can be changed easily and quickly.

• *(Photograph B)* The stand-on platform keeps operators out of mud and debris and reduces fatigue.

• Available with your choice of aggressive tracks for better traction or turf-friendly tracks for reduced jobsite restoration.

• Like all members of the SK line, the SK650's controls are simple and easy to use.

• Greater lift and dump heights than competitors, so it can dump into vehicles that others can't, increasing its versatility.

• Diesel and hydraulic tanks are on either side of the machine frame, so you don't have to raise the hood to refuel or top off the hydraulic fluid.

Mini Skid Trencher Bids

	mini-skid with bucket	backfill blade	trencher attachment	Freight	TOTAL
Ditch Witch Sales, Inc. Olathe, KS	$19,499.00	$1,660.00	$4,807.00	$0.00	$25,966.00
Ditch Witch of Omaha Omaha, NE	$19,849.00	$1,857.00	$4,925.00	$500.00	$27,131.00
Ditch Witch Sales, Inc. Collinsville, IL	$20,490.76 $500.00	$1,740.03 $100.00	$5,222.41 $160.00	$760.00	$28,213.20

Ditch Witch Sales, Inc

Authorized Ditch Witch® Dealer
web site@www.ditchwitchsales.com

Olathe

HOME OFFICE:
1617 S. Service Rd.
P.O. Box 429
Sullivan, MO 63080
(573) 468-8012
(800) 392-3633
FAX (573) 468-8016

1355 S. Enterprise
Olathe, KS 66061
(913) 782-5223
(800) 468-0148
FAX (913) 782-7977

107 Troy Road
Collinsville, IL 62234
(618) 345-6262
(800) 356-3165
FAX (618) 345-2823

2801 Farmers Market Road
Springfield, IL 62707
(217) 789-1220
(800) 372-2085
FAX (217) 789-1223

SERVICE CENTER
1084 County Road 2710
Moberly, MO 65270
(660) 263-6420
(800) 630-3857
FAX (660) 263-0205

PRICE QUOTATION
City of Osawatomie
PO Box 37, 439 Main St.
Osawatomie, KS 66064
Attn: Terry Upshaw

DATE	8/20/12	**TERMS**	
INQUIRY DATED	8/20/12	**SALES REP**	Joel Hardy
PROPOSED SHIPPING DATE	TBA	**SHIPPED VIA**	

QUANTITY	*DESCRIPTION*	*PRICE*
1	New SK650 mini-skid w/bucket	$ 19,499.00
1	Backfill blade w/hydraulic conversion	$ 1,660.00
1	SK5Tr trencher attachment with 36" boom; 50/50 dirt/rock combo chain	$ 4,807.00
		$25,966

THANK YOU FOR THE OPPORTUNITY TO PROVIDE THE ABOVE QUOTE. SHOULD YOU HAVE ANY QUESTIONS, PLEASE FEEL FREE TO CONTACT ME.

SINCERELY,

SALES REP. Joel Hardy
OFFICE 913-782-5223
CELL 816-289-6832
PRICES AND CONDITIONS QUOTED WILL BE HONORED UNTIL
Ditch Witch Sales, Inc. Olathe, KS **DITCH WITCH DEALER**
City of Oswatomie **PROSPECTIVE CUSTOMER**

Authorized Ditch Witch Dealer

Ditch Witch of Omaha

I-80 and Hwy. 50 • P. O. Box 37532
Omaha, Nebraska 68137
(402) 895-2444 (800) 967-1644
FAX (402) 895-5183

PRICE QUOTATION

DATE

YOUR INQUIRY DATED

PROPOSED SHIPPING DATE

TERMS F.O.B.

SALESMAN

TO BE SHIPPED VIA PPD OR COLL.

City of Oconomowoc

THIS IS A QUOTATION ONLY AND SUBJECT TO THE CONDITIONS NOTED.

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
1	New Ditch Witch Model SK650 w/ bucket		
	Purchase Price	$19,849	
1	New Backfill blade w/ hydraulics		
	Purchase Price	$1,857	
1	New SK5TR trencher w/ 36" boom & 50/50 chain		
	Purchase Price	$4,925	
		$26,631	
	Add for freight $500	+ $500	
	Add for applicable sales tax	27,131	

...ES AND CONDITIONS QUOTED WILL BE

HONORED UNTIL _____, 19 ____

Ditch Witch of Omaha
Ditch Witch Dealer

Guy Medlin
Authorized Signature

Form No. 13

White-Prospective Customer, Yellow-Salesman, Pink-File Copy

DITCH WITCH SALES, INC.

107 TROY ROAD
COLLINSVILLE, IL 62234-5503
Phone 618-345-6262
Fax 618-345-2823

Ossawatomie, City of

PO Box 37
439 Main St.
Ossawatomie, KS 66064

Quote: 50050203
Ext. Ref.: SK650
Description: Mini Skid Steer
Date: 08/20/2012
Salesperson: Larry Vogel
Mobile Phone: 618-407-2813
Email: lvogel@ditchwitchsales.com

Price Quote

Quote valid for: 41 days, until 09/30/2012

SK650 Mini Skid Steer

The Ditch Witch® Model SK650 mini skid steer basic power unit includes the following: Kubota D1105-T liquid-cooled diesel engine, Tier 4i (32.8 hp gross,, 31.5 hp estimated net @ 3,000 rpm), Infinitely, variable-speed hydrostatic ground drive through, independently driven tracks, Mechanical service brake,, Multi-tach attachment plate, Hydraulic power beyond and, 650 lb. rated operating capacity (35% of total tip, capacity)..

Qty	Part Number	Description
1	SK650	SK650 Mini Skid Steer
1	SK650-5	Base Unit: Wide Aggressive Tracks 42"
1	300-5564	BUCKET, 44"

Equipment Subtotal	**$**	**20,490.76**
Subtotal Before Tax	**$**	**20,490.76**
Total Tax	**$**	**0.00**
Total Amount	**$**	**20,490.76** U.S. Dollars

PLUS FET + SETUP $500.00

$27,453.20
freight 760.00
$28,213.20

DITCH WITCH SALES, INC.

107 TROY ROAD
COLLINSVILLE, IL 62234-5503
Phone 618-345-6262
Fax 618-345-2823

Ossawatomie, City of

PO Box 37
439 Main St.
Ossawatomie, KS 66064

Quote: 50050205
Ext. Ref.: SK5BFB
Description: Backfill Blade
Date: 08/20/2012
Salesperson: Larry Vogel
Mobile Phone: 618-407-2813
Email: lvogel@ditchwitchsales.com

Price Quote

Quote valid for: 41 days, until 09/30/2012

Backfill Blade

Qty	Part Number	Description
1	322-630	Backfill Blade
1	104-033	HYD BLADE CONVERSION KIT

Equipment Subtotal	**$**	**1,740.03**
Subtotal Before Tax	**$**	**1,740.03**
Total Tax	**$**	**0.00**
Total Amount	**$**	**1,740.03** U.S. Dollars

PLUS FRT & SETUP $100.00

DITCH WITCH SALES, INC.

107 TROY ROAD
COLLINSVILLE, IL 62234-5503
Phone 618-345-6262
Fax 618-345-2823

Ossawatomie, City of

PO Box 37
439 Main St.
Ossawatomie, KS 66064

Quote: 50050208
Ext. Ref.: SK5TR
Description: Trencher
Date: 08/20/2012
Salesperson: Larry Vogel
Mobile Phone: 618-407-2813
Email: lvogel@ditchwitchsales.com

Price Quote

Quote valid for: 41 days, until 09/30/2012

SK5TR Utility Attachment

SK5TR Compact Utility Trenching Attachment

Qty	Part Number	Description
1	SK5TR	SK5TR Utility Attachment
1	104-040-1	Mat. Var.: SK5TR Utility Att. Base Unit
1	141-791	ROLLER BOOM ASS'Y (36")
1	141-755	RESTRAINT BAR
1	133-040	33K 4P DURA 68P 4.4

Equipment Subtotal	**$**	**5,222.41**
Subtotal Before Tax	**$**	**5,222.41**
Total Tax	**$**	**0.00**
Total Amount	**$**	**5,222.41** U.S. Dollars

PLUS FREIGHT & SETUP 160.00

City of Osawatomie
www.osawatomieks.org

Osawatomie City Hall
439 Main Street • PO Box 37
Osawatomie, KS 66064
Phone: (913)755-2146
Fax: (913)755-4164

MEMORANDUM

To: Mayor and City Council

From: Don Cawby, City Manager

Re: **Projects & Issues Update**

Date: September 13, 2012

Projects

Sewer Plant. At the next meeting, Brian Kingsley from BG Consultants will be here to discuss the proposed sewer plant upgrades. Our plant continues to have problems and couple pieces of equipment we have are being held together with bailing wire. I have asked Brian to come to the work session so we can have plenty of time for discussion.

Swimming Pool. We have already had discussions with BG Consultants on being our pool planners. They have given us preliminary estimates significantly lower than what we expected. Tom Arpin, BG's pool planner has already met with BG on Wednesday night and I will plan on having the contract ready for your to sign at the next meeting.

Issues

Grant Application. Today I submitted a grant application to the Baehr Charitable Trust Foundation for $35,000 for new playground equipment for the Cole Sports Complex. I would have rather requested money for new buildings or to improve our basketball courts and tennis courts, but we have yet to complete a master plan and playground equipment seems to be something the Baehr Foundation has funded in the past. If the grant application is approved we would need to provide the installation and any additional money over the $35,000. Based upon some estimates, I believe this is the right amount of money to provide a better play area at the complex.

Position Posted. We have posted an Accounting Officer position for the City to replace Lynette Mersman when she retires in the next couple of months. We posted the position open until filled, but will begin resume review in the next couple of weeks.

Communications Training. Last week I attended the 3CMA conference in Portland Oregon. 3CMA is an organization focused on communications professionals in local governments. I came back with tons of new ideas and a real focus on how we portray our community to the world. Obviously improvements to our website is a big step in that direction, but I also think we need to start thinking about how we need to change our communication style with our citizens as the way they communicate is rapidly changing. I also gained some real insight on getting community feedback and looking for some ways to engage our

citizens in our activities. I am praying for some time to develop these ideas as I think communication improvements are going to be crucial to real improvements in our community.

Upcoming Meetings/Dates

Sept 15-16	Freedom Festival
Sept 27	City Council Meeting
October 11	City Council Meeting

Manager's Out-of-town Schedule

Sept 14	KACM Board Meeting - Salina
Oct 6-8	LKM Annual Conference in Topeka

OSAWATOMIE CITY COUNCIL

WORK SESSION / MEETING AGENDA
September 27, 2012
7:00 p.m., Memorial Hall

WORK SESSION

A. Call to Order

B. Roll Call

C. Work Session Items

   1. Efficiency Kansas 2.0

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. Pool Planning Contract - BG Consultants
   2. Sewer Plant Project & Contract - BG Consultants
   3. RICE Conversion Contract – Exline
   4. Police Car Purchase

I. City Manager Updates

J. Executive Session

K. Adjournment of Regular Meeting

City of Osawatomie
www.osawatomieks.org

Osawatomie City Hall
439 Main Street • PO Box 37
Osawatomie, KS 66064
Phone: (913)755-2146
Fax: (913)755-4164

STAFF AGENDA MEMORANDUM

DATE OF MEETING: September 27, 2012

AGENDA ITEM: **Efficiency Kansas 2.0**

PRESENTER: Scott Shreve, EMG

ISSUE SUMMARY: The State of Kansas has re-engineered the Efficiency Kansas program to create version 2.0. It is a low-cost loan program that helps Kansans make energy-efficiency improvements to their home, rental unit or small business. The program uses qualified energy auditors who will pinpoint how a home or building uses (and loses) energy and give provide a custom plan to make them more energy efficient. Efficiency Kansas provides low-cost financing through participating lenders or utilities.

The City's energy consultant, Scott Shreve, will provide an overview of the program and how the City would be involved as the utility company. The packet includes several documents related to the program for informational purposes only.

COUNCIL ACTION NEEDED: Review and discuss.

STAFF RECOMMENDATION TO COUNCIL: Provide direction to staff on whether or not to move forward with the program. I do not recommend formal action at this meeting.

EFFICIENCY KANSAS 2.0

This efficiency program works in conjunction with the State of Kansas Efficiency Kansas Loan Program to give City retail customers a turn-key solution to help lower their energy bills. It provides access to a loan program for cost-effective energy-efficient Improvements and adds the loan payment on the utility bill. EMG has administered this program for other municipal utility.

In simplest terms, this program allows for the energy savings to pay for this energy improvement loan. In order to qualify you must meet the following requirements:

1. Live in an City service territory.
2. Have 12 month utility billing history so baseline can be established.
3. Not had utility service disconnected in last 12 months due to non-payment.
4. Be current on utility service.

Business buildings must be equipped with "residential" like HVAC equipment in order to upgrade the current HVAC system.

*****NO INCOME RESTRICTIONS*****

Some of the Features:

- Interest loan for residential ($20k) and small commercial/industrial ($30k) energy efficiency is as follows: 1-3 years 5%, 4-6 years 6%, 7-9 years 8%, 10-15 years 8 ½%.
- 2.0 - Interest loan on "Commercial Lighting" program is 1-5 years 5% and 6% for 6 years up to $30,000.
- Meter-based agreement (loan tied to location and not the person).
- Customer is responsible for energy audit. The customer is the obligated to pay for the audit at the time of the audit ($300).
- Most of the improvements that generate the largest savings will be programmable thermostats, air-sealing/weather stripping, and insulation. HVAC may have enough savings based on age of equipment, but will require a longer term which, in turn, adds additional interest.
- Customers must make the energy improvements based on their simple payback. If the customer does not want to make a payment to buy-down the project to fall inside of the financed amount, the customer would begin deleting the lowest simple payback improvement until the project was completely financed by the savings generated from the improvement measures minus the associated interested involved in the loan.
- Comprehensive home energy audit designed to accurately diagnose and solve your home or building's energy waste problems in the most cost-effective manner possible, and identify most safety issues concerning the physical structure of the home, mechanical equipment (e.g. gas furnaces and water heaters), combustible gas leakage, and carbon monoxide leakage.
- City is not responsible for the loan. City will go through the same steps as collecting on a non-pay utility bill. After exhausting all avenues, the City will turn the customer over the bank to collect.
- City Fee: $1 per month for the term of the agreement
- State Fee: $2 per month for the term of the agreement

Efficiency Kansas 2.0

Program Manual

Guidelines for Program Participants, Participating Utilities, Energy Auditors, and Contractors

Kansas Corporation Commission, Energy Division
Version 5
August, 2012

www.efficiencykansas.com
785-271-3185

Table of Contents

Efficiency Kansas 2.0 Program Guide 1
Section 1: Efficiency Kansas Overview 1
1.1 Introduction 1
Future Updates 1
Energy efficiency goals of the KCC 1
1.2 Eligibility Requirements 2
Residential Structures 2
Owner-occupant 2
Rental units 2
Mobile homes 3
Small Commercial and Industrial Structures 3
Owner-occupant 3
Rental 3
1.3 Amount and Term of Financing 4
The loan rates: 4
Section 2: Energy Auditors and Energy Audits 5
2.1 Auditor Requirements and Responsibilities 5
Auditor Training 5
Auditor Qualification 5
Program-specific training 5
Field testing 6
On-site test 6
REM/Energy Conservation Plan testing 7
Continuing education 8
Required Insurance 8
Auditor General Provisions 8
Code of Ethics 8
Auditor Conduct and Continued Qualification 9
Probation 10
Suspension 10
Software 11
The Efficiency Kansas Data Collection (EKDC) workbook 11
2.2 Energy Audit Requirements 11
Customer interview 11
Unvented Combustion Appliances 12
Inspection 12

Assessment of building envelope exterior: ... 12
Exterior observation and measurements ... 12
Create plan view ... 12
Create elevation views ... 12
Measure doors and windows and assess shading and solar exposure. ... 13
Check side wall construction and insulation factors. ... 13
Exterior Observation of Roof Condition ... 14
Assess water-shedding functions of the dwelling ... 14
Assessment of building envelope interior: ... 15
Interior observation, measurement, and preparation ... 15
Inspect attic insulation, ... 15
Inspect wiring and heat sources in the attic. ... 15
Inspect ceilings. ... 16
Assess ventilation ... 16
Inspect walls ... 17
Inspect floors ... 17
Inspect basement/crawlspace ... 17
Recording Building Data ... 18
Mechanical systems ... 18
Duct leakage ... 19
Moisture control ... 19
Blower door / Air-tightness testing ... 19
Inspecting mobile homes: Special considerations ... 20
Furnaces and ducting ... 20
Framing ... 20
Walls and windows ... 21
Other repairs ... 21
Project Financing ... 22
2.3 Audit Report and Energy Conservation Plan ... 22
Energy Conservation Plan ... 22
Necessary repairs to existing infrastructure ... 22
Priority listing of energy-efficiency improvements ... 22
Mandatory minimums for equipment replacements ... 23
Cost effectiveness of recommended improvements ... 23
Building report ... 24
Permanence of recommended improvements ... 24
Non-approved improvements ... 24
Cost of each improvement ... 24
Projected savings ... 25
Monthly costs ... 25
Health and safety considerations ... 25
Audit expiration ... 26
Fuel switching ... 26
Liability ... 26
Mandatory Pre-Approval Audit Information to be Submitted ... 26

2.4 Bids for Recommended Improvements 27
Contractor Requirements 27
Contractor Compliance 27
Mandatory Audit Information Submitted for the Approval of Funds 28
2.5 Post-retrofit Audit 28
2.6 Monitoring by the Energy Division 29
Section 3: Guidelines for Customers 30
3.1 Getting Started 30
3.2 Arranging for an Energy Audit 30
Obtaining Utility Information 30
Selecting an Auditor 30
3.3 Selecting Improvements and Soliciting Bids 31
3.4 Submitting Energy Conservation Plan for Approval 32
3.5 Submitting Certificate of Project Completion 32
3.6 Repaying the Efficiency Kansas Loan 32
3.7 Maintenance of Equipment 33
3.8 Disclosure Requirements 33
Owner-occupants 33
Rental properties 33
Landlords and tenants 33
3.9 Self-Performance and Do-It-Yourself Regulations 33
Risks to Consider 33
Self-Performance and DIY Guidelines 34
Allowable Work Items 34
Work Items Requiring Special Consideration 35
Impact on Auditors 35
Impact on Participating Utilities 36
Section 4: Guidelines for Participating Utilities 37
4.1 Utility Requirements and Responsibilities 37
Eligibility Screening 37
Definition of residential and commercial customers 37
Rental properties 38
Directing Customers to Energy Auditors 38
Facilitating Approval of Energy Conservation Plan and Customer Projects 38
Verifying Completion 39
Receiving Efficiency Kansas Funds 39
Paying Contractors 39
Placing Charge on Bill 39
Term of the obligation 39
Program charge as a percentage of projected savings 40
Utility administrative fees 40
Energy Division administrative fees 40
Level payment plan option 40
Payment-in-full option 40
Repayment of funds 41

Frequency 41
Reporting 41
Case of default 41
Revert to Owner 41
Transfer of Service 41
Disclosure and Notification Requirements 42
UCC filing 42
Additional public information and outreach 42
Prudent Procedures 42
Reporting Requirements 42
4.2 KCC and Energy Division Responsibilities 43
Management and Oversight 43
Review, Pre-approval and Final Approval of the Energy Conservation Plan 43
Field inspection 43
Payment to utilities 43
Maintaining online information 44
Section 5: Guidelines for Contractors 45
5.1 Contractor Requirements and Responsibilities 45
Role of Contractors 45
Contractor Qualifications 45
Preparation of Bids 45
Building permits and local codes 45
Implementation of work 45
Payments to Contractors 45
Insurance Requirements 46
5.2 EPA Renovation, Repair and Painting (RRP) Regulations 46
Efficiency Kansas Material and Installation Standards Manual 46
Section 6: Glossary 47
Section 7: Appendixes 49
Appendix 1: Fuel Information Release Form 49
Appendix 2: Auditor Identification and Disclosure 50
Appendix 3: Contractors Terms and Conditions 51
Appendix 4: Self-Performance Terms and Conditions 52
Appendix 5: Utility Contact Form 53
Appendix 6: Variance for Twelve Months of Continuous Utility Usage 54

Efficiency Kansas 2.0 Program Guide

Section 1: Efficiency Kansas Overview

1.1 Introduction

Beginning July 15, 2009 the Efficiency Kansas loan program was established by the Kansas Corporation Commission (hereafter, "KCC") to promote energy conservation through energy-efficiency improvements in existing Kansas homes and small businesses. Operated by the Energy Division, a division of the KCC, Efficiency Kansas was funded with approximately $34 million in federal economic stimulus dollars, authorized by the American Recovery and Reinvestment Act of 2009. As the program re-launches in 2012, it is funded by up to $20 million dollars provided entirely by the private sector.

The Efficiency Kansas loan program is a revolving loan program. In other words, as funds are repaid, the loan fund will replenish and thus provide a long-term source of financing for cost-effective energy conservation and efficiency improvements in homes and buildings throughout the state.

To better accomplish the program objectives (detailed below), the Energy Division has partnered with Kansas utilities to promote energy-efficiency improvements in Kansas homes and small businesses. To ensure cost-effectiveness, all structures will first undergo an energy audit that results in a customized energy conservation plan (see Section 2 for more details about energy audits and auditors). Only those improvements for which estimated energy savings cover or exceed the project cost will be approved for Efficiency Kansas financing. Customers may have the option to make upfront payments to "buy down" project costs to meet this requirement. This upfront payment will be referred to as the "Initial Customer Outlay" for programmatic reference.

See the Efficiency Kansas Data Collection workbook, page 7, "Loan Overview" for project budget calculations.

Future Updates

This manual may be updated or revised at any time; the version number will be changed with each substantive update. Program Participants, Participating Utilities, Qualified Auditors, and Contractors should refer to the Efficiency Kansas website (www.efficiencykansas.com) for the most current version.

Energy efficiency goals of the KCC

The loan program is closely aligned with the KCC's overall goals for energy efficiency programs, as laid out in the final KCC order in Docket 08-GIMX-442-GIV (the "442 Docket"), in that it (1) produces cost-effective, firm energy savings; (2) requires a comprehensive approach based on sound building science principles; (3) works well with Midwest Energy's existing How$mart® program, as well as similar meter-based programs that may be offered by other utilities; and (4) allows for targeting of rental units.

Efficiency Kansas offers Kansans an affordable approach to making energy-saving improvements in existing buildings statewide. By using local contractors, the program stimulates economic activity throughout the state. And by allowing the funds to recycle though the revolving loan fund, the program provides the state with a long-term source of funding for smart energy efficiency improvements to help reduce energy consumption and emissions of regulated pollutants and carbon dioxide now and in the future.

1.2 Eligibility Requirements

Efficiency Kansas 2.0 has no income limits. All Kansas owners of existing homes and small businesses, regardless of their income, are eligible to participate in Efficiency Kansas and may apply for financing through their Participating Utilities (provided their electric or natural gas utility offers the program). Tenants whose utility offers a meter-based program may also be eligible for financing.

Efficiency Kansas 2.0 participants must be in good standing with regard to their utility bill payments and have access to 12 consecutive months of utility bills. While it is preferred that these bills be the participant's, if a participant has not lived in the home for 12 full months, they may be eligible if they have access to the previous occupant's bills. (See Appendix 1: Fuel Information Release Form**)**

Auditors listed as an Efficiency Kansas 2.0 Qualified Auditor may participate in the program as a consumer however; an auditor shall not conduct an energy audit on or, prepare documentation for an Efficiency Kansas project on their own property. Any Qualified Efficiency Kansas Auditor must employ the services of another Qualified Efficiency Kansas Auditor to participate in the program.

Residential Structures

Owner-occupant

All Kansas homeowners may participate in the program, provided they meet the following criteria:

- They are deemed creditworthy by participating utilities
- They are Kansas residents,
- The existing house is in need of energy-efficiency improvements (proposed improvements must meet program guidelines)
- The home is located within the state of Kansas, and
- The home has been constructed for a period of 12 months or longer.

Rental units

Owners of property (landlords) as well as occupants/operators of small businesses (tenants) may participate in the program, provided they meet the following eligibility criteria:

- They are deemed creditworthy by participating utilities,
- They are Kansas residents,
- Both landlord and tenant are informed of their respective obligations and agree to participate,
- The rental unit is in need of energy-efficiency improvements (proposed improvements must meet program guidelines)
- The rental unit is located within the state of Kansas, and

- The rental unit has been constructed for a period of 12 months or longer.

Mobile homes

Owner-occupants, landlords, and tenants of mobile homes may participate in program, provided the following conditions are met:

- They are deemed creditworthy by participating utilities,
- They are Kansas residents,
- If mobile home is a rental unit, both landlord and tenant are informed of respective obligations and agree to participate,
- The mobile home is on a permanent foundation or basement,
- The mobile home has had all wheels removed,
- The mobile is in need of energy-efficiency improvements (proposed improvements must meet program guidelines),
- The mobile home is located within the state of Kansas, and
- The audit is performed by an energy auditor who has received Mobile Home Certification from a qualified training institution.

Small Commercial and Industrial Structures

Owner-occupant

Any Kansas small business owners may participate in the program, as long as they meet the following eligibility criteria:

- They are deemed creditworthy by participating utilities,
- They are Kansas residents (applies to business partners),
- The existing structure uses residential-sized heating and air conditioning equipment,
- Their small business or commercial structure is in need of energy-efficiency improvements (proposed improvements must meet program guidelines)
- The small business or commercial structure is located within the state of Kansas, and
- The structure has been constructed for a period of 12 months or longer

Rental

Both owners of property (landlords) and occupants/operators of small businesses (tenants) may participate in the program, provided they meet the following eligibility criteria:

- They are deemed creditworthy by participating utilities,
- They are Kansas residents (applies to business partners),
- Both the landlord and tenant are informed of their respective obligations and agree to participate,
- The structure uses residential-sized heating and air conditioning equipment,
- The small business or commercial structure is in need of energy-efficiency improvements (proposed improvements must meet program guidelines)
- The small business or commercial structure is located within the state of Kansas, and
- The rental unit has been constructed for a period of 12 months or longer.

1.3 Amount and Term of Financing

Participants approved for Efficiency Kansas 2.0 financing will receive 90% of the approved project costs. The maximum amount of funding for approved improvements to existing residential structures is $20,000.For approved improvements to existing small commercial and industrial structures; the maximum amount of funding is $30,000.

The loan rates:

Project Financed (Years)	Interest Rate
1 – 3	5%
4 – 6	6%
7 – 9	8%
10-15	8.5%

The maximum term of all financed energy-efficiency projects is 15 years (180 monthly bill payments). Efficiency Kansas 2.0 financing will not be approved for items purchased prior to the approval of an Efficiency Kansas 2.0 project by the Energy Division.

Section 2: Energy Auditors and Energy Audits

2.1 Auditor Requirements and Responsibilities

Auditor Training

All projects that are approved for Efficiency Kansas 2.0 financing must be based on energy audits that have been performed by Efficiency Kansas "qualified" auditors. "Qualified Auditors" have (1) met the criteria established by the Energy Division and (2) requested that they be included in the listing of qualified auditors. This list is maintained by the Energy Division and is available on the Efficiency Kansas web site (www.efficiencykansas.com). All energy auditors on the Efficiency Kansas 2.0 Qualified Auditors list will have undergone training and been certified by one of the qualified training institutions listed on the Efficiency Kansas website (www.efficiencykansas.com). In addition to this requirement, auditors must pass an Efficiency Kansas certification to be listed as a Qualified Auditor.

All auditors will be asked to indicate their service area, and the Energy Division will include this information in the online list of qualified auditors.

Auditors performing audits on mobile homes must be certified by receiving mobile home audit training at a qualified institution.

Auditor Qualification

After attending an approved training course, or upon application to become Efficiency Kansas Auditor, energy auditors will be expected to complete additional requirements to receive Efficiency Kansas qualification.

To be considered for inclusion on the Efficiency Kansas 2.0 Qualified Auditors list, auditors must submit:

- Completed Qualified Auditors application
- Copy of Liability insurance
- Copies of relevant training certifications

Efficiency Kansas Auditor Certification will have three parts:

- Program-specific training.
- Field testing.
- Continuing education requirements.

Program-specific training

The Energy Division will provide auditors with program-specific information to help them effectively market and explain the Efficiency Kansas 2.0 program (hereafter called the Efficiency Kansas program) to their customers. The training will include a review of the Program Manual, the Efficiency Kansas website, the Efficiency Kansas Data Collection Workbook, and the participant handbook called

the “Efficiency Kansas 2.0 Workbook”. Auditors will also receive training on how to present the Energy Conservation Plan to their customers and the Energy Division.

Field testing

Field-testing will involve both an on-site test and a test of the auditor’s proficiency in REM/Rate or REM/Design and the EKDC workbook. It will be monitored by Energy Division staff energy auditors, hereafter “Monitor.”

On-site test

Field testing is limited to on-site testing procedures that will follow each auditor through the data collection portion of the energy audit. The auditor will identify a house that meets criteria as defined by the Energy Division. The house **must** have combustion appliances and a minimum of two of the following:

- Kneewalls (walls common between house and attic),
- Vaulted (sloped) ceilings,
- Crawlspace,
- Cantilevered floor, or
- Floored attic.

Once auditors have identified the house they wish to use, they will contact the Energy Division to verify the house will be a good choice for the field testing and schedule the on-site test. Auditors are encouraged to select a house that includes all of the features listed above, for the optimum scoring opportunity.

Auditors will have three hours to complete the on-site field test. Testing will conclude after three hours. Any inspection procedure performed after the time has expired will not be scored. The Monitor will document the end of the test and what procedures have not been completed. The items not completed will be scored with a zero (0).

The Monitor will instruct the auditor that:

- There is a three hour time limit;
- No questions can be asked about procedures;
- The test is an open-book, open-note test; the auditor can use any reference material desired;
- The training/qualification scoring forms can NOT be used as reference during the testing;
- The auditor is to talk throughout the inspection process to ensure that the Monitor is aware of what they are doing and why.

The Monitor will do the following during the on-site test:

- Explain to the auditor that they will be followed through the house and asked questions as they go.
- Ask the auditor if they need anything prior to starting the audit.
- Follow and observe auditors as they conduct an inspection of the dwelling.
- Record observations and measures throughout the house to compare with the findings the auditor submits.

- Score the auditors' efforts on the field-evaluation form by circling the most appropriate score for each activity area.
- Evaluate the accuracy of auditor performance on each line item and assign points, from 0 to 5, for each item on the field-evaluation form. (Monitors will mark NA if the item doesn't apply to house.) Any attempt at a procedure should result in a score above zero, unless the auditor creates a harmful or hazardous condition. The recognition, accuracy, proficiency, and number of attempts to perform the procedure will be scored to recognize the auditor's knowledge and abilities.
- Follow the instructions on the field training documents to evaluate and grade the auditor performance.

REM/Energy Conservation Plan testing

The remaining portion of the certification involves REM submittal and the preparation of the EKDC workbook including the Energy Conservation Plan. Auditors will receive a packet of information at the end of the field testing session, which includes information—pictures, drawings, and notes—about a house already audited by the Energy Division. It will be up to the auditor to complete the REM, EKDC workbook and Energy Conservation Plan for this house on their own. They will have one full week (7 days) to complete and submit the REM file, the EKDC workbook and the Energy Conservation Plan to the Energy Division.

Auditors will be tested on the following:

- Correctly identified improvement measures to consider
- Measurements and calculations for building, windows, doors, attics, etc.
- Property information input
- Correct library creation
- Utility costs reconciliation
- Work order specifications
- Two Building File Report
- Improvement analysis
- Retro-fit Report creation
- Use of the Efficiency Kansas Data Collection workbook
- Compilation of the Energy Conservation Plan

Auditors will receive a letter informing them of their "pass/fail" result and their score on field-testing certification. Auditors must receive at least an 80% or better to pass the on-site test portion and 90% or better to pass the REM/Energy Conservation Plan portion of the test.

- If auditors pass both portions of the field testing, they will be become Qualified Auditors.
- If auditors pass only one portion, they will be sent a letter explaining the test result and options for retesting.
- If auditors fail to pass either portion, they will receive a letter explaining the retest criteria.

A minimum of thirty (30) days must pass before a retest can be completed.

Continuing education

The Energy Division believes that continuing education is an important element of auditor qualification. Qualified Auditors will be required to attain twenty (20) hours of Continuing Education in order to be recertified. Recertification will be required every two (2) years. The Qualified Auditors have the option to perform a Field/REM/Energy Conservation Plan test again if the required CEU credits have not been obtained for recertification after two (2) years.

Required Insurance

Qualified Auditors must hold general liability insurance. They are also strongly encouraged to carry errors and omissions insurance. The Energy Division requires proof of insurance to list an auditor as a Qualified Auditor. Auditors are to provide the Energy Division with current copies of insurance upon each renewal period if they wish to maintain a listing on the Qualified Auditors list. Auditors will be removed from the Qualified Auditors list and placed on "Inactive" status if insurance coverage lapses and proof of insurance is not received within seven (7) calendar days of expiration date on certificate.

Auditor General Provisions

All audits must be completed by the Efficiency Kansas Energy Auditor certificate holder, including all data collection and analysis. No other person may perform audit service, inspection or evaluations for the Efficiency Kansas program.

An Efficiency Kansas Energy Auditor Identification form has been included in the Efficiency Kansas Program Manual. It is recommended program participants check the auditors' identification and have the auditor sign the form. This form is a record that is to be kept by the program participant.

To become a Qualified Auditor in the Efficiency Kansas loan program, auditors must complete the Application for Qualified Energy Auditors and submit it to the Energy Division along with proof of completed training and general liability insurance. All auditors are required to complete the additional Energy Division qualification process prior to being considered a Qualified Auditor and achieve an active listing on the Efficiency Kansas website.

Auditors on the qualified list may be removed or suspended at the discretion of the Energy Division (see below).

Code of Ethics

Qualified Auditors in the Efficiency Kansas loan program are expected to abide by a code of ethics in providing services to their customers. This code of ethics requires a commitment to confidentiality, accuracy, integrity and honesty. The Energy Division expects that Qualified Auditors practice the profession according to the following code of ethics.

Qualified Auditors representing the Efficiency Kansas Loan Program will meet the standards listed below.

- Make statements based on facts that are supported by the inspection, audit results, or research done by an industry-recognized professional source.

- Always act in good faith toward each client. A disclosure form indicating the Qualified Auditor's connection to any energy efficiency products or services other than audits has been provided to the clients. The client has the option of asking for this disclosure to be signed prior to the audit being performed or purchased.
- Never allow business interests to affect the quality or results of an audit or recommendations.
- Recommend that the customer obtain more than one bid with references, prior to selecting a contractor to provide the needed improvements.
- Never disclose any information concerning the results of the audit without the written approval of the customer or his/her representative, except to submit the results to the Energy Division for program evaluation purposes.
- Not accept or offer commissions or allowances directly from or to other parties dealing with the customer in connection with work for which they are responsible.
- Make every effort to uphold, maintain, and improve the professional integrity, reputation, and practice of the Efficiency Kansas loan program, the energy auditing profession, and its auditors.

Auditor Conduct and Continued Qualification

The Energy Division expects all auditors on the List of Qualified Auditors to uphold the high standards of both their profession and the Efficiency Kansas loan program. Auditors may be removed, suspended, or placed on probation at the discretion of the Energy Division. Qualified Auditors must renew their certification with Efficiency Kansas every two years.

The Energy Division is responsible for investigating complaints against Qualified Auditors. Auditors found to be in violation of the standards of practice outlined in this Program Manual will receive written notification from the Energy Division of the offense and the action taken. These actions include the following:

- *Probation:* The auditor will remain on the List of Qualified Energy Auditors, but no audits will be approved until the auditor is removed from probation. Failure to comply with program requirements while on probation may cause the auditor to be suspended. Such requirements may include seeking additional training.
- *Suspension:* An auditor will be temporarily removed from the List of Qualified Auditors, and suspended from submitting audits to the Efficiency Kansas loan program until the Energy Division determines that the problem has been resolved. Failure to comply with program requirements during suspension may cause the auditor to be removed from the List of Qualified Auditors. Such requirements may include seeking additional training.
- *Removal of qualified auditor status:* An auditor will no longer be listed on the List of Qualified Auditors and cannot reapply for a period of one year. The auditor will not be able to submit audits for approval for the Efficiency Kansas loan program.

Probation

The Energy Division may refuse to renew or revoke the qualification of energy auditors for the reasons outlined below:

- Misrepresentation of qualifications when applying to become a Qualified Auditor;
- Intentional misrepresentation of data provided to customers or the Energy Division;
- Any gross negligence, incompetence, or misconduct in performing an energy audit;
- Any violation of provisions of this Program Manual.
- Failure to maintain and show proof of insurance coverage as required by the Efficiency Kansas Program.

Suspension

Moreover, the Energy Division may suspend auditors, place them on probation or remove the qualified auditor status for the following reasons:

- Submitting audits performed by a person other than the Efficiency Kansas Qualified Auditor.
- Repeatedly refusing to do Efficiency Kansas program audits when approached by potential customers.
- Submitting audits that are not based on the house-as-a-system approach and recommending replacements or upgrades biased by any conflict of interest.
- Regularly submitting audits that do not conform to the EK 2.0 Program Manual requirements.
- Performing work or making recommendations that creates a potentially dangerous, harmful situation.
- Failure to identify potentially dangerous situations.
- Failure to comply with the Efficiency Kansas Program Manual.
- Failure to complete the auditing or reporting requirements once a property has been inspected.
- Failure to disclose fees for auditing or any associated costs in advance of services.
- Failure to respond in a timely manner to Efficiency Kansas audit information requests.
- Repeated complaints of poor performance against the Auditing Company which, if verified by staff, would result in their suspension from the Program.
- Failure to maintain and/or provide proof of required insurance coverage.

The Energy Division will continue to provide timely and reasonable support for qualified energy auditors. The Energy Division may host periodic meetings for qualified auditors, attendance at which will be mandatory.

Software

Computer modeling is required for a qualified energy audit. Auditors shall use either **REM/Rate** or **REM/Design** audit software. Other software may be deemed acceptable at the sole discretion of the Energy Division.

The Efficiency Kansas Data Collection (EKDC) workbook

This is a data collection and reporting tool that requires software that is compatible with Microsoft Excel 2007. The EKDC workbook is intended to standardize the audit submittal process and is the vehicle that is used for audit submission to the Energy Division.

An Efficiency Kansas Data Collection Workbook **Users Guide** is available to give auditors a step-by-step walk through of the operation of the EKDC workbook. That users' guide is available at the back of this manual or online at (www.efficiencykansas.com).

2.2 Energy Audit Requirements

The purpose of the energy audit is to determine the energy-use characteristics of the building and develop a cost-effective plan, using a "whole house" approach to energy efficiency.

The following section details the **minimum** requirements for an energy audit. Auditors should review this section to ensure that all audits have met these requirements.

Additional forms and other information for energy auditors can be found in the Appendixes section. These forms along with the EKDC workbook are also available on the Efficiency Kansas web site (www.efficiencykansas.com).

Customer interview

Prior to initiating the energy audit, Qualified Auditors will interview customers to identify the customer's priority comfort and health concerns and other questions. Page 1 of the EKDC workbook can be sent to the customer in advance for them to fill out and return to you, or filled in as an onsite customer interview. As with any page in the EKDC workbook, this page can be printed and filled in by hand, but it must be filled out electronically to be submitted to the Kansas Energy Division. Auditors will use the interview to explain the general audit process and procedures (including the technical processes), how information is gathered, and how that information will be used to create the Energy Conservation Plan. Efficiency Kansas Qualified Auditors are expected to keep customers involved to the greatest extent possible at all times.

At the time of the customer interview the auditor shall include a disclosure of the cost of the audit, including the required post-retrofit audit. The Auditor should inform customer of any audit rebate or subsidy that may be available from the Energy Division. If an auditor is charging hourly fees, they shall clarify with customers a maximum fee to be charged. All fees shall be disclosed prior to beginning the energy audit. Auditors shall also disclose any potential conflicts of interest, as required by Codes of Ethics (see previous section).

Unvented Combustion Appliances

Buildings heated by unvented combustion space heaters are considered unsafe and shall not have air sealing or building tightness measures applied unless the heaters are removed from the premises, vented to the outside, or replaced with an appropriate heating unit.

Auditor Notes: On page 1 of the EKDC workbook the series of three questions in rows 51 through 53 replace Appendix 7

Inspection

A thorough inspection is essential to an accurate energy audit. Inspections performed by Efficiency Kansas qualified energy auditors will include the following general components, which are detailed below:

Auditor Notes: Page 2 of the EKDC workbook can be printed and completed by hand at the job by the auditor and then scanned and uploaded as a PDF file. The page may also be filled out electronically and uploaded with the EKDC workbook if the auditor has drawing software and chooses to do so.

- Assessment of building envelope through exterior observation and measurements;
- Assessment of building envelope through interior observation, measurement, and preparation;
- Combustion testing (health and safety);
- Assessment of mechanical systems;
- Assessment of duct leakage;
- Assessment of moisture infiltration;
- Dealing with unvented space heaters; and
- Blower door / Air-tightness testing.

Assessment of building envelope exterior:

Exterior observation and measurements

Qualified Auditors will do the following during their inspection of the building envelope:

Create plan view

Auditor Notes: Use Page 2 of the EKDC workbook for illustrating the outline and dimensions of the structure.

- Many auditors find it helpful to begin consistently at a given point (say, the northwest corner of a structure) and measure in a particular direction (say, clockwise). Thus, all sides are viewed in a given order, reducing potential for confusion and duplication. The “plan view” drawing should indicate which way is North for easy reference. The drawing shall be the work of the auditor, not a pre-drawn document from appraisal records or architectural drawings. Include dimensions for the floor areas, ceiling areas, windows and doors.

Create elevation views

- Showing the overall shape and the location of doors, windows, and other features of each side or face of a structure. Effort should be made to produce an illustration that is neat

and provides a reasonably accurate representation of dwelling. **Photographs may be included in lieu of hand-sketched elevation views**. Pictures must show all four sides of the house and also clearly show any relevant items to be addressed in work specification forms. **Note that pictures are required, even if hand-sketched elevations are developed by the auditor.**

Measure doors and windows and assess shading and solar exposure

- Door and window dimensions are written in inches, with the width first, then the height.
- Observation should be made during the measurement phase to determine whether work will be applied to doors and windows. Identify condition of glazing, sill and other window parts, checking for damage and possible corrections to be repaired.
- If no additional work will be applied on a given door or window, only rough opening measurements are required. Contractors are required to perform their own measurements for accuracy when supplying bids.
- Assess the degree to which windows are shaded, thereby reducing the amount of solar heat gain transmitted through them. Shade can be provided by blinds and curtains on the inside of windows, insect and solar screens on the outside, overhangs and wing walls which are part of the building's shape and form, trees and shrubs which may seasonally lose and gain foliage, and nearby buildings and land forms.

Check side wall construction and insulation factors

- Check to determine the feasibility of installing additional sidewall insulation.
- Document the type of siding, insulation, approximate R-value, and type of construction. Siding condition should also be noted.
- Siding removal should be included as an option in insulation bid packages.

  Auditor Notes: The existence of various types of replacement siding (i.e., steel, aluminum, vinyl, and asbestos-cement) will not necessarily constitute a justification to omit sidewall insulation unless extenuating circumstances exist and are documented. All types of installation should be considered including an interior installation using crown mold and chair rail to cover holes.

- The presence of sidewall insulation will not necessarily constitute a justification to omit sidewall insulation, unless extenuating circumstances exist and are documented.
- Auditors must complete their own sidewall tests, such as drilling test holes to determine whether sidewalls are insulated.
- It is important when conducting blower door tests to know whether or not sidewalls are insulated. **Sidewall testing is not to be conducted by insulation contractors.**
- In some situations, it is possible to observe wall insulation by removing outlet and switch plates, or by drilling through interior walls in closets or behind cabinets.
- Uninsulated wall cavities on exterior walls shall receive a dense-packed, blown fibrous insulation (if audit approved), unless circumstances make it impossible to install insulation. The presence of pre-existing insulation is not necessarily a reason to not insulate.
- The dense-packed method must be employed unless the wall condition prohibits its use.

- It is the auditor's responsibility to determine whether or not the walls are in a condition that allows for the dense-packed insulation method.
- If the dense-packed method is not used, the inspection report must document the reason.
- The Energy Division will approve payment for insulation of only those sidewall areas that actually receive insulation.
- All sidewall insulation bids will specify insulation of "net" wall area. Any payment to contractors for insulation of "gross" wall areas (doors, windows, etc., that cannot be insulated) is not allowed.
- Document air sealing that can be done at utility bypasses, vents, and other penetrations that allow air leakage that is inaccessible from the interior. These items should be clearly and specifically identified to allow them to be easily located and identified by contractors. Examples might include the sill plate, band joist area in homes with very low crawlspaces, cracks or holes in foundations, and crawlspaces or foundation entry hatches.
- Pre-blower door air sealing measures which can be accomplished only from the exterior of the dwelling should be noted during this phase.
- Infrared scans may be performed to confirm areas of heat loss and gain. However, infrared scans shall not replace any of the above required analysis.
- Penetrations through the exterior siding of the home must be sealed even if the bypass does not continue into the interior living space. Failing to seal the penetrations at the exterior of the home provides opportunity for moisture and air to enter into the framed wall cavities and create air movement, moisture damage and possible mold problems. SEAL ALL EXTERIOR PENETRATIONS. Detail all penetration locations on your plan view as you are measuring the exterior of the house. Use these notes to build the list of improvement measures to include in the infiltration improvement measures analysis.

Exterior Observation of Roof Condition

- Determine if, and where, roof leakage problems may exist. If there are any signs of leakage or damage, notate if the condition has been corrected. It is imperative to identify and call for repairs to be completed prior to adding any additional insulation.

  Project Specifications: Roof leaks may be sealed to protect the integrity of the structure. Roof leaks may be sealed to protect attic insulation.

Assess water-shedding functions of the dwelling

- Site drainage problems which cause moisture to enter the structure and may compromise the integrity of the structure and/or foundation can be addressed as repairs to protect the structure against moisture damage and related health and safety problems.

  Auditor Notes: The costs associated with these activities would be a portion of the aggregate project costs since they cannot be input into the software for analysis.

  Project Specifications: A drainage swale could be cut to cause water to drain around the structure, or fill dirt could be added to cause water to drain from the structure.

- Other water-shedding or site drainage problems that are specific to the structure should be noted during this observation phase.

- A failing guttering system may result in moisture damage to the dwelling and may be addressed as repairs to protect the sidewall insulation.

  Project Specifications: Gutters may be cleaned, repaired, replaced or installed as protective measures to prevent or repair water damage that could affect the performance of installed measures.

Assessment of building envelope interior:

Interior observation, measurement, and preparation

The inspection of the building interior by the Qualified Auditors will include the following:

Inspect attic insulation

- Un-insulated or partially insulated attics shall be insulated to R-38, according to the cost-effectiveness of the measure. A maximum attic insulation level of R-38 is recommended by the Efficiency Kansas program. **Total installed R-Value in excess of R-49 will not be funded by Efficiency Kansas and will require the customer to buy-down the cost of the additional insulation unless a variance is granted for special circumstances.**
- Auditors may require that customer have some form of access to the attic as a requirement to perform the audit. Attic inspection *must* be completed as a part of the audit.
- If no attic access exists, and it is not possible to obtain access through an exterior vent, then an attic hatch or access vent may be installed at the customer's expense.

  Auditor Notes: "Access hatches" can be pre-fabricated using 1 × 10 lumber for the sidewalls (to act as an insulation dam), 1 × 4 lumber for ceiling trim, and a piece of ¾-inch plywood for the door. The pre-fabricated units can be sized to fit standard rafter widths of 16 inch and 24 inch on center.

  Project Specifications: Attic and crawlspace hatches in conditioned areas shall be weather-stripped to prevent air leakage. Kneewall access should be insulated to at least R-19. Attic access panels should be recommended to be installed at the same R-value as the entire attic. All accesses shall remain operable after the job is completed.

- Access hatches to knee-wall areas are subject to the same requirements. If no access to the knee-wall area(s) exists, one may be installed at the customer's expense.

Inspect wiring and heat sources in the attic

- If knob-and-tube wiring (KTW) is present and attic insulation will be installed, auditors should test the wiring with a voltage detection device to determine whether or not it is active.

  Auditor Notes: KTW is not inherently dangerous, but it is an older type of wiring that was not designed or installed with modern appliance loads in mind. Often, the KTW is a lighter gauge wire than is recommended for modern applications. Thus, KTW is potentially dangerous in situations where it can be overloaded, which may cause it to overheat and cause a fire.

  The National Electrical Code requires that insulation material should not cover KTW. It is suggested, therefore, that insulation be "valleyed" under and around KTW or that insulation dams be installed to prevent contact with KTW. Special care should be taken to ensure that KTW splices remain visible and are not covered by insulation.

  KTW must be protected by circuit breakers or S type fuses with an appropriate amperage limit for the gauge of wire used (15 amp for #14 wire, and 20 amp for #12 wire). S type fuses are designed to prevent

both the installation of higher amperage fuses and the insertion of coins into the fuse holder for the purpose of circumventing fused amperage limitations.

Insulation cannot be installed if the above precautions are not taken. Permission must be obtained from the owner to modify fuse box.

Insulation dams must be placed around any potential heat-producing sources, including recessed lights, chimneys, flues, and open electrical boxes.

Unfaced fiberglass batting may be used as an insulation damming material, but a three-inch air space must be maintained between any damming material and the heat source. Unfaced fiberglass batting, or any other damming material, must not touch the heat source.

Damming material must be sufficiently high to contain the specified depth of the insulation material to be installed. Damming material also must be sufficiently strong to ensure that the weight of the insulation product will not cause the damming material to move or collapse against the heat source.

Inspect ceilings

- The stack effect in winter is perhaps the most constant and often the strongest driving force moving conditioned air and moisture vapor from a dwelling. Holes or penetrations in the upper plane of the interior envelope are, therefore, the most important air leaks to seal in a structure. Be sure to look in all cabinets, closets and cupboards to check for gaps, holes and bypasses.
- Air sealing around heat sources is to be done with High-Temp Caulk. Spray foams shall not be used.
- Open wire junction boxes, frayed wires, open connections, etc. need to be noted and addressed in the audit.
- Check to see that the mechanical ventilation fans (bath and kitchen fans) are exhausted to the nearest roof or soffits vent.
- Detailed notes regarding the attic are required. The best practice would be to make a plan view of the attic space(s) and detail for contractors where items are located, what work needs to be completed, the method to complete the measure and specific details for each item found.
- Each attic area MUST be investigated and evaluated.

Assess ventilation

- The auditor must take into account the leakiness of the attic and its particular moisture- and heat-retention characteristics when determining the proper amount and location of additional venting to recommend.
- Determine if adequate ventilation is installed. If it's not, determine the methods to provide the appropriate ventilation required.

Project Specifications: Attic ventilation shall be installed so that there is one square foot (net) of free vent area in every 300 square feet of attic floor area, with approximately half of the vent area located near the roof ridge and the remaining vent area located near the eaves.

Auditor Notes: Many older houses were originally constructed with spaced boards and have wood shakes or shingles that have a much higher natural ventilation rate than newer houses with plywood sheathing. Therefore, such structures may require less or no additional ventilation.

Inspect walls

- Holes or penetrations in interior walls, especially in balloon-framed structures, can allow conditioned air to move from the structure through interconnected framing conduits. Do not assume a crack or a hole will be a source of infiltration or exfiltration. Check the condition with the blower door testing running. Specify to seal if they leak under pressure.
- Failing to seal the penetrations at the exterior of the home provides opportunity for moisture and air to enter into the framed wall cavities and create air movement, moisture damage and possible mold problems. SEAL ALL EXTERIOR PENETRATIONS.
- Infrared scans may be performed to confirm areas of heat loss and gain. However, infrared scans shall not replace any of the above required analysis.

Project Specifications: Holes or penetrations that would allow insulation to blow into the living space must be sealed prior to the installation of the insulation.

Inspect floors

- Floors between stories in many houses contain open floor joist areas that can act as air passage conduits. Cantilevered areas—where an upper story juts over a lower story or where a bay window extends beyond the wall plan—can allow major air leakage. Many leaks through and between floors will be revealed by blower door tests.
- Cantilevered areas must be checked to ensure that the space is insulated (to fullest possible capacity) and air sealed. Caulk to seal the seams of the protective covering of the insulation.

Auditor Notes: Dense-packed insulation can be used as an effective air sealant at the ends of floor joist cavities.

Inspect basement/crawlspace

- Auditors will look for signs of air leakage at penetration sites (including any windows and doors) and inspect the condition of rim joist insulation. Signs of moisture infiltration should be noted in the Audit Report to the customer.
- Infrared scans may be performed to confirm areas of heat loss and gain.

Project Specifications: The sill plate rim joist area in many homes is a major source of air infiltration. Stone foundations often contain numerous holes and cracks, which are major sources of infiltration. Cracks may be caulked, stuffed with backer rod or other packing material and caulked, sealed with an expanding foam product, or sealed in other ways that provide an effective and durable seal. Expanding foam products should be used only in areas that do not receive direct sunlight, or should be coated to protect them from such light (ultra-violet rays deteriorate the product and reduce its effectiveness).

Batt or rigid-board insulation may be cut and placed neatly in the rim joist area if the auditing software determines that the addition of batt insulation to the perimeter would result in significant reduction of conductive heat loss. Rim joist insulation may also be installed using spray applied cellulose material.

- Provide low cost options of sealing and insulating Rim joists and foundation walls, as well as the more expensive (expanding foam) options. All options must be analyzed separately in the Improvement Analysis.
- Basement grade entries, foundation entry doors, and crawlspace entry hatches should be inspected to ensure that they provide an effective barrier to the penetration of water and a durable air seal.

Project Specifications: Wood construction in contact with soil or near the grade line should be of a treated nature. Foundation entry doors can be constructed of treated, braced plywood or can be standard exterior entry doors.

Auditor Notes: A six-mil poly vapor barrier should be installed over all dirt crawlspace floors if possible. The poly barrier can also help to make crawlspace inspection and repair work more pleasant, and it will contain the evaporation of moisture from the soil into the space above.

Crawlspace ventilation should be installed only if the site-specific situation precludes the installation of an effective vapor barrier and if there is reason to believe that ventilation is necessary to protect structural components from moisture damage.

Recording Building Data

Auditor Notes: Page 3 of the EKDC workbook is Lined paper for analyzing and reporting the Improvement Measures you want to include in the structure being audited. The page may be printed and taken to the audit sight to be completed by hand if needed, but it will be necessary to complete the form electronically. Please give a detailed description of "what" the problem is, "where" it is located and "how big" it is.

Collected data should include detailed notes about each finding during the inspection process. These details need to be included for each portion of the inspection process and gathered as a list of items to include for consideration of improvement in the Improvement Analysis. If extra sheets are needed, print as necessary and fill in extra copies of the EKDC page 3.

Mechanical systems

In addition to the specific requirements below, auditors should identify the age and condition, make, model, serial number, and energy efficiency rating for all mechanical systems in the report accompanying the energy audit.

Auditor Notes: The EK Combination HVAC Test In Record sheet (EKDC workbook, page 4) may be printed and taken to the audit sight to be completed by hand if needed, but it will be necessary to complete the form electronically because a large amount of information will be processed from this form by the Energy Division.

- Heating and cooling: Auditors will check performance of equipment, and ensure equipment is operating as intended (e.g., auditors will check any drain and condensate lines, the condition of the burners, fans and ignition systems). Performance adjustments are not allowed for equipment library creation and input into REM without a form of performance validation. The validation must be presented with the audit report to the Energy Division by way of photo of gauge reading, showing efficiency readings found during testing. Photos must be date and time stamped to be accepted.
- Water heater: Auditors will examine water heater for performance, temperature setting, and signs of leakage. If furnace or boiler system is being recommended for replacement and shares a flue system with the water heater that is not going to be replaced, note on the EKDC form that the water heater will be “orphaned.”
- Auditors will perform combustion appliance zone (CAZ) analysis on combustion appliances in the home. This will include looking for evidence of backdraft/spillage and any carbon monoxide leaks in the home. Auditor’s recommendations should take into account health and

safety precautions to ensure safe operation of combustion appliance and that indoor air quality is maintained at a safe level. **This testing shall be performed during test-in and test-out procedures.**

- Distribution systems: Auditors will check condition of, and indicate any repairs that may be necessary for the following:
- Air handlers and coils
- Ductwork
- Steam/hot water pipes (for boiler)
- Mechanical ventilation (bath/garage exhaust fans)

Duct leakage

Auditors will follow the specifications listed below:

- If duct system runs through unconditioned space in the attic, crawl space, or basement, the ducting must be sealed and insulated.
- Return-air systems in CAZ area shall have seams sealed to prevent possibly pulling combustion gas by-products into the system and distributed through supply system.

Project Specifications: Fiberglass mesh tape shall be installed under mastic, where needed for reinforcement. Approved caulks and mastics shall be used for duct sealing. Duct insulation shall have a minimum R-value of 4.

Moisture control

Homes that have moisture problems such as leaky roofs or foundation problems must have these issues corrected prior to implementing the energy conservation plan recommendations.

Existing moisture problems in a house may result from mechanical ventilation not being either installed or used by the customer//tenant of the property. Mechanical ventilation should be installed and customers should be advised of hazards associated with moisture when doing daily water activities such as cooking or bathing. To help ensure that the moisture is eliminated from the home, the auditor shall instruct the occupants about using ventilation fans for thirty minutes following any water activity to eliminate moisture from the house and help reduce the risk of creating a moisture damage problem in the structure. Mechanical ventilation should be exhausted to gable, roof, or soffit vent, not merely into the attic. Clothes dryers must be vented to the outside.

Auditors need to ensure the minimum ventilation guidelines have been installed per ASHRAE 62-89.

Blower door / Air-tightness testing

Auditors will perform an air-tightness test using a blower door, a piece of equipment that allows an auditor to depressurize a house to determine the tightness of the home's shell, and identify ways to improve the home's shell. Auditors will take care to ensure health and safety regarding lead paint or asbestos materials, making all efforts to cause no harm to customers. Auditors will locate all areas of significant air infiltration/exfiltration including baseboards, jams, ducts chases, etc., and report these to the customer. Auditors and contractors will ensure that minimum air ventilation guidelines, as per ASHRAE 62-89, have been met during both test-in and test-out procedures to provide for the proper

amount of air changes per hour. Combustion appliance zone testing will be performed at a level equal to or exceeding guidelines established by the Building Performance Institute (BPI), Residential Energy Services Network (RESNET), and other Department of Energy (DOE) funded research.

All contractors and crew members will be responsible for complying with the EPA's Renovation Repair and Painting (RRP) regulations, as enforced by the Kansas Department of Health and Environment. More information can be found online (www.epa.gov/lead/pubs/renovation.htm). Contractors should also reference the additional information included in EPA Final Rule [under the authority of 402 c 3 of the Toxic Substances Control Act (TSCA)], and New Lead Based Paint Renovation, Repair and Painting Program requirements (40 CFR 745, Subpart E), issued April 22, 2008 (73 FR 21692).

Inspecting mobile homes: Special considerations

Auditors inspecting mobile and modular homes must have a special Mobile Home Certification. This training can be obtained at an Efficiency Kansas qualified training institution (see web site for list of such institutions: www.efficiencykansas.com).

Furnaces and ducting

The interior observation process in mobile homes should start with a visual inspection of the furnace ducting system, then move to the upper plane of the interior envelope (i.e., the ceiling), and finally work through the main body of the house to the floor and possible penetrations into or through the underbelly.

Several types of air leakage sites are common to the furnace ducting systems of mobile homes. The boot that connects the duct to the floor of the trailer is often the site of major air leakage. In many mobile homes, it is possible to lift a floor register and see into the underbelly, or see the ground under the structure through holes in the duct boot and the underbelly.

In some older mobile homes, the ends of units of ducting have been compressed to connect them to other units to form longer ducting runs. As a result, there are often air leaks at the top and bottom of the duct where the two units of ducting join. In addition, the ends of ducting runs are either poorly sealed or not sealed at all. In double-wide units, the duct that joins the two sides is often loose or misaligned.

Leaks in the supply ducting of mobile homes allow conditioned air to be blown into the underbelly or outside the house, when the furnace blower is functioning, significantly reducing the efficiency of warm air delivery within the structure. When the furnace blower is not functioning, the same leaks allow outside air to blow back into the structure. No air movement within or through the ducting system should be observed when the blower fan is not operating.

Project Specification: Mastic all duct boots to the floor and seal all trunk ends with foam board and mastic.

Framing

In the assembly process of most mobile homes, the roof structure is installed as a complete unit after the frame, floor, and walls has been constructed. The completed roof section is lifted into place with

a crane and set upon the wall structure; this creates some potential for air leakage at the roof/wall joint. Appropriate sealing material may be applied on both sides of the trim piece at the roof/wall joint. However, sealing the joint between interior partition walls and the ceiling should rarely be necessary.
Holes, cracks, and penetrations in the ceiling may constitute important air leaks.

Walls and windows

Holes or penetrations on the inside of exterior walls of mobile homes can allow air to move from the structure through the corrugated exterior siding.

In almost every case, some type of interior storm window will provide the most effective, and the most cost effective, reduction of air infiltration through mobile home windows. Recent research on mobile homes has indicated that window replacements should be used *only* when repair would be more expensive than replacement. Even for jalousie and awning windows, money is better spent on interior storm panels than on window replacement.

It is often possible (with client approval) to seal some primary windows shut if they are not normally used for ventilation.

Other repairs

Floors in mobile homes are often constructed of particle or wafer board. Moisture generally causes this type of material to deteriorate rapidly. In mobile homes, plumbing leaks and other types of moisture concentration are a common occurrence. Floor repairs may be completed using treated lumber to provide some protection against future deterioration.

Note: Caution should be used in the handling of treated material due to the toxic nature of the chemicals used in the material.

A good opportunity for combined air-sealing and thermal boundary improvements are available in mobile homes by installing insulation to a value of R-30 in the belly of the home. Belly paper and belly board should be repaired and sealed if any gaps are evident, prior to installing insulation.

Product Specification: Recommended method for insulating mobile home floors is to use a lightweight fibrous material such as loose-fill fiberglass. Drill and blow the floor full, sealing all access points in floor. Caution should be taken to avoid filling ductwork with insulation.

Exterior doors that are misaligned due to settling of the unit may allow water leakage. It is not uncommon to find floors around exterior doors deteriorated due to moisture damage. Condensation on windows, especially replacement type windows without interior storms, can cause deterioration of the walls and floors below the window. Plumbing leaks under kitchen and bathroom cabinets, bathtubs, water heaters, washing machines, and refrigerators may also cause floor deterioration. Many of these problems could be included as an infiltration measure in the Energy Conservation Plan. Holes in floors, walls, and ceilings are common in mobile homes and can be a source of infiltration. However, plumbing leaks that would cause problems would need to have the leaks fixed first. Sometimes, moisture problems are caused by mobile homes being inherently tight: in many instances, too many people and/or pets occupy the small space or mechanical vents at water locations are not installed, used, or working properly.

Project Financing

Funds will be released to the utility upon project approval by the Energy Division. The utility may release funds to contractors upon receipt of a Certificate of Project Completion. The Certificate will be supplied by the Qualified Auditors from the EKDC workbook. The Certificate must be signed by the customer and auditor, and routed to the Partner Utility, who will send it to the Energy Division. Customers must also submit contractor invoices that clearly indicate the work completed, including itemization of materials and labor where appropriate, serial and model numbers of equipment installed, or anything else necessary for the Energy Division to clearly identify that the invoices are consistent with the previously approved Energy Conservation Plan.

2.3 Audit Report and Energy Conservation Plan

Another key piece of an Efficiency Kansas approved energy audit is the report that the auditor prepares following the inspection. The Audit Report**,** which includes general information about the structure and the Energy Conservation Plan, provides both a detailed "diagnosis" and a "prescription" with options for the customer to review.

Every Audit Report will be reviewed by the Energy Division and recommended projects approved before funds are released from the Efficiency Kansas loan fund. No materials can be purchased by anyone prior to the Energy Conservation Plan being approved by the Energy Division.

Energy Conservation Plan

The EKDC workbook will include an Energy Conservation Plan (ECP) that will detail the recommended improvements and may include several options for customers to choose among. These recommended improvements will be prioritized in terms of cost effectiveness.
As discussed in Sections 3 and 4, it is the customer's responsibility to solicit bids from contractors after the Energy Conservation Plan has been approved by the Energy Division. Once the Plan is approved, the customer may seek final financing approval. **Auditors that also perform as contractors must provide an opportunity for customers to solicit bids from additional contractors. Bid specifications must be created in a manner which allows item for item comparison and pricing for all bids.**

Necessary repairs to existing infrastructure

First and foremost, the Energy Conservation Plan will detail any "as-built" problems that will require repairs to ensure the health and safety of structure's occupants; examples include repairing faulty equipment, such as pilot lights on gas furnaces and/or water heaters, and improperly sized or installed vent piping for combustion appliances. This documentation and disclosure can save lives.

Priority listing of energy-efficiency improvements

These improvements and the priority in which they should be implemented will be identified by the auditor. Priority is determined by the analytical software utilized in preparation of the energy audits (see Section 2.1).

Any mechanical system that is found to be operating with a cracked heat exchanger, unrecoverable back-drafting, spillage or other situations that cause carbon monoxide to contaminate the indoor environment **must** be corrected prior to applying any improvement measure that will tighten the thermal boundary. **Thermal boundary improvements, such as air-sealing and insulation, must not be installed prior to the correction of or replacement of hazardous conditions existing with mechanical equipment.** Whenever such hazardous conditions are present, auditors may contact the Energy Division for a waiver of the required prioritized listing.

Recommended improvements *may* also include water conservation measures and/or renewable energy generation, provided such improvements are cost effective and permanently attached to the structure or concrete footings and bases.

Auditors are encouraged to write specifications in great detail, in order to ensure that contractors have sufficient information to make accurate bids and implement recommended improvements so that estimated savings may be achieved.

Although the focus of the audit and the Energy Conservation Plan is on saving energy, the plan will detail any "as-built" repairs needed to ensure the health and safety of the structure's occupants. As stated previously, examples include repairing faulty equipment (such as faulty pilot lights on gas furnaces and/or water heaters), and improper sizing and installation of combustion appliance vent piping.

Mandatory minimums for equipment replacements

If auditors recommend replacement of HVAC equipment, they must specify equipment that meets the minimum efficiency standards and other requirements listed below. Auditors may recommend more efficient equipment.

- Furnaces must have an AFUE of at least 92%.
- Boilers must have an AFUE no less than 90%
- Air Conditioners must have a minimum SEER of 14.
- Heat Pump minimum requirements are: HSPF 8.5, 14 SEER. Can include an 80% back-up combustion forced air furnace.
- Water heater blankets must be audited for cost effectiveness if they are not present unless such installation is not recommended by the manufacturer or for other safety concerns.
- Carbon Monoxide monitors must be recommended if they are not present.
- All equipment must be installed per the manufacturer's specifications.
- All manuals and warranties must be left with the customer.
- It is recommended to audit programmable thermostats for effectiveness. If recommended, auditors should clearly educate customers on the proper use of the programmable thermostat.

Cost effectiveness of recommended improvements

In order for projects to be approved for financing through the Efficiency Kansas 2.0 Loan Program, all projects must:

- Have a Simple Payback of 15 years or less.
- Projected energy and dollar savings must be realized within the "life-cycle" of the equipment, which cannot exceed 15 years for the purpose of calculating the Simple Payback.

Even though a particular item may take longer than 15 years to pay for itself strictly on its own savings, other improvements may help contribute savings that allow the entire project to pay for itself in 15 years. The Simple Payback calculation should be based on the prevailing marginal utility rates for each source of energy saved.

Measures that require more than 15 years to provide a Simple Payback may qualify for Efficiency Kansas financing if the customer is willing to contribute out-of-pocket funds to cover the "Initial Customer Outlay" (make an upfront payment for the additional costs), so that the total project will meet the 15-year Simple Payback.

> **Auditor Notes:** The auditor will work with the customer using the "Loan Overview Calculator" on page 7 of the EKDC workbook.

Building report

Auditors shall use the Two Building Report system in REM to provide recommended improvements to customers and in their submission to the Energy Division. This system shall also be used to determine the estimated savings comparisons between as-built energy usage and post-retrofit energy usage. The original REM Improvement Analysis and Retro-Fit Report must accompany all Energy Conservation Plans submitted to the Energy Division. (See detailed instructions on Two Building Reports in the Supplement section of the EKDC Workbook Users Guide at the end of this Manual).

Permanence of recommended improvements

In addition to the cost-effectiveness criteria outlined above, all improvements must be a permanent fixture to the building in order to be approved for financing through the Efficiency Kansas 2.0 Loan Program.

Non-approved improvements

The Energy Conservation Plan may contain items and recommendations that will not be approved by the Energy Division, but may be valuable for the customer. Such improvements include lighting and appliance upgrades or other measures that are not permanently attached to the structure. Savings from these items cannot be included in the Simple Payback calculation.

Cost of each improvement

Qualified Auditors will include detailed specifications and estimated costs for each recommended improvement in their initial Energy Conservation Plan. The customer authorizes the auditor to submit the Energy Conservation Plan, along with required audit documentation, to the Energy Division. The submission shall include work specifications for contractors and estimated costs for each item in the Energy Conservation Plan. The Energy Division reviews the Energy Conservation Plan and notifies the auditor of approval. Customers will be responsible for obtaining final bids for all work (see 2.4 below). These bids are considered final; no requests for additional funds will be approved in the event of cost overruns.

Projected savings

The Energy Conservation Plan shall include a detailed calculation of projected savings, based on actual historical usage, for each fuel source used. Calculations and assumptions shall be clearly identified. (This information will be entered on page 1 of the EKDC workbook) Auditors will analyze at least twelve (12) months of the most recent utility bill information (electric, gas, propane, etc.) for the purpose of determining accurate savings estimates. Using a 36-month history would provide better accuracy if data is available.

Homes lacking 12 consecutive months of their own history may utilize a variance for twelve months of continuous utility usage. A Variance for Twelve Months of Continuous Utility Usage form has been included in the Efficiency Kansas Program Manual (Appendix 6). This form is also located in the Efficiency Kansas User's Guide and available online at www.efficiencykansas.com. If using the variance, complete the form and present it to the auditor at the time of the audit.

Savings and payback projections will be included for each measure individually, as well as for the comprehensive package of improvements.

> **Auditors Note:** complete the questions regarding the annual reduction of fuel usage on page 6 of the EKDC workbook by utilizing the REM 2 Building File Report, which provides for this calculation through the REM Fuel Summary report. Record
> the fuel savings information on the data collection forms and submit to the Energy Division.

Monthly costs

Qualified Auditors will calculate the monthly program charge that will be included on utility customer's monthly bills (see EKDC workbook, page 7 for more information on calculations). In order to qualify for Efficiency Kansas 2.0 financing, the repayment term cannot exceed 15 years and the amount of the monthly charge, including any interest charges, cannot be more than 90% of the projected average monthly savings. In other words, the monthly charge for a project with projected average monthly savings of $100 may not exceed $90. Note that the calculation of savings will be based on estimated reductions in both electricity and natural gas usage, where applicable. The monthly charge will also include a $2.00 monthly fee to cover Energy Division administrative costs and may also include an administrative fee for the Utility.

Health and safety considerations

Qualified Auditors will identify and list all combustion appliances and systems, the test performed, and any repairs or replacements necessary to ensure the health and safety of building occupants. Any mechanical system that is found to be operating with a cracked heat exchanger, unrecoverable back-drafting, spillage or other situations that cause carbon monoxide to contaminate the indoor environment must be corrected prior to applying any improvement measure that will tighten the thermal boundary. **Thermal boundary improvements, such as air-sealing and insulation, must not be installed prior to the correction of or replacement of hazardous conditions existing with mechanical equipment.**

Auditors and contractors will ensure that minimum air ventilation guidelines as per ASHRAE 62-89 have been met during both test-in and test-out procedures to provide for the proper amount of air changes per hour.

Combustion appliance zone (CAZ) testing must be performed at a level equal to or exceeding guidelines established by BPI, RESNET, and other DOE funded research. Documentation of the worst case CAZ testing must be included on the required HVAC form.

Qualified Auditors will recommend installation of carbon monoxide detector if one is not currently installed within the dwelling.

Audit expiration

Audits and Energy Conservation Plans shall expire twelve (12) months from the date printed on the audit report. Customers who do not elect to move forward with a project during this time frame will be required to have another audit, should they wish to access Efficiency Kansas 2.0 financing.

Fuel switching

If the Energy Conservation Plan recommends improvements that necessitate a change in the type of fuel currently used (for example, a gas furnace being replaced by an air-source heat pump), the Audit Report must include the costs and projected energy savings for both the recommended equipment and fuel, and costs and savings associated with updated equipment using the current fuel source.

Liability

Auditors must include the following language on all contracts, paperwork, and the Audit Report provided to the customer: *"The Kansas Corporation Commission (KCC) does not endorse, approve, or recommend any energy auditor, contractor or subcontractor associated with the Audit Report, or energy efficiency improvements. No guarantees or warranties, express or implied, are made by the KCC or the Energy Division with respect to any audit report, estimated savings, proposal for improvements, contract for improvements or any work or equipment included as part of the customer's energy efficiency project funded through the Efficiency Kansas loan program. It is recommended that customers exercise due diligence in the selection of an energy auditor or contractor prior to entering into any contract or agreement for energy efficiency improvements. Customers may request references of an energy auditor or contractor and should always insist that any guarantees and warranties represented by an energy auditor or contractor, either for workmanship or equipment warranties, are provided in writing. The KCC and the Energy Division are not liable for any intentional, criminal, or negligent acts or omissions of the auditor or contractor. The KCC and the Energy Division make no representation of warranty of any kind, expressed or implied as to the quality of the work done by independent energy auditors."*

Mandatory Pre-Approval Audit Information to be Submitted

Every Efficiency Kansas energy audit report must include the following specific information:

- Computerized Audit (REM building file or other Energy Division approved software)
- Efficiency Kansas Data Collection Workbook. (EKDC).
- Photographs: Portrait elevation views of all sides of the building.
- Auditors or customers will complete page 1 of the Efficiency Kansas Data Collection workbook to include the historical utility costs for submission to the Energy Division.

Customers shall provide auditors with the previous 12 consecutive months of utility information. Auditors will not send the historical utility documents to the Energy Division with the first audit submittal however; they must retain copies of the historical documents for a period of one year.

2.4 Bids for Recommended Improvements

Unless other arrangements are made with the auditing company, the customer will act as a general contractor for the project and they are responsible for soliciting bids, coordinating and scheduling contractors for each of the recommended improvements they wish to implement. They will use the detailed specifications included in their Audit Report to inform contractors of specific requirements. Customers shall seek final bids from contractors, as any costs in excess of the approved amount will be the customer's responsibility. Customers will also provide contractors with the Contractor Terms and Conditions forms (Appendix 3, located in the Efficiency Kansas User's Guide and online at www.efficiencykansas.com).

Customers are not required to take the lowest bid, but the amount spent on the improvement must meet the cost-effectiveness standards discussed in Section 2.3. Customers must have received final bids from contractors following Energy Division approval of the Energy Conservation Plan and prior to arranging financing with the participating utility.

It is advised that the customer have all contractors sign the Contractor Terms and Conditions form (Appendix 3). Customers should retain the Contractor Terms and Conditions form(s) for each contractor selected, for the entirety of the project. The Energy Division may request a copy of the Contractor Terms and Conditions form if need arises. Additional copies of this form are located in the Efficiency Kansas User's Guide and online at www.efficiencykansas.com (Appendix 3).

After receiving the completed bids, customers will provide copies of the bids to the auditor for the Energy Conservation Plan to be updated with accurate cost data. The auditor will update the audit information for submittal to the Energy Division to receive Approval of Funds for the project.

All project improvements must be completed within ninety (90) calendar days from the date of the Approval for Funds document which is provided to the auditor upon final project approval for financing from the Energy Division. The auditor will contact the customer to verify project approval.

Contractor Requirements

Under no circumstances will the Energy Division finance more than the maximum amount approved in the Energy Conservation Plan. *Change orders are not allowed* in the Efficiency Kansas Program. Customers are responsible for any products and/or services which exceed the approved project scope and costs. Any change order item completed by a contractor which has not been pre-approved in writing will be done at the risk of the contractor and not paid for by the Energy Division or the customer.

Contractor Compliance

All contractors and crew members will be responsible for complying with the EPA's Renovation Repair and Painting (RRP) regulations, as enforced by the Kansas Department of Health and Environment. More information can be found online (www.epa.gov/lead/pubs/renovation.htm).

Contractors should also reference the additional information included in EPA Final Rule [under the authority of 402 c 3 of the Toxic Substances Control Act (TSCA)], and New Lead Based Paint Renovation, Repair and Painting Program requirements (40 CFR 745, Subpart E), issued April 22, 2008 (73 FR 21692).

Mandatory Audit Information Submitted for the Approval of Funds

- Copies of the contractor's hard bids. (PDF's preferred)
- Revised Energy Conservation Plan, based on actual bid pricing. (In the EKDC workbook).
- Revised REM Improvement Analysis.
- Revised REM Retrofit Report.
- The Energy Division may request auditors to provide a utility company summary of the last year's utility use. (Only submit this documentation if you are required to do so by the EKDC workbook).

As discussed in Sections 3 and 4, it is the customer's responsibility to solicit bids from contractors (these will also be included in the information they provide to the utility upon project completion).

2.5 Post-retrofit Audit

Auditors must perform a post-retrofit audit to ensure that all measures have been installed properly as designed by the audit. The post-retrofit audit will include the following:

- Examination of all components of the approved Energy Conservation Plan to ensure they were installed properly.
- Performance of a blower-door test, ensuring strict adherence to ASHRAE Standard 62-89 for minimum air change calculations.
- Performance of combustion appliance zone testing; this test shall be performed at a level equal to or exceeding guidelines established by BPI, RESNET, and other DOE funded research. Documentation of test-out must be sent to the Energy Division.

Auditor Notes: Record the Blower Door test date and results on BTL sheet in the EKDC workbook and it will be transferred to the Certificate of Project Completion. Under Post audit Tab, you will find the auto-filled Certificate of Project Completion to be printed and signed by yourself, the customer and the participating utility representative.

The auditor is responsible for documenting any safety concerns or improper installation in the post-audit report, which is delivered to the customer and Energy Division with the Certificate of Completion. Auditors should clearly indicate remedies for any safety concerns or improper installation so a customer may correct these. Auditors should indicate that any item that is improperly installed may cause health and safety concerns or result in the measures not producing the anticipated savings.

Upon completion of the post-retrofit audit, auditors will sign and submit the Efficiency Kansas Certificate of Project Completion to the customer, whose signature is also required (along with the signature of the participating utility) for project to be considered completed.

2.6 Monitoring by the Energy Division

The Energy Division will monitor projects on a continuing basis to ensure that Efficiency Kansas Participants receive excellent service. This monitoring will include (1) reviewing all Audit Reports, including Energy Conservation Plans, prior to approving projects for financing; (2) performing random "performance" audits before or after the project's completion; and (3) performing random interviews with customers to measure their satisfaction and to determine ways to improve the program.

Should the Energy Division find unsatisfactory work, incomplete audits, or other problems causing customers to be unsatisfied, auditors and contractors may be barred from further participation in the program.

Section 3: Guidelines for Customers

3.1 Getting Started

Kansans can access the Efficiency Kansas loan program through Participating Utilities. The energy efficiency up-grades may be financed through the Efficiency Kansas loan program, up to a maximum of $20,000 for improvements in existing homes and $30,000 for improvements to existing small commercial and industrial structures if there are enough energy savings generated to support the improvement measure(s).

When accessing Efficiency Kansas financing through Partner Utilities, customers should first contact the partner to verify their eligibility for the program (see Section 1.2).

An Efficiency Kansas User's Guide is available for customers to assist with the project flow process. The Efficiency Kansas User's Guide is available on the Efficiency Kansas website for download (www.efficiencykansas.com) or, by contacting the Energy Division with a request for one to be mailed. The Efficiency Kansas User's Guide is a resource that assists the customer through each step of the process of the Efficiency Kansas Program.

3.2 Arranging for an Energy Audit

Obtaining Utility Information

Before contacting auditors, customers must obtain their electricity and natural gas (or other heating source) usage for the previous 12 months from their utility providers. It is the customer's responsibility to obtain this information from the utilities. If a fuel source other than a utility provided service is used (i.e. propane, wood, pellets, etc…) it is necessary to provide copies of receipts for purchase of the fuel source. In the case of a structure that is heated by fuels harvested from the customers' personal source, an estimate of material and labor cost for harvesting the fuel, with current market pricing, can be used for this requirement. This information is needed in order for the auditor to calculate estimated savings for proposed improvements.

Selecting an Auditor

Customers must use an Efficiency Kansas Auditor. An updated list of Efficiency Kansas certified auditors can be found at www.efficiencykansas.com. Customers may select any energy auditor from the list of qualified auditors maintained by the Energy Division. To ensure that they receive the comprehensive audit required by the program, customers shall verify that the individual performing their audit is an Efficiency Kansas qualified auditor. Before agreeing to the audit, customers should also ask the auditor to fully disclose what the audit will cost. The price should include the post-retrofit audit, and reporting any and all data required by the Energy Division as detailed in this Program Manual. Auditors are required to disclose any potential conflicts of interest that may arise as a result of their offering certain services or equipment. Customers are encouraged to ask auditors for this disclosure (see Appendix 2 – Auditor ID and Disclosure).

Customers are responsible for paying for the energy audit, regardless of whether the recommended project is approved by the Energy Division for Efficiency Kansas financing or whether they decide to move forward with an approved project.

3.3 Selecting Improvements and Soliciting Bids

Upon receipt of the Audit Report, customers will select the improvements to be included in their Efficiency Kansas project. The Energy Conservation Plan provided to the customer will include a list of improvements prioritized in order of cost-effectiveness—that is, those with the quickest payback will be at the top of the list. Customers are not required to implement all the recommended improvements, but they must start with the improvements at the top of the list and work down.

> **Program Note:** Your auditor will explain your options using the Efficiency Kansas Data Collection Workbook and the "Loan Overview" calculator. On this sheet you will be able to select the best energy efficiency improvements and the monthly repayment amount that will be added to your utility bill. Your repayment amount plus your utility usage should be less than your current utility bill.

After completing the audit, auditors will submit the Energy Conservation Plan and audit documentation to the Energy Division. The Plan will include estimated costs for the improvements. The Energy Division will review the plan and notify auditors of approval. The auditor can then instruct the customer to pursue bids for the work.

Once the customer has been informed of the audit's pre-approval, they are free to solicit bids from the contractors of their choice to perform the work required to implement the improvements in their proposed project. Customers should be sure to receive final and complete bids, as no change orders increasing the price will be allowed after they've submitted their Energy Conservation Plan for approval.

Unless some other arrangement has been reached with the auditing company, the customer will act as the general contractor for the project and will be responsible for soliciting bids. Each selected proposal must be accompanied by a signed Appendix 3 – Contractor Terms and Conditions. This document informs the contractor of their rights and obligations if they participate in the Efficiency Kansas program. Contractor Terms and Conditions forms are included in the Efficiency Kansas Program Manual (see Appendix 3)and also available in the Efficiency Kansas User's Guide and online at www.efficiencykansas.com. Customers should ask all contractors to sign this form and retain a copy of the form(s) for their records.

Customers wishing to perform their own work on items on the prioritized list shall follow the guidelines below in Subsection 3.9 (also see Appendix 4 - Self-Performance Terms and Conditions). No materials can be purchased by anyone prior to the Energy Conservation Plan being approved by the Energy Division. *No labor costs are paid to the customer for self performance items. Only pre-approved material costs are covered by the program for self performance items.*

All contractors and crew members will be responsible for complying with all requirements of the EPA's Renovation Repair and Painting (RRP) regulations as enforced by the Kansas Department of Health and Environment (see Section 2 for more details).

After receiving final bids from contractors, customers should submit the final bid information to auditors to update the Energy Conservation Plan. It is the customer's responsibility to seek and retain insurance certificates from contractors.

3.4 Submitting Energy Conservation Plan for Approval

After receiving bids from contractors, customers will next need to provide the hard bids to their auditor so that they may update the Energy Conservation Plan with actual pricing. The following items are required by the Energy Division from the auditors for this submission:

- The full Audit Report—including the Energy Conservation Plan—indicating the improvements the customer wishes to include in their Efficiency Kansas project;
- The actual contractor costs (bids/proposals) for the specific improvements with signed Appendix 3 – Contractor Terms and Conditions from each contractor doing work;
- Proposals generated for the customer by a retail outlet detailing the material costs to be used by the customer for the self performance work accompanied by a signed Appendix 4 - Self Performance Terms and Conditions (if applicable)
- Any other pertinent information received from the auditor and contractors.

Once the Energy Conservation Plan has been approved by the Energy Division, the customer will inform the contractors to begin work. All work must be completed within ninety (90) calendar days of the Approval for Funds document date. The customer is responsible for coordinating and scheduling contractors for each of the recommended improvements they wish to implement.

3.5 Submitting Certificate of Project Completion

After contractors have completed their work and the auditor has performed the required post-retrofit audit, the customer and auditor will sign the Certificate of Project Completion that the auditor will supply, after signing the document, the customer and/or auditor will submit the Certificate of Project Completion and the contractor invoices to the participating utility for their signature. The utility will forward the documents to the Energy Division for processing. Once the Energy Division has processed the Certificate of Project Completion, the utility will issue payment(s) to the contractors and reimburse the customer for materials (if applicable).

3.6 Repaying the Efficiency Kansas Loan

Customers will pay the program charge on their monthly utility bill. This charge will include the cost of the approved project and the administrative fees (see discussion of Program Charges in Section 4.1). Because the program charge in KCC-approved meter-based programs is considered "regular utility service," customers who do not pay their bill, or pay only a portion thereof, are subject to having their utility service disconnected. The utility must notify the customer of the amount of the program charge before the Energy Division sends project funds to the utility. The total of all charges affiliated with the Efficiency Kansas loan program on the customer's utility bill cannot exceed 90% of the projected savings. Customers are responsible for making monthly payments until the meter-based obligation has been paid in full.

Customers may elect to make an initial cash outlay towards the cost of improvements with their own funds to allow projects to meet the 15-year payback requirements. However any cash outlays will not impact the calculation or the order of the prioritized listing of improvements (see Section 3.2).

3.7 Maintenance of Equipment

Customers are responsible for all maintenance of equipment and should solicit and receive information on maintenance from the contractors that install the equipment. Customers should recognize that properly maintained equipment will provide better results and more sustained savings. Should the equipment fail, customers are still responsible for paying the monthly program charge on their utility bill.

3.8 Disclosure Requirements

Customers that agree to participate in the program are required to disclose to subsequent occupants any obligation that remains on the meter (i.e., remaining monthly payments). As a condition of participation in their meter-based program, Partner Utilities will have customers sign disclosure agreements (see discussion of disclosure and notification requirements in Section 4.1).

Owner-occupants

Customers who own the home or small commercial/industrial structure must sign an agreement with the utility stating that they will disclose the meter obligation upon sale of the structure. Failure to make proper disclosure could result in the customer being responsible for immediate repayment of the remaining balance.

Rental properties

Landlords must disclose an existing meter obligation to tenants prior to their signing a lease if the tenant will be responsible for the utility bill.

Landlords and tenants

Tenants wishing to participate in the program must have agreement from landlords in order to participate in Utility meter-based program. Conversely, landlords must have agreement from current tenants (unless the landlord also pays the utility bills). As noted above, landlords must also disclose to all tenants an existing meter obligation prior to the tenants' signing a lease.

3.9 Self-Performance and Do-It-Yourself Regulations

The Efficiency Kansas Loan Program will allow certain materials to be purchased and installed by the customer. Customers interested in performing some of the work items from their custom Energy Conservation Plan must abide by certain rules and regulations. They should inform their partner lender or utility of this interest when making initial arrangements for financing.

Risks to Consider

Before considering any self-performance construction activities, customers should understand that there are inherent risks involved in self-performance. If the proper materials and installation guidelines are not followed, the risk of improper installation is high. Improper installation can

negatively impact the estimated savings that were calculated by the audit and factored into the Energy Conservation Plan. Moreover, all work must be done in accordance with all local, state, and federal regulations.

The customer should fully recognize other risks involved in assuming the role of a contractor in self-performing improvement measures as well as impacts on the potential results. Contractors have insurance to cover the risk of liability, product installation, property damage, fire and health dangers; the customer may not be protected against such risks in a do-it-yourself situation.

Self-Performance and DIY Guidelines

Customers should keep in mind the following self-performance and DIY guidelines:

- Printed quotes for materials should be obtained by the customer and given to the auditor to be turned in to the Energy Division for project pre-approval.
- Only materials that are purchased and installed will be paid for by the program.
- Receipts for installed products may be submitted at the project completion, or intermittently, as allowed by the customer's partner lender or partner utility.
- No tools that are needed to complete any improvement measure may be purchased through the program. If a specialty tool is needed and is rented for the completion of an improvement measure, the rental cost may be included in financing considerations.
- Labor will not be paid for any portion of the project that is performed by the customer.
- Materials purchased must be high quality and have the expected life expectancy specified by the auditor.
- Any damage done to the structure, items, or possessions while implementing an energy-efficiency measure will not be covered by Efficiency Kansas funds.
- Any item required by the manufacturer to be installed by a skilled, trained professional must not be installed by a customer, without proper certifications that have been pre-approved by the Energy Division.
- All work must be done in a professional manner.
- All work must be completed within ninety (90) days from the date of the Approval for Funds document.
- Pre-purchasing of items is not allowed. Items purchased prior to the approval date for the Efficiency Kansas project will not be reimbursed.
- Any item installed in an unapproved manner will not be approved for payment with Efficiency Kansas funds

Allowable Work Items

Any work item that a customer is considering for possible self-performance shall be approved by the Energy Division during the course of the audit review. Customers must fill out Appendix 4 - "Self-Performance Terms and Conditions," when proposing to self-perform work. While a complete list of allowable work items cannot be provided, the following list provides examples of the types of work items that will be allowed for self-performance:

- Install reinforcing mesh and mastic at ductwork splices and connections.
- Install weather-stripping and sweeps at exterior doors.
- Install insulation in attics and kneewalls (Use caution if there is a presence of knob-and-tube wiring).
- Caulking and sealing holes and openings to minimize air infiltration.
- Handyman and carpentry items related to sealing and closing the thermal envelope.
- Insulating exposed ductwork and installing water heater blankets.
- Insulating rim joist cavities and draping insulation on concrete walls.
- Insulating foundation walls in crawlspaces and frame-floor assemblies.
- Installing vapor barriers over the ground in crawlspaces.

Work Items Requiring Special Consideration

Certain weatherization work activities will not be allowed to be self-performed by the customer, without proper certifications and/or professional training licenses; these certifications and licenses must be reviewed and pre-approved by the Energy Division before the work is started. While a complete list of these items cannot be provided, examples of some of these work items are listed below:

- Dense packing walls with tube filled insulation equipment.
- Installing furnaces, boilers, and air conditioning equipment.
- Installing electrical, plumbing, and gas piping.

Impact on Auditors

If customers elect to self-perform some of the work, the auditors will be receptive to customer wishes and adjust the overall audit accordingly. Customers may want to purchase some of the materials out-of-pocket and not include those costs within the loan. On the other hand, customers may also want to purchase the materials through the loan funds. Auditors will need to work closely with customers to develop these particular lists of information and make sure that all of the other construction work activities have been properly assigned to individual contractors. This information will become an important part of the overall audit that must be reviewed by the Energy Division.

Bids are required for all items recommended by the auditor in the Energy Conservation Plan. For customers intending to self-perform certain improvement measures, printed quotes will be required for all materials needed to complete the work. No labor charges will be accepted or paid by the project funding. Customers are required to prepare a list of materials and the actual costs, including all taxes and fees, to submit to auditors so they can complete the Energy Conservation Plan using final pricing. Change orders are not allowed. Estimated costs for materials must be adhered to. Customers should plan the material purchases wisely to avoid a shortage of available funds to complete improvement measures.

Auditors are responsible for documenting any safety concerns or improper installation issues in the post-audit report, which is delivered to the customer, the Energy Division and the Partner Utility. Auditors should clearly indicate remedies for any safety concerns or improper installation so a

customer may correct these. Auditors should indicate that any item that is improperly installed may cause health and safety concerns or result in the measures not producing the anticipated savings.

Impact on Participating Utilities

In the event that customers purchase materials (after Energy Division pre-approval) with out-of-pocket funds and want to include these costs in the loan, the participating utility may require that the customer submit the receipts for these purchases to the utility so that the customer can be reimbursed. There may also be instances where customers may need a joint checking arrangement from the participating utility that would allow customers to work with a lumber yard or supply house and pay for the materials with a check made out jointly to the customer and the vendor. Participating utilities may implement whatever guidelines they deem necessary to protect their interests.

Section 4: Guidelines for Participating Utilities

4.1 Utility Requirements and Responsibilities

Utilities are considered Efficiency Kansas "Participating Utilities" if:

- They offer programs that facilitate energy conservation improvements in residential housing.
- They plan to utilize Efficiency Kansas financing.
- They have signed the Memorandum of Agreement with the KCC and the Partner Banking Institution pertaining to Efficiency Kansas Funds.

Programs offered by Participating Utilities are likely to vary, with some utilities offering full, meter-based programs, similar to the existing How$mart® program at Midwest Energy, and others offering a program that is not meter-based. In all instances, however, all projects receiving funds through Efficiency Kansas must be repaid in 15 years (that is, 180 monthly bill payments) or less.

Utilities subject to the jurisdiction of the KCC may become Participating Utilities upon approval of the utility's program and associated tariffs by the Commission. Non-jurisdictional utilities may become Participating Utilities upon approval of the utility's program by the Energy Division and upon signing a Memorandum of Agreement between the utility, the Partner Banking Institution and Kansas Corporation Commission.

Eligibility Screening

Utilities are responsible for establishing the eligibility of interested customers. To be eligible for Efficiency Kansas financing, utility customers:

- Must be current on their utility payments.
- Must not have had their utility service disconnected in the 12 months prior to their application for participation.
- Customers who do not have 12 months history with a utility will be asked to provide payment history with a previous utility.
- Customers currently on payment plans (to repay past bills) do not meet these eligibility requirements.
- Subject to approval from the KCC and Energy Division, utilities may use additional eligibility criteria.

Definition of residential and commercial customers

Residential customers are defined as all customers taking service under the utility's Kansas residential tariff.

Commercial customers must subscribe for service under one of the utility's applicable Kansas commercial or industrial service tariffs and use residential-sized HVAC equipment in their buildings.

Rental properties

For rental properties, whether residential or commercial, the utility customer may be either the landlord or the tenant. In either instance, the eligibility screening is the same as outlined above. For rental properties, the utility will also be required to ensure that both the tenant and landlord are informed and agree to participation in the meter-based program and ensure that all required measures for disclosure and notice are met (see below for discussion of disclosure and notification requirements).

Directing Customers to Energy Auditors

Utilities will direct eligible customers to the list of Efficiency Kansas qualified auditors (or to the utility's qualified employee auditors, provided a utility has received a waiver from the KCC). Customers will select an auditor from this list or utilize the utility employee auditor to perform the required energy audit and develop the Energy Conservation Plan.

"Qualified auditors" are those who have:

- Met the criteria established by the Energy Division.
- Requested that they be included in the listing of qualified auditors.

This list will be maintained by the Energy Division and be available on the Efficiency Kansas web site (www.efficiencykansas.com). All energy auditors on the Efficiency Kansas qualified auditor list will have undergone training and been certified by one of the qualified training institutions (see Section 2.1).

Qualified energy auditors are not recommended, approved, or endorsed by the Energy Division or the Kansas Corporation Commission.

Facilitating Approval of Energy Conservation Plan and Customer Projects

Following the energy audit, customers will review the prioritized recommendations outlined in the Energy Conservation Plan and decide on the scope of the project. Customers will authorize auditors to forward the Energy Conservation Plan to the Energy Division for review and pre-approval of funds.

Following the Energy Division's review and pre-approval of funds, (or disapproval), the auditor will notify the customer of the status of the proposed Energy Conservation Plan (ECP). Once the customer has been informed of the audits pre-approval, they are free to solicit bids from the contractors of their choice to perform the work required. Utilities may work with customers to select contractors. After receiving bids from contractors, customers will next need to provide the hard bids to their auditor so that they may update the Energy Conservation Plan with actual pricing and resubmit the ECP to the Energy Division for approval. Once the Energy Division has issued an Approval for Funds document for a project, no adjustments can be made in the project costs.

After the Energy Division has issued the Approval for Funds, the Utility will sign the necessary agreements with the customer. These agreements will include requirements for the customer to disclose the meter-based obligation to subsequent occupants. (See discussion of Disclosure and Notification Requirements below.)

Once all necessary agreements have been signed, the utility will inform customers that contractors can begin work on approved projects. In all instances, the utility will be responsible for paying contractors (as detailed below).

Verifying Completion

After contractors have completed their work and the auditor has performed the required post-audit testing, the customer or the auditor will provide the utility with a signed Certificate of Project Completion. The utility will sign the Certificate of Project Completion, indicating their acceptance of the auditor and customer's assurances, and send the certificate to the Energy Division. Utilities have the option to conduct an on-site inspection before signing the Certificate of Project Completion.

Receiving Efficiency Kansas Funds

Utilities first will need to sign the Memorandum of Agreement with the KCC and the Partner Banking Institution prior to an exchange of funds.

Utilities will invoice KCC for costs of all Energy Conservation Plans that have been approved by the KCC and completed. A copy of each respective signed Certificate of Project Completion will be included with the invoice. Invoices shall be submitted on the 5th day (or next subsequent business day) of each month for completed Energy Conservation Plans that have not been previously invoiced to the KCC.

Utilities will receive funds from the Partner Banking Institution within 30 days after the receipt of invoices. Payment will be based upon the project costs submitted to the KCC Energy Division with the Energy Conservation Plan. See detailed discussion of repayment of funds to the Partner Banking Institution below.

Paying Contractors

Upon receipt of the Certificate of Project Completion, the utility will promptly pay all contractors (and customer self-performance material costs, if applicable) for completed work with Efficiency Kansas Funds provided by Partner Banking Institution on behalf of the KCC.

Placing Charge on Bill

After paying the contractors for all approved project costs, the utility will place the program charge on the customer's bill. The reimbursement obligation shall remain tied to the meter of the residence, small commercial or small industrial structure on which the project work was performed. The Program charge includes principal and interest accruing on the funds advanced for the project as well as the Energy Division's monthly administrative fee. The customer will have been notified of this charge *prior* to the auditor submitting the final Energy Conservation Plan to the Energy Division, as required in the Energy Audit Specifications (see Section 2.2 of this manual).

Term of the obligation

The maximum term of the meter-based obligation cannot exceed 15 years (180 bill payments). Utilities and customers may choose a shorter repayment period, (1 to 15 years), provided all other

requirements are met. There must be a provision for payment in full of the funds to be reimbursed to the Partner Banking Institution for the benefit of the KCC.

Program charge as a percentage of projected savings

In calculating the program charge, the utility will assume that all savings are annualized, resulting in a level (or average) monthly repayment. Under no circumstances will the Principal and Interest charges, including all administrative fees, exceed 90% of the estimated total energy savings from all fuel sources. Utilities may provide one or more fuel types (e.g., natural gas and electricity); however, the calculation of projected savings will include all savings from all fuels.
(See discussion of administrative fees below).

Utility administrative fees

Utilities will be allowed to charge administrative fees to cover the costs of administering their program. Regulated utilities must have their administrative fees included in the tariff for the program, which is approved by the Kansas Corporation Commission. Non-regulated utilities must submit their proposals for administrative fees, including estimated costs to operate the program, to the Energy Division.

Before customers agree to move forward with the project, they must be informed by the utility that the monthly program repayment charge will include the Energy Division and utility administrative fees (If any).

The Energy Division reserves the right to examine the administrative fees charged by regulated and non-regulated utilities participating in the Efficiency Kansas program.

Energy Division administrative fees

The program charge will include a monthly $2.00 administrative fee that will be collected by the utilities and paid to the KCC on the behalf of the Energy Division. The customer must be informed of the Energy Division administrative fee *prior* to the customer agreeing to the project. The program charge, including the administrative fees of the utility and Energy Division, the Loan Principal and Loan Interest cannot exceed 90% of the expected savings.

Level payment plan option

Customers may elect to enter into a level, or average, payment agreement with the utility. Customers who elect not to have a level payment plan should understand that their actual savings may vary monthly and seasonally. The program charge will be a level payment, regardless of when actual savings are achieved.

Payment-in-full option

Utilities are required to offer customers the option to pay in full any remaining balance, at any time during the repayment term. There will be no penalty or extra charge for customers who choose to repay the obligation in full.

If a customer sells or transfers ownership of property subject to meter-based payments for energy efficiency improvements, the customer may pay the remaining balance in full, or the new property owner may complete the paperwork to assume the remaining balance.

Repayment of funds

Utilities are responsible for remitting the monthly customers reimbursement payments to the Partner Banking Institution for the benefit of the KCC. Utilities are also responsible for remitting the Energy Division's monthly administration fee to the KCC.

Frequency

Utilities will make regular monthly payments to the KCC. However, utilities will only submit payments for those meters at which the customer has paid the monthly bill. If a customer has not paid the bill, the utility will not be required to remit payment for that meter to the KCC, until payments resume.

Reporting

The utility will be required to report the status of each meter obligation—that is, the location of the meter and the total remaining obligation—to the KCC on a monthly basis. Likewise, the utilities will be required to identify which meter obligations have been paid and which have not.

Case of default

In the event that customers fail to make their monthly payments of the program charge, the utility will be required to report to the KCC, on a monthly basis, information regarding the collection status and disconnections resulting from the non-payment. The utility is expected to make every effort to collect payment of delinquent program charges and to exercise as much due diligence with collection of Efficiency Kansas revolving loan program funds as they would their own capital. At such time as the utility determines that it has exhausted its means of collection, the utility will notify CTB and the Energy Division of the meter number, meter address, name of the customer and the outstanding balance due, and submit the "Verified Statement" form, as stipulated in the Memorandum of Agreement between the Utility and the KCC.

Revert to Owner

Utilities will be required to continue charging the program charge, even for meters that have a revert-to-owner clause. As long as a bill is generated during the 15-year term, the bill must include the program charge.

Transfer of Service

If a customer sells or transfers ownership of property subject to meter-based payments, the seller has the option to pay the remaining meter based balance in full, or the new property owner may complete the paperwork to assume the remaining balance**.** At the time of the transfer of service from one customer to another at any property having a meter-based reimbursement obligation, the Utility shall require that the new customer at that meter to execute a document entitled "Meter Obligation Agreement", that is substantially similar to the form developed by the Energy Efficiency Institute (EEI) for use with the PAYS® program. Utility shall not be required to use PAYS® forms, but

must establish such a form that contains substantially similar information. If a customer refuses to sign such form, they will be considered as refusing to pay for "utility service" that the utility is providing and the Utility is permitted to disconnect service for that customer.

Disclosure and Notification Requirements

To ensure that subsequent occupants of a residential or small commercial/industrial structure receive full and timely notification of the program charge they will be assuming (i.e., the remaining obligation on the meter), the utility is required to provide written notification of this obligation to customers when service is initiated at locations that already have meter-based obligations. The utility must also require all customers to sign an agreement requiring similar disclosure by the customer to subsequent occupants. The KCC will require such agreements to be part of approved program tariffs.

UCC filing

In addition to the disclosure and notification requirements outlined above, each property with a meter-based reimbursement obligation which is not paid in full at the outset, the utility must file a Uniform Commercial Code financing statement (UCC-l Form) or similar appropriate document to perfect a security interest in the property and/or provide notice to subsequent owner that the property is subject to a meter based obligation.

Additional public information and outreach

The Energy Division will coordinate with utilities and others (e.g., realtors and trade associations and shows in areas offering meter-based programs) to increase public awareness. The utility will include Efficiency Kansas "brand" in marketing materials used to promote the Efficiency Kansas Program and/or the Utility's energy efficiency Program.

Prudent Procedures

In establishing the guidelines for meter-based energy efficiency programs, utilities must properly document all transactions and include notices to the customer of the following:

- interest rates,
- repayment terms,
- fee structure,
- collateral requirements, and
- procedure for collection and recovery actions.

Even if the above are not applicable, documentation must clearly state that they are not applicable. As discussed above, UCC and any other applicable notice requirements must be filed to provide sufficient notice to future occupants and owners.

Reporting Requirements

In addition to the monthly reporting requirements outlined above (see Repayment of Funds), utilities are required to provide quarterly reports to the Energy Division as required by the Department of Energy, detailing:

- The number and value of projects funded through the program.

- The number of buildings retrofitted, by sector.
- The square footage of buildings retrofitted, by sector.
- The projected energy savings (kWh & MCF).
- The number of jobs created or retained as a result of KCC funding.

4.2 KCC and Energy Division Responsibilities

Management and Oversight

The Energy Division will manage all aspects of the Efficiency Kansas loan program. The Energy Division will ensure that all program participants receive high-quality service at each step of the process.

The KCC Utilities Division will review the applications of regulated utilities for a meter-based program and make recommendations to the Commission regarding approval of the program. The application for a meter-based program should include the content outlined by the Commission in Docket No. 08-GIMX-441-GIV, Appendix A (available on the KCC web site at http://kcc.ks.gov/scan/200811/20081114142730.pdf). The KCC Utilities Division will also coordinate the evaluation, measurement and verification associated with all utility-sponsored energy efficiency programs.

Review, Pre-approval and Final Approval of the Energy Conservation Plan

The Energy Division will review all stages of the Energy Conservation Plans to ensure that auditors have performed the audit properly, that savings estimates are appropriate and realistic, that project costs are not unreasonable, and that health and safety standards have been met. See Section 2 for audit specifications and other related information.

Field inspection

The Energy Division will perform random field inspections to ensure that projects have been properly executed. Inspections may include full audits, inspection of systems installed, and interviews with customers.

Payment to utilities

The KCC will direct the Partner Banking Institution to provide Efficiency Kansas Funds to Utilities to establish a meter-based obligation to recover costs of approved energy efficiency projects in residential, small commercial and small industrial structures.

The KCC will direct the Partner Banking Institution to remit funds (including adequate details to identify projects funded) to the Utility within 30 days of receipt of monthly invoices from Utility.

Maintaining online information

The Energy Division will be responsible for ensuring that information on the Efficiency Kansas web site is accurate. Such information will include, but not be limited to, the listing of qualified Efficiency Kansas Energy Auditors and Participating Utilities.

Section 5: Guidelines for Contractors

5.1 Contractor Requirements and Responsibilities

Role of Contractors

Private-sector contractors perform all the work on energy-efficiency projects approved for Efficiency Kansas financing. Contractors are contacted directly by customers, or the customer's representatives, who must solicit final bids for all the work involved in their proposed project before the project can be approved for financing by the Energy Division (see Section 3, Guidelines for Customers for further information).

Contractor Qualifications

All contractors are eligible to participate, provided they are operating under current state and federal guidelines regarding labor standards and taxation requirements. The Energy Division will not pre-qualify contractors nor maintain a list of "participating" contractors.

Preparation of Bids

Contractors will prepare bids based on the specifications included in the Energy Conservation Plan provided by the customer or their representative. Contractors may not substitute equipment or change specifications, without written notification to the auditor. Bids provided to customers should be considered final bids, as these bids will be used to determine the total amount financed through Efficiency Kansas. Any additional costs that are not identified in the bids will be the responsibility of the customer.

Building permits and local codes

As with any project, contractors working on Efficiency Kansas projects are responsible for securing all appropriate local, city, and county building permits prior to beginning work. The costs of these permits are to be borne by the contractors and should be included in the bid. If a building permit is required, a copy must be provided to the customer. All work must comply with local jurisdictional building codes.

Implementation of work

Customers will be notified by Participating Utilities and auditors that their Energy Conservation Plan has been approved by the Energy Division, and then customers will solicit bids. Once customers get financing, then and only then, will contractors be allowed to begin implementing the work specified by the Energy Conservation Plan.

Payments to Contractors

Contractors will receive payment for their work directly from Participating Utilities, who will determine payment procedures and timing according to their discretion and program requirements.

Insurance Requirements

All contractors are required to provide current insurance certificates to the customer before they will be allowed to perform work.

5.2 EPA Renovation, Repair and Painting (RRP) Regulations

All contractors and crew members will be responsible for complying with the EPA's Renovation Repair and Painting (RRP) regulations, as enforced by the Kansas Department of Health and Environment. More information can be found at www.epa.gov/lead/pubs/renovation.htm. Also refer to EPA Final Rule [under the authority of 402 c 3 of the Toxic Substances Control Act (TSCA)], and New Lead Based Paint Renovation, Repair and Painting Program requirements (40 CFR 745, Subpart E), issued April 22, 2008 (73 FR 21692).

Efficiency Kansas Material and Installation Standards Manual

All work performed for Efficiency Kansas projects should follow the guidelines in the Efficiency Kansas Material & Installation Standards manual. This manual will provide contractors with best practices and clear guidelines for the installation of projects. Download copies from the Efficiency Kansas web site (www.efficiencykansas.com) or contact the Energy Division.

Section 6: Glossary

"As-Built" Repairs": Repairs and suggested improvements that are identified by qualified auditors to correct minor structural inefficiencies, potentially dangerous situations and ensure health and safety of the occupants. Although not classified or funded as Efficiency Kansas energy-efficiency improvements, they would need to be completed in any instance.

Audit Report: The Audit Report is the document that the auditor provides to the customer, which details the results of the energy audit. This report includes technical information about the building's existing condition and also includes the Energy Conservation Plan.

Blower Door: A diagnostic tool that measures the air-tightness of buildings and helps locate air leakage sites. Equipment consists of a calibrated fan for measuring an airflow rate, and a pressure-sensing device to measure the air pressure created by the fan flow. The combination of pressure and fan-flow measurements is used to determine the building air-tightness.

Certificate of Project Completion: A form which is supplied by and signed by the auditor, then signed by the homeowner after finished improvements have been installed. This form is then submitted to the participating utility that signs off and submits the form to the Energy Division which finalizes the work on the project.

Combustion Appliance Zone (CAZ): An area which contains one or more combustion appliances (water heater, furnace, etc.)

Energy Audit: An energy audit is a comprehensive assessment, survey, and analysis of energy flows and energy usage of a building, which allows the auditor to identify the most cost-effective opportunities for energy savings.

Energy Conservation Plan: This plan contains the auditor's detailed recommendations for improving the energy efficiency of the building. It gives the customer the detailed specifications for all recommended improvements, which the customer will use to get final bids from contractors.

Mobile Home: Efficiency Kansas defines a mobile home as an existing mobile home that has had the wheels removed and been placed on a permanent foundation or basement.

Meter-based Energy Efficiency Programs: These are utility-sponsored programs in which the obligation to repay the costs of energy efficiency projects is assigned to the utility meter and survives changes in ownership and/or tenancy. These repayment costs are tied to the regular utility service.

Participating Utility: A participating gas or electric utility, including rural elective cooperatives or municipal utilities, that have entered into an Agreement with the State of Kansas to participate with Efficiency Kansas to provide financing through their billing services.

Projected savings: The estimate of energy and dollar savings that will be realized after the implementation of the energy-efficiency improvements recommended by the qualified auditor and outlined in the Energy Conservation Plan. These savings are calculated using the actual historical utility data for the property and applied to each improvement recommended by the auditor.

Qualified Energy Auditor: These are energy auditors who have (1) met the criteria established by the Energy Division and (2) requested that they be included in the listing of qualified auditors. This list will be maintained by the Energy Division and be available on the Efficiency Kansas web site (www.efficiencykansas.com). All energy auditors on the Efficiency Kansas qualified auditor list will have undergone training and been certified by one of the qualified training institutions, and passed the required Efficiency Kansas Certification. Qualified energy auditors are not recommended, approved, or endorsed by the Energy Division or the Kansas Corporation Commission.

Residential: Efficiency Kansas defines a residential structure as an existing structure located in the state of Kansas used as a place of residence.

Simple Payback: Simple Payback indicates how quickly the energy and dollar savings resulting from the project will "payback" the cost of all improvements. Simple Payback is calculated by dividing the total cost of each project by the estimated annual savings resulting from all improvements.

Small Commercial: Efficiency Kansas defines a small commercial structure as an existing small business structure located in the state of Kansas, which uses residential-sized heating and air conditioning equipment.

Unvented Space Heaters: Defined as heaters that consume fuels in a manner that depletes oxygen and produces unsafe quantities of CO, water vapor, and oxides of nitrogen. Oxygen depletion and CO are serious health hazards that can be life-threatening. The safe use of unvented gas room heaters requires one or more open windows, which can interfere with the room's heating and comfort level.

Whole house approach: An approach to evaluating energy efficiency in which the entire structure is viewed as a unified system. Using this approach, auditors use the data collected during a comprehensive energy audit to evaluate how all the elements—thermal boundaries, mechanical systems, lifestyle of occupants—interact and impact one another. This approach is used to determine cost-effective improvements that can be made to increase comfort and performance of the whole house.

Section 7: Appendixes

Appendix 1: Fuel Information Release Form

Applicant's Name: _____

Address: _____

City, State, Zip: _____

Telephone Number: _____

(TO BE COMPLETED BY APPLICANT)

***NOTE:* ALL FUEL SOURCES SHOULD BE DOCUMENTED AND PROVIDED TO THE AUDITOR**

ELECTRIC SUPPLIER:

Name: _____

Address: _____

Bill to: _____

Account #: _____

NATURAL GAS SUPPLIER :

Name: _____

Address: _____

Bill to: _____

Account #: _____

PROPANE OR OTHER FUEL SUPPLIER:

Name: _____

Address: _____

Bill to: _____

Account #: _____

WOOD OR PELLETS: ***(PROVIDE RECEIPTS)***

Do you use the same supplier for both heating and electric? Yes ☐ No ☐

I hereby authorize the above energy providers to release information on my fuel bills to the following: (Print Name of Auditing Company)

_____

I understand that this information will be used only to provide data for the above named, and no information obtained through this release shall be made public in such a manner that the dwelling or occupants can be identified.

_____ Client Signature

_____ Date

Appendix 2: Auditor Identification and Disclosure

Only Energy Auditors that have been listed as a Qualified Auditor on the Efficiency Kansas program website may perform a qualifying energy audit. It is required that the homeowner/tenant/property owners verify the identification of the auditor and complete the information below.

I_____ have verified that the Auditor that has

(Homeowner Printed Name)

been contacted to perform the energy audit on my property has presented valid identification and is the Auditor listed on the Qualified Auditors List.

Property Owner Signature: _____

Notice of Disclosure

As a Qualified Auditor for the Efficiency Kansas Loan Program, I agree to abide by the Code of Ethics contained in the Efficiency Kansas Program Manual.

My client is hereby notified by this statement that potential conflict of interest may exist because of my relationship with the firms or products identified below.

When recommending building products, services or solutions, I promise to give fair representation of applicable products, services or solutions.

The homeowner is encouraged to obtain more than one cost estimate for any product or service. (See page 9 of Project Manual for auditor specification instructions.)

As a Qualified Auditor I hereby disclose the following business intentions/associations and activities prior to collecting any fees or performing an energy audit on the house located at:

_____

Street Address City/State Zip Code

Associated Company Name Products or Services

_____ _____

_____ _____

_____ _____

I further disclose that I will perform an energy audit on this house and that the resulting information will be a fair and accurate representation of the building performance, and does not consider occupant energy use habits. As a result your actual energy use may vary from the estimates provided. The audit remains valid regardless of who lives in the house, until or unless a modification is made which will affect its energy performance.

_____ _____

Auditor's Signature Date

Appendix 3: Contractors Terms and Conditions

Contractor Name:
_____

Contractor Address:_____**Phone Number:**_____

Customer Name:_____**Customer Address**: _____

(Please initial on the space provided after reading each condition)

- I understand that the following are prerequisites for bidding:

_____ I will obtain all necessary building permits from the local authority for the work to be performed.
_____ All bids must state exactly what will be done.
_____ All bids are to be based on the energy conservation plan provided by the auditor, and approved by the Energy Division.
_____ Material or labor costs are NOT paid in advance.
_____ No work shall begin until such time as the Energy Division has approved the appropriate bid and I have been formally notified by the customer.
_____ All work will be done in a workman like manner and in accordance with industry standards.
_____All work will be completed within ninety (90) calendar days from the date which appears on the Approval for Funds document provided to the customer by the Energy Division. It is the contractor's responsibility to request and be informed of the completion date deadline from the customer.

- I understand if I am awarded the project that:

_____ I shall only perform those items of work that are approved by the Energy Division. I shall not perform any extra work requested by the homeowner. If prior approval is not granted, the Energy Division will not be responsible for the additional costs.
_____No Change orders for products or services are allowed. Change orders will not be funded by the Energy Division. Any change order which increases the cost of the project must be agreed upon by the customer, with the customer being solely responsible for the funding of the change.
_____ Before beginning any home repairs, I will ensure that the customer has been informed as to what materials and supplies will be used and the customer agrees to its content.
_____All work will be completed within the ninety (90) day completion requirement as agreed above.
_____ I will warrant that my work is free from defects in material and workmanship for a period of one (1) year. Upon notice of a material defect in the work within that period, I shall be responsible for any repairs, replacements or corrections to the defective construction within a reasonable period of time, at no cost to the customer. Nevertheless, I shall not be responsible if: (1) my work has been modified, altered, defaced, or had repairs made or attempted by others; or (2) the material defect was caused by an Act of God.

I have read and agree to the terms and conditions of the Efficiency Kansas loan program. I understand that any expenses exceeding what was approved by the Energy Division, or expenses that exceed the maximum award of the program, will **not** be the responsibility of the Kansas Energy Division.

_____ ___/___/___
Contractor Signature Date

Appendix 4: Self-Performance Terms and Conditions

Homeowner Name: _____

Project Address: _____ Phone Number: _____

Person performing Improvements:_____

Efficiency Kansas Loan Program

I understand that the following are prerequisites:

- Bids must have itemized cost of materials to be used in the energy conservation plan.
- Labor costs will not be covered.
- I will obtain all necessary building permits from the local authority for the work to be performed.
- All bids must state exactly what will be done, for accountability purposes.
- All bids are to be based on the energy conservation plan provided by the auditor, and approved by the Energy Division.
- Material costs are NOT paid in advance.
- No work shall begin until such time as the Energy Division has approved the appropriate bid and I have been formally notified by your auditor.
- All work will be done in a workman like manner and in accordance with industry standards.
- Only Material costs will be allowed. Purchase of any required tools, licenses or equipment needed to complete the project will not be approved for reimbursement.
- I shall only perform those items of work that are approved by the Energy Division. I shall not perform any extra work. If prior approval is not granted, the Energy Division will not be responsible for the additional costs.
- All work must be completed within ninety (90) calendar days of the Approval for Funds document provided by the Energy Division at the time of project funding approval.
- Thermal boundary improvements, such as air-sealing and insulation, must not be installed prior to the correction of or replacement of hazardous conditions existing with mechanical equipment (i.e. cracked heat exchanger or unvented appliances that may release gases into the home).
- I have reviewed Section 3.9 of the Project Manual concerning self-performance and do-it-yourself regulations.

I have read and agree to the terms and conditions of the Efficiency Kansas loan program. I understand that any expenses exceeding what was approved by the Energy Division, or expenses that exceed the maximum award of the program, will **not** be the responsibility of the Energy Division.

_____ ___/___/___

**This completed form must be provided to your energy auditor for consideration when you elect to self-perform any work.

Appendix 5: Utility Contact Form

Kansas Corporation Commission
Efficiency Kansas
UTILITY CONTACT INFORMATION

PLEASE COMPLETE & RETURN THIS FORM TO: Kansas Corporation Commission, State Energy Office, Attn: Efficiency Kansas, 1500 SW Arrowhead Road, Suite 100, Topeka, KS 66604-4074

Utility Name: _____

Home Office Address: _____

Information Provided By: _____

CONTACT(S) FOR ENERGY EFFICIENCY PROGRAM

Name: _____ Title: _____
Address: _____ City, State, Zip: _____
Phone: _____ Fax: _____ Email: _____

Name: _____ Title: _____
Address: _____ City, State, Zip: _____
Phone: _____ Fax: _____ Email: _____

CONTACT(S) FOR ENERGY AUDIT CUSTOMER SUPPORT

Name: _____ Title: _____
Address: _____ City, State, Zip: _____
Phone: _____ Fax: _____ Email: _____

Name: _____ Title: _____
Address: _____ City, State, Zip: _____
Phone: _____ Fax: _____ Email: _____

CONTACT(S) FOR GENERAL ACCOUNTING & BALANCE CONFIRMATIONS

Name: _____ Title: _____
Address: _____ City, State, Zip: _____
Phone: _____ Fax: _____ Email: _____

Name: _____ Title: _____
Address: _____ City, State, Zip: _____
Phone: _____ Fax: _____ Email: _____

Appendix 6: Variance for Twelve Months of Continuous Utility Usage

Continuous Utility Usage Explained

The total amount of funds that a project may receive through Efficiency Kansas is determined by calculating the estimated monthly savings. In order to accurately determine the savings that a homeowner/renter could see, an auditor will need to review at least twelve months of consecutive utility bills for that home or business. This homeowner/renter will have distinct lifestyle characteristics that will be reflected in their utility bills. Twelve months of consecutive living in this home by this homeowner/renter will provide the most accurate savings calculations.

Shared Utility History

For those homeowners/renters who have not lived in their home for a full twelve months, the program will allow a homeowner/renter to use a previous homeowner or renter's utility history for this required data. Access to and use of this data must be approved by previous occupants and received legally.

Risks to Consider

Any homeowner/renter who chooses to use a previous homeowner's utility history shall understand that this could affect the anticipated estimated monthly savings. New occupants of a home could have dramatically different lifestyles than the previous homeowners.

Acknowledgement

I, the undersigned, acknowledge that there are potential risks in using utility history from previous occupants. Due to this, savings estimates provided by the auditor may not be accurate.

_____	_____	_____
Printed Name of Homeowner/Renter	Signature	Date

_____	_____	_____
Printed Name of Landlord (if applicable)	Signature	Date

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement") is dated June ___, 2012 and is between the STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, ("KCC"), an agency of the State of Kansas, THE CENTRAL TRUST BANK ("CTB"), a Missouri trust company, and the _____ ("Utility").

DEFINED TERMS

"Certificate" shall mean a Certificate of Project Completion as defined in Section 6 of the Program Manual.

"Efficiency Kansas Funds" means funds provided by CTB to the KCC for its Efficiency Kansas Program to finance cost-effective energy efficiency and energy conservation improvements in Kansas residences and small commercial and industrial structures.

"Efficiency Kansas Program" means the Efficiency Kansas Loan Program as set forth in the most current version of the Efficiency Kansas Program Manual ("Program Manual"), found at http://www.efficiencykansas.com/ and is hereby incorporated by reference. A copy of the Program Manual, updated as of June ___, 2012 is attached hereto as ***Appendix A***.

"Energy Audit" shall have the meaning and meet the requirements set forth in Section 2.2 of the Program Manual.

"Energy Conservation Plan" shall have the meaning set forth in Section 6 of the Program Manual and shall meet the requirements of Section 2.3 of the Program Manual.

"Utility's Program" shall mean Utility's Meter-Based Energy Efficiency Program as set forth in Section 4 of the Program Manual.

RECITALS

WHEREAS, the KCC is an agency of the State of Kansas that regulates natural gas, electricity, telephone and transportation vendors requiring safe, adequate and reliable services at reasonable rates. KCC also requires oil and gas producers to protect the environmental and correlative rights. As summarized in Docket No. 08-GIMX-442-GIV, the KCC supports utility-sponsored programs that: (1) produce cost-effective, firm energy savings; (2) address efficiency improvements in a comprehensive manner using sound building science principles; (3) implement the most cost-effective programs in a logical sequence to maximize the energy savings per dollar spent; and (4) target customers residing in structures most in need of efficiency improvements;

WHEREAS, CTB and the KCC have entered into that certain Contract dated December 5, 2011 (the "CTB/KCC Contract") wherein CTB agreed to provide funds to the KCC upon the

terms and conditions provided in the CTB/KCC Contract, a copy of which is attached hereto as ***Appendix B*** and is hereby incorporated by reference;

WHEREAS, a portion of the Efficiency Kansas Funds will be directed by the KCC to Utility's Program;

WHEREAS, Utility is a municipal agency of _____;

WHEREAS, the KCC and Utility have agreed to identify Kansas residences and small commercial and industrial structures needing energy efficiency improvements and provide Efficiency Kansas Funds in the manner described below.

The parties therefore agree as follows:

1) **KCC's Obligations.** The KCC shall:
   a) Review Energy Conservation Plans for adherence to Efficiency Kansas Program criteria as set forth in the Program Manual.
   b) Maintain a list of Qualified Energy Auditors, as defined in Section 6 and meeting the requirements set forth in Section 2.1 of the Program Manual.
   c) Direct CTB to provide Efficiency Kansas Funds to Utility to establish Utility's Program to recover costs of approved Energy Conservation Plans in residential, small commercial and small industrial structures.
   d) Direct CTB to remit funds (including adequate details to identify Energy Conservation Plans funded) to Utility within thirty (30) calendar days of receipt of monthly invoices from Utility.
   e) Administer the Efficiency Kansas Program through the KCC's Energy Division.

2) **Utility's Obligations.** Utility shall:
   a) Assist the KCC in (i) providing information about the Efficiency Kansas Program to customers and (ii) providing customer support.
   b) Assist residential and small commercial and industrial customers in arranging for an Energy Audit.
   c) Provide customers all Efficiency Kansas Program forms required by Utility, CTB and KCC and return signed forms and acknowledgments to KCC.
   d) Inform customers of KCC approval of customers' Energy Conservation Plan.
   e) Send to the KCC, by facsimile, email or First Class U.S. Mail, a copy of the signed Certificate, together with contractor invoices for each Energy Conservation Plan.
   f) Receive Efficiency Kansas Funds to establish a meter-based obligation, as defined in Section 2(h)(i) below, to recover costs of approved Energy Conservation Plans in residential, small commercial and small industrial structures.

i) All Efficiency Kansas Funds received by Utility shall be kept in an FDIC insured account(s) prior to disbursement to contractors upon completion of customer's Energy Conservation Plan.

g) These and other provisions relating to the Efficiency Kansas Funds received by Utility are detailed in the CTB/KCC Contract and Program Manual.

h) Pay contractors for approved services with Efficiency Kansas Funds provided by CTB on behalf of the KCC as set forth in Section 5 of the Program Manual.

i) Place a charge on customer's utility bill, for reimbursement of Energy Conservation Plan costs paid by the Utility with Efficiency Kansas Funds, and further described in Section 4 of the Program Manual.

   i) Utility's reimbursement obligation shall be and shall remain tied to the meter attached to the residence, small commercial or small industrial structure on which the work was performed ("Meter-Based Obligation").

   ii) The Efficiency Kansas Program charge includes principal and interest accruing on the funds advanced for the Energy Conservation Plan as well as the KCC monthly administrative fee.

j) Offer customers a provision for payment in full of the funds to be reimbursed to CTB for the benefit of the KCC.

k) Forward customer reimbursement payments to CTB for the benefit of the KCC on a monthly basis.

l) Forward the KCC administration fee to the KCC on a monthly basis.

m) File a Uniform Commercial Code financing statement (UCC-1 Form) or similar appropriate document to perfect a security interest in the property and/or provide notice to subsequent owner that the property is subject to a meter based obligation for each property with a Meter Based Obligation which is not paid in full at the outset. If Utility returns uncollectible obligations to the KCC pursuant to subsections 4(e), 4(f) and 4(g) below, Utility shall not itself be responsible for repayment or for further collection efforts.

n) Include Efficiency Kansas Program "brand" in marketing materials used to promote Utility's Program.

o) Execute the appropriate documents for the use of any copyrighted material, trademark, service mark, or intellectual property of third parties, if such is used in Utility's Program.

p) Provide notice to the KCC within seven (7) calendar days of service of any lawsuit brought against Utility that is associated with the Efficiency Kansas Program and Utility's Program. Utility shall also provide notice to the KCC within seven (7) calendar days of commencing any lawsuit associated with the Efficiency Kansas Program and Utility's Program.

q) Comply with all guidelines for prudent approval of customer eligibility as set forth in the Program Manual.

r) At the time of the transfer of service from one customer to another, at any property having a Meter-Based Obligation, require the new customer at that obligated meter to execute a document entitled Meter Obligation Agreement, which is substantially similar to the form developed by the Energy Efficiency Institute (EEI) for use with the PAYS® program. Utility shall not be required to use PAYS® forms, but must establish such a form that contains substantially similar information. If a customer refuses to sign such form, they will be considered as refusing to pay for "utility service" that the utility is providing and Utility is permitted to disconnect service for that customer.

s) Perform all other Utility responsibilities in accordance with guidelines set out in the Program Manual.

3) **CTB's Obligations.** CTB agrees to provide the services described in the CTB/KCC Contract including, but not limited to:

a) Providing Efficiency Kansas Funds to Utility when and as directed by the KCC.

b) Providing all debt-service operations in connection with the Efficiency Kansas Funds.

c) Liability for default and responsibility for collection of repayment of Efficiency Kansas Funds at the meter-based obligation locations in the event that Utility is unable to collect, but only to the extent that the default involves the principal and interest advanced by CTB for Efficiency Kansas Funds and not including any administrative fees owed to the KCC.

d) Receiving repayments of Efficiency Kansas Funds forwarded by Utility for the benefit of the KCC in repayment to CTB of Efficiency Kansas Funds.

e) Providing a monthly report of all Efficiency Kansas Funds forwarded to Utility.

f) Reporting, on a monthly basis, the status of each reimbursement obligation, including meter location and total amount of remaining obligation at each meter.

4) **Repayment Provisions.** CTB, KCC and Utility mutually agree to the following repayment provisions:

a) Utility shall invoice KCC for costs of all Energy Conservation Plans that have been approved by the KCC and completed. A copy of each respective signed Certificate shall be included with the invoice. Invoices to the KCC shall be submitted on the 5th day (or the next subsequent business day) of each month for completed Energy Conservation Plans that have not been previously invoiced to the KCC.

b) KCC shall review the invoice, and each invoiced Energy Conservation Plan's Certificate, and direct CTB to remit funds to the Utility within thirty (30) days of receipt of the invoice with adequate details to identify specific Energy Conservation Plans and contractors funded with each payment.

c) Utility shall remit customer payments to CTB on a monthly basis for Energy Conservation Plans for which it has received payment from customers.

d) Utility shall identify, with its remittance of customer payments to CTB, each meter number and the CTB-assigned loan number for each Energy Conservation Plan associated with each remittance.

e) Utility shall notify CTB and the KCC, on a monthly basis, of any event of nonpayment by the customer. Utility shall provide notice to CTB and the KCC as to the current status of collection efforts.

f) Utility shall pursue all commercially reasonable means to collect the Efficiency Kansas Program charge from participating customers including, without limitation, charging meter-based obligations in connection with the Efficiency Kansas Program whenever the property benefitted by the Program receives services from the Utility, irrespective of whether the customer owned or leased the property at the time the energy efficiency improvements were made or subsequently took title and/or possession. Utility shall make no less effort to collect the Efficiency Kansas Program charge than it would for any other debt collection matter. If Utility determines it has exhausted it means of collection, Utility shall notify CTB and the KCC of the meter number, meter address, name of customer and the outstanding balance due. Utility shall also submit the "Verified Statement" form, included as ***Appendix C*** herein, stating that Utility has made every effort to recover the unpaid amounts (and no less effort than it would have made in any other collection matter) and that it has complied with all requirements of the Efficiency Kansas Program as set forth in the Program Manual.

g) During any period of non-payment wherein Utility has deemed a Meter-Based Obligation uncollectable, CTB shall defer the monthly payment which will result in an extension of the maturity date.

   i) In addition, CTB shall:

      (1) Incur the loss of interest accrued over the period of non-payment; and

      (2) Resume interest accrual payment of the Meter-Based Obligations when payments resume.

h) CTB and the KCC shall monitor the status of all Meter-Based Obligations that are in default. Either CTB or the KCC, in their sole discretion, may request that defaulted Meter-Based Obligations be returned to CTB or the KCC, as the case may be, for collection, within thirty (30) calendar days of such request.

i) In the event that either CTB or the KCC, in their sole discretion, determines that Utility has incurred a disproportionate amount of uncollectible Meter-Based Obligations under the Efficiency Kansas Program partnership, CTB or the KCC, as the case may be, may suspend approval of additional Energy Conservation Plans for up to sixty (60) calendar days, pending a review of Utility's criteria for approving customers under the program. Utility shall cooperate with CTB and the KCC to review whether revisions to Utility's Meter-Based Energy Efficiency Program are necessary to reduce future losses.

j) Regardless of any language in this Agreement to the contrary, the KCC shall not incur any obligation to repay Efficiency Kansas Funds to CTB under any circumstances.

5) Program Manual.

a) The parties acknowledge that the Efficiency Kansas Program is subject to revisions and the most current version of the Program Manual shall be available on the Efficiency Kansas Website, located at http://www.efficiencykansas.com.

b) The parties agree that, to the extent revisions to the Program Manual are not inconsistent with the terms of this Agreement, the parties shall execute addendums to this Agreement to incorporate changes to the Efficiency Kansas Program.

c) Changes to Section 4, "Guidelines for Participating Utilities" of the Program Manual shall be provided to Utility and CTB with fifteen (15) calendar days' prior written notice.

d) If either CTB or Utility does not accept changes to the Program Manual, the KCC reserves the right to suspend further approval of Efficiency Kansas Funds.

6) **Modification.** The parties may, at any time, modify Sections 1, 2 and 3 of this Agreement in writing, executed by all parties.

7) **Termination.** Any party may terminate this Agreement at any time, for any reason or no reason, with sixty (60) calendar days' written notice to the other party. In event of termination, Utility shall continue to remit customer reimbursement payments and KCC administration fees on a monthly basis for Meter-Based Obligations existing at the time of termination. The post-termination obligation of Utility shall continue until the entire balance of Efficiency Kansas Funds disbursed to Utility have been repaid or otherwise becomes uncollectible following default. Termination of this Agreement shall not terminate or otherwise affect the CTB/KCC Contract which shall continue in full and effect.

8) **Additional Provisions.** Utility agrees that it shall fully and completely comply with the Contractual Provisions (Form DA-146a) contained in ***Appendix D***, attached hereto and hereby incorporated by reference.

9) **Use of CTB Name; Trademarks.** Neither CTB's name and/or trademarks shall be used by Utility or the KCC in connection with the marketing or administration of the Efficiency Kansas Program without the prior written consent of CTB.

10) **Collection of Funds.** Notwithstanding anything to the contrary herein contained, the parties acknowledge and agree that only means of collection from Utility's customers for advances of Efficiency Kansas Funds shall be the imposition and collection of charges on the utility meters serving the locations where the energy efficiency improvements were made as provided in Section 4 of the Program Manual. Those charges shall be tied to the meters and shall assessed and collected from any customer using those meters, irrespective of whether such customer made the energy efficiency improvements or subsequently assumed or possession of the property served by the meter where the energy efficiency improvements were made.

11) **Prior Agreement.** This Agreement does not alter or eliminate the obligations, promises, terms or conditions of that certain agreement between the KCC and Utility, dated October 29, 2010, or that certain addendum thereto, dated January 11, 2011.

Each party is executing this Agreement on the date stated below that party's signature.

_____
[" Utility "]

CORPORATION COMMISSION OF
THE STATE OF KANSAS

_____
Name
Title

Date: _____

_____
Patrice Peterson-Klein
Executive Director

Date: _____

THE CENTRAL TRUST BANK

_____
Mark Q. Johnson
Executive Vice President

Date: _____

APPENDIX C

UTILITY VERIFICATION OF COLLECTION PROCEDURES FOR METER-BASED OBLIGATION DEEMED UNCOLLECTIBLE

[UTILITY NAME], pursuant to its agreement with the KCC and in partnership with the Efficiency Kansas Loan Program, entered into an agreement for a meter-based obligation to fund energy efficiency improvements with the following customer which has been deemed by [UTILITY NAME] to be uncollectible:

Meter Address
City, State Zip
Meter #
Utility Account #

This customer was the original owner/occupant of the premises served by the above referenced meter ___yes ___no

Date last payment received:_____
Uncollectible amount: _____

(Initial each section below)

____The application for the original customer at the above referenced meter was approved pursuant to program guidelines set forth in the Efficiency Kansas Program Manual, Memorandum of Agreement with the Kansas Corporation Commission and any applicable Commission orders.

____ Original customer approved for the meter-based obligation had no disconnections within 12 months prior to the application and was current on his or her bill.

____ Customer was provided with all applicable notices and terms of the program.

____ Customer was provided notice of the interest rate, repayment terms, monthly repayment amount, length of repayment, collateral requirements and fee structure.

____ UCC and any applicable notice filings were filed and updated by the Utility as necessary.
_____Date of UCC filing. Updated UCC filing date(s): _____

____ [UTILITY NAME] has made no less effort to collect the Efficiency Kansas meter-based obligation than it would to collect any other utility bill amount that is in default.

____ [UTILITY NAME] required any subsequent owner or occupant requesting service at the above referenced location to complete the necessary paperwork to assume payments for the meter-based obligation.

____ The above-referenced meter-based obligation has been deemed to be uncollectible.

____ The above-referenced meter-based obligation has not become uncollectible due to any negligence or error of [UTILITY NAME], its agents, employees or contractors.

State of _____)
) ss.
County of _____)

I, ___[NAME]___, hereby state that I am employed by [UTILITY NAME] as [TITLE]. [UTILITY NAME] has complied with all terms of the Efficiency Kansas Program Manual and all applicable agreements, Commission orders, statutes and regulations. [UTILITY NAME] has taken all prudent steps to collect on this meter-based obligation, and has determined it to be uncollectible. [UTILITY NAME] hereby submits this meter based obligation to the KCC as uncollectible pursuant to its Memorandum of Agreement with the KCC dated _____. On behalf of [UTILITY NAME], I hereby certify, upon my oath, that the above information is true and correct to the best of my knowledge.

_____
Title: _____
Phone: _____
E-mail: _____

Subscribed and sworn to before me this ____ day of _____, 20__.

_____
Notary Public

My Appointment Expires:

APPENDIX D

State of Kansas
Department of Administration
DA-146a (Rev. 1-01)

CONTRACTUAL PROVISIONS ATTACHMENT

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

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

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

1. **Terms Herein Controlling Provisions**: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.

2. **Agreement With Kansas Law**: All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

3. **Termination Due To Lack Of Funding Appropriation**: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Disclaimer Of Liability**: Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. **Anti-Discrimination Clause**: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

   Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total $5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract**: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties**: Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

8. **Representative's Authority To Contract**: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes**: The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance**: The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.

11. **Information**: **No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.**

12. **The Eleventh Amendment**: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

City of Osawatomie
www.osawatomieks.org

Osawatomie City Hall
439 Main Street • PO Box 37
Osawatomie, KS 66064
Phone: (913)755-2146
Fax: (913)755-4164

STAFF AGENDA MEMORANDUM

DATE OF MEETING: September 27, 2012

AGENDA ITEM: **BG Consultants Contract for Pool Planning**

PRESENTER: Brian Kingsley, P.E., BG Consulting

ISSUE SUMMARY: During the final budget discussions, the City Council asked me to include $30,000 for pool planning in the Capital Improvements budget. This additional funding was added and I was directed to bring back some options for this activity.

After discussions with the City's on-call engineering firm, BG Consultants, I believe that the City should hire BG Consultants to plan and design a new pool facility. We have a contract with BG that has reduced fees for any work they perform. Most importantly, Tom Arpin, a principal with BG, is an experienced pool designer for smaller communities. I believe that if we tried to go with a bigger pool-only company, we would be pressured to do extensive studies to determine the size, amenities or location of a new facility. I believe this community has a consensus that we need a good basic pool and not a water park. BG has experience with exactly these types of projects.

I asked BG to meet with our Recreation Director and the Parks & Recreation Committee. They had a very productive meeting last month and I believe there is a comfort level with BG's experience and approach.

Finally, BG has quoted a price of $17,502 to complete a planning and preliminary design phase. At the end of the contract, the City would have a facility design with detailed cost estimates that will be used as the basis for any financial decisions and public vote. Brian Kingsley will be at the meeting on Thursday night to present BG's experience and to answer any questions you may have.

COUNCIL ACTION NEEDED: Review and discuss.

STAFF RECOMMENDATION TO COUNCIL: Authorize the mayor to sign the contract with BG for pool planning and design.

AGREEMENT

CONSULTANT-CLIENT

THIS AGREEMENT made and entered into by and between BG CONSULTANTS, INC., party of the first part, (hereinafter called the CONSULTANT), and City of Osawatomie, KS , party of the second part, (hereinafter called the CLIENT).

WITNESSETH:

WHEREAS, the CLIENT is authorized and empowered to contract with the CONSULTANT for the purpose of obtaining Services for the following improvement:

CITY POOL IMPROVEMENTS

OSAWATOMIE, KS

WHEREAS, the CONSULTANT is licensed in accordance with the laws of the State of Kansas and is qualified to perform the Professional Services desired by the CLIENT now therefore:

IT IS AGREED by and between the two parties aforesaid as follows:

SECTION 1 – DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this contract, and other forms of any defined words shall have a meaning parallel thereto.

1.1 "Additional Services" means any Services requested by the CLIENT which are not covered by Exhibit 1 of this Agreement.

1.2 "Agreement" means this contract and includes change orders issued in writing.

1.3 "CLIENT" or "Client" means the agency, business or person identified on page 1 as "CLIENT" and is responsible for ordering and payment for work on this project.

1.4 "CONSULTANT" or "Consultant" means the company identified on page 1. CONSULTANT shall employ for the Services rendered, engineers, architects and surveyors licensed, as applicable, by the Kansas State Board of Technical Professions.

1.5 "Contract Documents" means those documents so identified in the Agreement for this Project, including Engineering, Architectural and/or Survey documents under this Agreement. Terms defined in General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.

1.6 "Engineering Documents" or "Architectural Documents" or "Survey Documents" means plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums or correspondence related to the work described in Exhibit 1 attached hereto.

1.7 "Consulting Services" or "Engineering Services" or "Architectural Services" or "Survey Services" means the professional services, labor, materials, supplies, testing and other acts or duties required of the CONSULTANT under this Agreement, together with Additional Services as CLIENT may request and evidenced by a supplemental agreement pursuant to the terms of this Agreement.

1.8 "Services" is a description of the required work as shown in **Exhibit 1**.

1.9 "Subsurface Borings and Testing" means borings, probings and subsurface explorations, laboratory tests and inspection of samples, materials and equipment; and appropriate professional interpretations of all the foregoing.

SECTION 2 – RESPONSIBILITIES OF CONSULTANT

2.1 SCOPE OF SERVICES: The CONSULTANT shall furnish and perform the various Professional Services of the Project to which this Agreement applies, as specifically provided in **Exhibit 1** for the completion of the Project.

2.2 GENERAL DUTIES AND RESPONSIBILITIES

2.2.1. **Personnel**: The CONSULTANT shall assign qualified personnel to perform professional Services concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal point of contact on this Project.

Name:	Tom Arpin, AIA
Address:	1405 Wakarusa Drive
	Lawrence, KS 66049
Phone:	785-537-7448 Ext. 1105

2.2.2. **Standard of Care**: In the performance of professional Services, CONSULTANT will use that level of care and skill ordinarily exercised by reputable members of CONSULTANT's profession currently practicing in the same locality under similar conditions. No other representation, guarantee or warranty, express or implied, is included or intended in this agreement or in any communication (oral or written) report, opinion, document or instrument of service.

2.2.3. **Independent Contractor**: The CONSULTANT is an independent contractor and as such is not an employee of the Client.

2.2.4. **Insurance**: CONSULTANT will maintain insurance for this Agreement in the following types: (i) worker's compensation insurance as required by applicable law, (ii) comprehensive general liability insurance (CGL), (iii) automobile liability insurance for bodily injury and property damage and (iv) Professional liability insurance.

2.2.5. **Subsurface Borings and Material Testing**: If tests additional to those provided in Exhibit 1 are necessary for design, the CONSULTANT shall prepare a request for the necessary additional borings and procure at least two proposals, including cost, from Geotechnical firms who engage in providing Subsurface Borings and Testing Services. The CONSULTANT will provide this information to the Client and the Client will contract directly with the Geotechnical firm. The CONSULTANT will not charge an add-on percentage for the Geotechnical firm's work. The Client will pay the Geotechnical firm separately from this Agreement.

2.2.6. **Service by and Payment to Others**: Any work authorized in writing by the Client and performed by a third party, other than the CONSULTANT or their subconsultants in connection with the proposed Project, shall be contracted for and paid for by the Client directly to the third party or parties. Fees for extra work shall be subject to negotiation between the CLIENT and the third party. Fees shall be approved by the CLIENT prior to the execution of any extra work. Although the CONSULTANT may assist the CLIENT in procuring such Services of third parties, the CONSULTANT shall in no way be liable to either the CLIENT or such third parties in any manner whatsoever for such Services or for payment thereof.

2.2.7. **Subcontracting of Service**: The CONSULTANT shall not subcontract or assign any of the architectural, engineering, surveying or consulting Services to be performed under this Agreement without first obtaining the approval of the Client regarding the Services to be subcontracted or assigned and the firm or person proposed to perform the Services. Neither the CLIENT nor the CONSULTANT shall assign any rights or duties under this Agreement without the prior consent of the other party.

2.2.8. **Endorsement**: The CONSULTANT shall sign and seal final plans, specifications, estimates and data furnished by the CONSULTANT according to Kansas Statutes and Rules and Regulations.

2.2.9. **Force Majeure**: Should performance of Services by CONSULTANT be affected by causes beyond its reasonable control, Force Majeure results. Force Majeure includes, but is not restricted to, acts of God; acts of a legislative, administrative or judicial entity; acts of contractors other than contractors engaged directly by CONSULTANT; fires; floods; labor disturbances; epidemics; and unusually severe weather. CONSULTANT will be granted a time extension and the parties will negotiate an equitable adjustment to the price of any affected Work Order, where appropriate, based upon the effect of the Force Majeure on performance by CONSULTANT.

2.2.10. **Professional Responsibility**: The CONSULTANT will exercise reasonable skill, care and diligence in the performance of its Services as is ordinarily possessed and exercised by a licensed professional performing the same Services under similar circumstances.

2.2.11. **Inspection of Documents**: The CONSULTANT shall maintain Project records for inspection by the CLIENT during the contract period and for three (3) years from the date of final payment.

SECTION 3 – CLIENT RESPONSIBILITIES

3.1 GENERAL DUTIES AND RESPONSIBILITIES

3.1.1. **Communication**: The CLIENT shall provide to the Consultant information and criteria regarding the CLIENT's requirement for the Project; examine and respond in a timely manner to the Consultant's submissions and give notice to the Consultant whenever the CLIENT observes or otherwise becomes aware of any defect in the Services.

3.1.2. **Access**: The CLIENT will provide access agreements for the Consultant to enter public and private property when necessary.

3.1.3. **Duties**: The CLIENT shall furnish and perform the various duties and Services in all phases of the Project which are outlined and designated in Exhibit 1 as the CLIENT's responsibility.

3.1.4. **Program and Budget**: The CLIENT shall provide full information stating the CLIENT's objectives, schedule, budget with reasonable contingencies and necessary design criteria so that Consultant is able to fully understand the project requirements.

3.1.5. **Testing**: Any additional tests required to supplement the Scope of Services or tests required by law shall be furnished by the CLIENT.

3.1.6. **Legal, Insurance, Audit**: The CLIENT shall furnish all legal, accounting and insurance counseling Services as may be necessary at any time for the Project. The CLIENT shall furnish all bond forms required for the Project.

3.1.7. **Project Representative**: The CLIENT will assign the person indicated below to represent the CLIENT in coordinating this Project with the CONSULTANT, with authority to transmit instructions and define policies and decisions of the CLIENT.

Name:	Don Cawby, City Manager
Address:	439 Main Street
	Osawatomie, KS 66064
Phone:	913-755-2146

SECTION 4 – PAYMENT

4.1 COMPENSATION

4.1.1. **Fee and Expense**: The CLIENT agrees to pay the CONSULTANT a fee based on the actual hours expended on the Project at the rates indicated in the attached Fee Schedule; Exhibit 2 and the actual reimbursable expenses permitted under this Agreement and incurred on the Project. This fee is based on the scope of Services outlined in Exhibit 1 of this Agreement and shall be completed on or before October 1, 2014. Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.

4.1.2. **Hourly Rate**: Any Additional Services which are not set forth in this Agreement will be charged on the basis of the hourly rate schedule attached hereto as Exhibit 2, and reimbursable expenses not contemplated in this Agreement will be charged at actual cost plus ten (10) percent. No Additional Services or costs shall be incurred without proper written authorization of the CLIENT.

4.1.3. **Annual Rate Adjustment**: The payment amounts listed in this Agreement are based on the work being performed within one year of the contract date. Because of natural time delays that may be encountered in the administration and work to be performed for the project, each value will be increased at the rate of 3%, compounded annually, beginning after one year from the date of the contract and ending when that item is approved for billing.

4.1.4. **Reimbursable Expenses**: Reimbursable expenses plus ten (10) percent shall be charged. Reimbursable expenses include, but are not limited to, expenses of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; expenses of printing and reproductions; postage; expenses of renderings and models requested by the CLIENT and other costs as authorized by the CLIENT. Reimbursable expenses will not include overhead costs or additional insurance premiums.

4.1.5. **Sales Tax**: Compensation as provided for herein is exclusive of any sales, use or similar tax imposed by taxing jurisdictions on any amount of compensation, fees or Services. Should such taxes be imposed, the CLIENT shall reimburse the CONSULTANT in addition to the contractual amounts provided. The CLIENT shall provide tax exempt number, if required, and if requested by the CONSULTANT.

4.1.6. **Billing**: CONSULTANT shall bill the CLIENT monthly for services and reimbursable expenses according to **Exhibit 2**. The bill submitted by CONSULTANT shall itemize the services and reimbursable expenses for which payment is requested, notwithstanding any claim for interest or penalty claimed in a CONSULTANT's invoice. The CLIENT agrees to pay the CONSULTANT within ten (10) days of approval by the governing body.

4.1.7. **Timing of Services**: CONSULTANT will perform the Services in a timely manner according to Exhibit 2. However, if during their performance, for reasons beyond the control of the CONSULTANT, delays occur, the parties agree that they will negotiate in writing an equitable adjustment of time and compensation, taking in to consideration the impact of such delays.

4.1.8. **Change in Scope**: For modifications in authorized scope of services or project scope and/or modifications of drawings and/or specifications previously accepted by the CLIENT, when requested by the CLIENT and through no fault of the CONSULTANT, the CONSULTANT shall be compensated for time and expense required to incorporate such modifications at CONSULTANT's standard hourly rates per Exhibit 2. CONSULTANT shall correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due to CONSULTANT's negligence, error or omission.

4.1.9. **Additional Services**: The CONSULTANT shall provide, with the CLIENT's concurrence, Services in addition to those listed in Exhibit 1 when such Services are requested in writing by the CLIENT. Prior to providing Additional Services, the CONSULTANT will submit a proposal outlining the Additional Services to be provided. Payment to the CONSULTANT, as compensation for these Additional Services, shall be in accordance with the attached hourly rate schedule attached as Exhibit 2. Reimbursable expenses incurred in conjunction with Additional Services shall be paid separately and those reimbursable expenses shall be paid at cost plus ten (10) percent. Records of reimbursable expenses and expenses pertaining to Additional Services and Services performed on an hourly basis shall be made available to the CLIENT if so requested in writing.

4.1.10. **Supplemental Agreement**: This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by written amendment signed by both parties. The contract price and contract time may only be changed by a written supplemental agreement approved by the CLIENT, unless it is the result of an emergency situation, in which case the CLIENT may give verbal, e-mail or facsimile approval which shall be the same as written and approved supplemental agreement.

SECTION 5 – MUTUAL PROVISIONS

5.1 TERMINATION

5.1.1. **Notice**: The CLIENT reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of the CONSULTANT, by providing written notice of such termination to the CONSULTANT. Such notice will be with Twenty Four (24) hour's notice.

Upon receipt of such notice from CLIENT, the CONSULTANT shall, at CLIENT's option as contained in the notice; Immediately cease all Services and meet with CLIENT to determine what Services shall be required of the CONSULTANT in order to bring the Project to a reasonable termination in accordance with the request of the CLIENT. The CONSULTANT shall also provide to the CLIENT digital and/or mylar copies of drawings and documents completed or partially completed at the date of termination. The CONSULTANT is entitled to terminate this agreement by providing thirty (30) days written notice.

5.1.2. **Compensation for Convenience Termination**: If CLIENT shall terminate for its convenience, as herein provided, CLIENT shall compensate CONSULTANT for all Services completed to date prior to receipt of the termination notice.

5.1.3. **Compensation for Default Termination**: If the CLIENT shall terminate for cause or default on the part of the CONSULTANT, the CLIENT shall compensate the CONSULTANT for the reasonable cost of Services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. The CLIENT also retains all its rights and remedies against the CONSULTANT, including, but not limited to, its rights to sue for damages, interest and attorney fees.

5.1.4. **Incomplete Documents**: Neither the CONSULTANT, nor its subconsultant, shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this section, the CONSULTANT having been deprived of the opportunity to complete such documents and certify them as ready for construction and/or complete.

5.2 DISPUTE RESOLUTION

5.2.1. If a claim, dispute or controversy arises out of or relates to the interpretation, application, enforcement or performance of Services under this Agreement, CONSULTANT and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of CONSULTANT and CLIENT. If such negotiations are unsuccessful, CONSULTANT and CLIENT agree to attempt to settle the dispute by good faith mediation. If the dispute cannot be settled through mediation, and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in Kansas. CLIENT and CONSULTANT hereby waive the right to trial by jury for any disputes arising out of this Agreement. Except as otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.

5.3 OWNERSHIP OF INSTRUMENTS OF SERVICE

5.3.1. Reports, drawings, plans or other documents (or copies) furnished to CONSULTANT by the CLIENT shall, at CLIENT's written request, be returned upon completion of the Services hereunder; provided, however that CONSULTANT may retain one (1) copy of all such documents. Reports, drawings, plans, documents, software, field notes and work product (or copies thereof) in any form prepared or furnished by CONSULTANT under this Agreement are instruments of service. Exclusive ownership, copyright and title to all instruments of service remain with CONSULTANT. CLIENT's right of use of instruments of service, if any, is limited to that use on the Project. The instruments of service are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the work or on any other project.

5.4 INDEMNIFY AND HOLD HARMLESS

5.4.1. CLIENT shall indemnify and save CONSULTANT, its offices and employees harmless from and against any liability, claim, judgment, demand or cause of action arising out of or relating to: (i) CLIENT's breach of this Agreement; (ii) the negligent acts or omissions of CLIENT or its employees, contractors or agents; (iii) site access or damages to any surface or subterranean structures or any damage necessary for site access.

5.4.2. In addition, where the Services include preparation of plans and specifications and/or construction observation activities for CLIENT, CLIENT agrees to have its construction contractors agree in writing to indemnify and save harmless CONSULTANT from and against loss, damage, injury, or liability attributable to personal injury or property damage arising out of or resulting from such contractors' performance or nonperformance of their work.

5.4.3. CONSULTANT shall indemnify and save CLIENT and its employees and officials from loss to the extent caused or incurred as a result of the negligence or wrongful acts of the CONSULTANT, its offices or employees in performance of Services pursuant to this Agreement.

5.5 ENTIRE AGREEMENT

5.5.1. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

5.6 APPLICABLE LAW

5.6.1. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with laws of the State of Kansas.

5.7 ASSIGNMENT OF AGREEMENT

5.7.1. This Agreement shall not be assigned or transferred by either the CONSULTANT or the CLIENT without the written consent of the other.

5.8 NO THIRD PARTY BENEFICIARIES

5.8.1. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

5.9 LIMITATION OF LIABILITY

5.9.1. CLIENT's exclusive remedy for any alleged breach of CLIENT's standard of care hereunder shall be to require CONSULTANT to re-perform any defective Services. Notwithstanding any other provision of this Agreement, the total liability of CONSULTANT, its officers, directors and employees for liabilities, claims, judgments, demands and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to the total compensation actually paid to CONSULTANT for the Services. All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after completion of the Services.

5.9.2. CLIENT agrees that any claim for damages filed against CONSULTANT by CLIENT or any contractor or subcontractor hired directly or indirectly by CLIENT will be filed solely against CONSULTANT or its successors or assigns and that no individual person shall be made personally liable for damages in whole or in part.

5.9.3. CONSULTANT and CLIENT shall not be responsible to each other for any special, incidental, indirect or consequential damages (including lost profits) incurred by either CONSULTANT or CLIENT or for which either party may be liable to any third party, which damages have been or are occasioned by Services performed or reports prepared or other work performed hereunder.

5.10 COMPLIANCE WITH LAWS

5.10.1 CONSULTANT shall abide by known applicable federal, state and local laws, ordinances and regulations applicable to this Project until the Consulting Services required by this Agreement are complete. CONSULTANT shall secure occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.

5.11 TITLES, SUBHEADS AND CAPITALIZATION

5.11.1 Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

5.12 SEVERABILITY CLAUSE

5.12.1. Should any provision of this Agreement be determined to be void, invalid or unenforceable or illegal for whatever reason, such provisions shall be null and void; provided, however that the remaining provisions of this Agreement shall be unaffected hereby and shall continue to be valid and enforceable.

5.13 FIELD REPRESENTATION

5.13.1. Unless otherwise expressly agreed to in writing, CONSULTANT shall not be responsible for the safety or direction of the means and methods at the contractor's project site or their employees or agents, and the presence of CONSULTANT at the project site will not relieve the contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If necessary, CLIENT will advise any contractors that Consultant's Services are so limited. CONSULTANT will not assume the role of "prime contractor", "constructor", "controlling employer", "supervisor" or their equivalents, unless the scope of such Services are expressly agreed to in writing.

5.14 HAZARDOUS MATERIALS

5.14.1. The CONSULTANT and the CONSULTANT's subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal or exposure of persons to hazardous materials in any form at the Project site.

5.15 AFFIRMATIVE ACTION

5.15.1. The CONSULTANT agrees to comply with the provisions of K.S.A. 44-1030 in the Kansas Acts Against Discrimination.

5.16 SPECIAL PROVISIONS

5.16.1. Special Provisions may be attached and become a part of this agreement as **Exhibit 3**.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate this _____ day of _____, 20__.

CONSULTANT:		**CLIENT:**	
BG Consultants, Inc.		**City of Osawatomie, KS**	
By:	_____	By:	_____
Printed Name:	Tom Arpin	Printed Name:	Don Cawby
Title:	Vice President	Title:	City Manager

END OF CONSULTANT-CLIENT AGREEMENT

Exhibit 1 – SCOPE OF WORK

PRELIMINARY DESIGN PHASE:

This work will be performed to determine the scope and construction costs for this project.

1) Organize a Project Advisory Committee (members selected by the CITY).
2) Meet with CITY officials and Project Advisory Committee to define the scope of work and needs of the proposed project.
3) Prepare alternate conceptual designs based on the Project Advisory Committee's defined scope of project for the proposed pool facility.
4) Prepare Estimates of Probable Project Costs for alternate concept designs.
5) Present conceptual alternates to the Project Advisory Committee and develop the scope of project for a final conceptual design. (2 meetings anticipated to develop consensus on concept with Project Advisory Committee).
6) Present conceptual design to City Council.
7) Develop Final conceptual design.
    a. Develop final conceptual Site Layout, Floor Plans, Building Elevations
    b. Provide Architectural Renderings of Entire Project
    c. Develop on Estimate of Probable Construction Working Budget
8) Meet with Project Advisory Committee to discuss conceptual drawings and review the project with CITY staff.
9) Update "Estimate of Probable Project Costs".
10) Meet with CITY as needed to finalize the concept design. (1 meeting is anticipated)
11) Present concept design at public meeting (1 meeting is anticipated)

DESIGN DEVELOPMENT PHASE: Construction Contract Document Preparation:

After the CITY determines the scope of the project and funding sources, contract documents will be prepared.

12) Prepare working drawings, specifications and contract documents after receiving approval of the scope of work from the CITY.
13) Provide Architectural/Engineering design services.
    a. Building design
    b. Hydraulic design
    c. Soil compaction and stabilization recommendations
    d. Structural design and calculations
    e. Electrical and lighting design
    f. Sound System design
    g. Utility plan and design
    h. Prepare finish schedules for all surfaces
14) Prepare "Opinion of Probable Construction Costs" and construction scheduling guidelines.
15) Prepare alternate work items as required to match estimate of probable construction costs with available funds.
16) Print and provide copies of drawings and specifications to the CITY.

17) Provide and submit final plans and specifications to the CITY and all regulatory agencies for final approval.
18) Prepare bid sheet and final "Opinion of Probable Construction Costs".

BIDDING PHASE:

19) Assist CITY with advertise project for bids.
20) Release final plans and specifications to prospective bidders.
21) Issue addendums providing clarification to prospective contractor questions.
22) Attend bid letting, analyze bids, and provide a recommendation for award of contract to the CITY.

CONSTRUCTION PHASE:

23) Represent the CITY at the preconstruction conference.
24) Provide technical assistance and construction observation services during the construction process. This shall include periodic observation of the work in progress, review of drawings submitted by the contractor for compliance with design concept, and observation of performance tests required by the specifications.
25) Review contractor pay requests and provide recommendation for payment to the CITY.
26) Be available as needed for periodic reports to the CITY.
27) Assist the CITY with preparation of final contract documents including substantial and final completion.

Exhibit 2 – COST AND SCHEDULE

Design services set forth in Exhibit 1 items 1 through 6 will be billed hourly at City Discounted Rate Schedule to an anticipated total cost of **$6,692.00**. All billings will be made on a monthly basis for the prior month's work. Payment for each billing shall be due and payable within 30 days of billing by the Consultant. Consultant shall obtain City approval prior to exceeding the estimated hours if additional services are requested.

Design services set forth in Exhibit 1 items 6 through 11 will be billed hourly at City Discounted Rate Schedule to an anticipated total cost of **$10,810.00**. All billings will be made on a monthly basis for the prior month's work. Payment for each billing shall be due and payable within 30 days of billing by the Consultant. Consultant shall obtain City approval prior to exceeding the estimated hours if additional services are requested.

Services will be performed in an effort to meet City scheduling goals including the following milestones:

1. Preliminary Design Phase services will be completed in 90 to 120 days.

Design Phase, Bidding Phase and Construction Phase (items 12 thru 27 of Exhibit 1) will be determined in the Preliminary Design Phase. A letter amending this Agreement will be presented to the CLIENT for approval prior to commencing work on the Design Development Phase.

Compensation for Additional Services Section 4.1.2, if requested by the CLIENT, shall be billed at the discounted hourly rates attached.

Osawatomie Municipal Pool Improvements
Osawatomie, KS

Man-hour Estimate

	Task	Project Manager	Architect	Project Architect	Project Engineer	3-man Survey Crew	Sen. Project Surveyor	CAD Sys & Operator	Clerical	SUBTOTAL
1	**Organize Project Advisory Committee (PAC)**									
	Total Hours	0	2	0	0	0	0	0	0	2
	Labor Rate	$123.00	$118.00	$92.00	$90.00	$137.00	$107.00	$79.00	$48.00	
	Total Labor	$ -	$ 236.00	$ -	$ -	$ -	$ -	$ -	$ -	$ 236.00
	Task	Project Manager	Architect	Project Architect	Project Engineer	3-man Survey Crew	Sen. Project Surveyor	CAD Sys & Operator	Clerical	SUBTOTAL
2	**Meet with PAC to define scope**									
	Total Hours	0	0	0	0	0	0	0	0	0
	Labor Rate	$123.00	$118.00	$92.00	$90.00	$137.00	$107.00	$79.00	$48.00	
	Total Labor	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
	Task	Project Manager	Architect	Project Architect	Project Engineer	3-man Survey Crew	Sen. Project Surveyor	CAD Sys & Operator	Clerical	SUBTOTAL
3	**Alternate Concepts**									
	Total Hours	0	16	24	0	0	0	0	0	40
	Labor Rate	$123.00	$118.00	$92.00	$90.00	$137.00	$107.00	$79.00	$48.00	
	Total Labor	$ -	$ 1,888.00	$ 2,208.00	$ -	$ -	$ -	$ -	$ -	$ 4,096.00
	Task	Project Manager	Architect	Project Architect	Project Engineer	3-man Survey Crew	Sen. Project Surveyor	CAD Sys & Operator	Clerical	SUBTOTAL
4	**Estimates of Probable Project Cost**									
	Total Hours	0	8	0	0	0	0	0	0	8
	Labor Rate	$123.00	$118.00	$92.00	$90.00	$137.00	$107.00	$79.00	$48.00	
	Total Labor	$ -	$ 944.00	$ -	$ -	$ -	$ -	$ -	$ -	$ 944.00
	Task	Project Manager	Architect	Project Architect	Project Engineer	3-man Survey Crew	Sen. Project Surveyor	CAD Sys & Operator	Clerical	SUBTOTAL
5	**PAC meetings**									
	Total Hours	0	8	0	0	0	0	0	0	8
	Labor Rate	$123.00	$118.00	$92.00	$90.00	$137.00	$107.00	$79.00	$48.00	
	Total Labor	$ -	$ 944.00	$ -	$ -	$ -	$ -	$ -	$ -	$ 944.00
	Task	Project Manager	Architect	Project Architect	Project Engineer	3-man Survey Crew	Sen. Project Surveyor	CAD Sys & Operator	Clerical	SUBTOTAL
6	**Council Presentation**									
	Total Hours	0	4	0	0	0	0	0	0	4
	Labor Rate	$123.00	$118.00	$92.00	$90.00	$137.00	$107.00	$79.00	$48.00	
	Total Labor	$ -	$ 472.00	$ -	$ -	$ -	$ -	$ -	$ -	$ 472.00

Subtotal: $ 6,692.00

	Task	Project Manager	Architect	Project Architect	Project Engineer	3-man Survey Crew	Sen. Project Surveyor	CAD Sys & Operator	Clerical	SUBTOTAL
7	**Final Concept Design and Renderings**									
	Total Hours	4	16	32	8	0	0	24	0	84
	Labor Rate	$123.00	$118.00	$92.00	$90.00	$137.00	$107.00	$79.00	$48.00	
	Total Labor	$ 492.00	$ 1,888.00	$ 2,944.00	$ 720.00	$ -	$ -	$ 1,896.00	$ -	$ 7,940.00
	Task	Project Manager	Architect	Project Architect	Project Engineer	3-man Survey Crew	Sen. Project Surveyor	CAD Sys & Operator	Clerical	SUBTOTAL
8	**PAC review of Final Concept**									
	Total Hours	0	4	0	0	0	0	0	0	4
	Labor Rate	$123.00	$118.00	$92.00	$90.00	$137.00	$107.00	$79.00	$48.00	
	Total Labor	$ -	$ 472.00	$ -	$ -	$ -	$ -	$ -	$ -	$ 472.00
	Task	Project Manager	Architect	Project Architect	Project Engineer	3-man Survey Crew	Sen. Project Surveyor	CAD Sys & Operator	Clerical	SUBTOTAL
9	**Update Estimates of Probable Project Cost**									
	Total Hours	0	4	8	0	0	0	0	0	12
	Labor Rate	$123.00	$118.00	$92.00	$90.00	$137.00	$107.00	$79.00	$48.00	
	Total Labor	$ -	$ 472.00	$ 736.00	$ -	$ -	$ -	$ -	$ -	$ 1,208.00
	Task	Project Manager	Architect	Project Architect	Project Engineer	3-man Survey Crew	Sen. Project Surveyor	CAD Sys & Operator	Clerical	SUBTOTAL
10	**Finalize Concept Design**									
	Total Hours	0	4	0	0	0	0	0	0	4
	Labor Rate	$123.00	$118.00	$92.00	$90.00	$137.00	$107.00	$79.00	$48.00	
	Total Labor	$ -	$ 472.00	$ -	$ -	$ -	$ -	$ -	$ -	$ 472.00
	Task	Project Manager	Architect	Project Architect	Project Engineer	3-man Survey Crew	Sen. Project Surveyor	CAD Sys & Operator	Clerical	SUBTOTAL
11	**Public Presentation**									
	Total Hours	2	4	0	0	0	0	0	0	6
	Labor Rate	$123.00	$118.00	$92.00	$90.00	$137.00	$107.00	$79.00	$48.00	
	Total Labor	$ 246.00	$ 472.00	$ -	$ -	$ -	$ -	$ -	$ -	$ 718.00

Subtotal: $ 10,810.00

Total Contract Amount: $ 17,502.00

BG CONSULTANTS DISCOUNTED HOURLY RATES FOR 2012

POSITION	STANDARD PER HOUR 2012	DISCOUNTED PER HOUR 2012
PRINCIPAL	$175.00	$123.00
ASSOCIATE	$155.00	$118.00
PROJECT ENGINEER III	$140.00	$111.00
PROJECT ENGINEER II	$130.00	$98.50
PROJECT ENGINEER I	$110.00	$90.00
SENIOR DESIGN ENGINEER	$130.00	$92.00
DESIGN ENGINEER	$100.00	$81.00
ASSISTANT DESIGN ENGINEER*	$80.00	$68.50
ARCHITECT	$168.00	$118.00
PROJECT ARCHITECT	$130.00	$92.00
DESIGN ARCHITECT	$100.00	$81.00
ASSISTANT ARCHITECT*	$80.00	$69.00
TECHNICIAN II*	$85.00	$76.00
TECHNICIAN I*	$78.00	$66.50
SENIOR CONSTRUCTION INSPECTOR*	$90.00	$73.00
CERTIFIED CONSTRUCTION INSPECTOR*	$75.00	$62.50
CONSTRUCTION INSPECTOR*	$68.00	$56.00
SENIOR PROJECT SURVEYOR*	$160.00	$107.00
PROJECT SURVEYOR*	$118.00	$99.00
GPS SURVEYOR*	$98.00	$78.00
3-MAN SURVEY CREW*	$165.00	$137.00
2-MAN SURVEY CREW*	$130.00	$103.50
CAD SYSTEM AND OPERATOR*	$97.00	$79.00
CLERICAL*	$50.00	$48.00

Note: 1) The hourly rates shown above are effective for services through December 31st of the contract year and are subject to revision annually.

2) * For any non exempt personnel in positions marked with an asterisk (*), overtime will be billed at 1.5 times the hourly labor billing rates shown.

Special Note: "Discounted" rates are only applicable for City Engineering Contracts

City of Osawatomie
www.osawatomieks.org

Osawatomie City Hall
439 Main Street • PO Box 37
Osawatomie, KS 66064
Phone: (913)755-2146
Fax: (913)755-4164

STAFF AGENDA MEMORANDUM

DATE OF MEETING: September 27, 2012

AGENDA ITEM: **BG Consultants Contract for Sewer Plant Upgrades**

PRESENTER: Brian Kingsley, P.E., BG Consulting

ISSUE SUMMARY: On February 23, Brian Kingsley came and talked to the Council about the needed upgrades at the Sewer Treatment Plant. The main area of concern is the headworks which has numerous operational issues from a spiral screen that is falling apart, a grit chamber that continues to break down, and concrete that is advanced disrepair because of modifications to the original design.

BG Consultants did some preliminary reviews of the plant and looked at a couple of cost effective options for repair at the plant. However, BG wanted to run these repairs by the Kansas Bureau of Water of KDHE to make sure they would be well received. About two months ago, we received those comments back and at that point, I asked Brian to generate cost estimates based on the only real option we have at this point.

Also, we had asked Brian to review optimization at the plant to see if there were ways to reduce operational costs and fix some of our issues with peak flows and low flows. Since that discussion we have struggled with land to apply sludge and disrepair of the sludge truck. I believe that we need to look at a sludge press so that we no longer have to land apply sludge. The consideration of these additional items needs to be a part of any discussion as we look at potential funding mechanisms and sewer rates.

Brian will be at the Council to review this proposal and their contract for services on these improvements. More importantly, we will need to discuss the potential sewer rate increases for these improvements and our long-term financing plan for the upgrades.

COUNCIL ACTION NEEDED: Review and discuss.

STAFF RECOMMENDATION TO COUNCIL: Approve the contract with BG Consultants for the headworks reconstruction.

AGREEMENT

CONSULTANT-CLIENT

THIS AGREEMENT made and entered into by and between BG CONSULTANTS, INC., party of the first part, (hereinafter called the CONSULTANT), and City of Osawatomie, KS, party of the second part, (hereinafter called the CLIENT).

WITNESSETH:

WHEREAS, the CLIENT is authorized and empowered to contract with the CONSULTANT for the purpose of obtaining Services for the following improvement:

2012 WWTP Improvements

WHEREAS, the CONSULTANT is licensed in accordance with the laws of the State of Kansas and is qualified to perform the Professional Services desired by the CLIENT now therefore:

IT IS AGREED by and between the two parties aforesaid as follows:

SECTION 1 – DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this contract, and other forms of any defined words shall have a meaning parallel thereto.

1.1 "Additional Services" means any Services requested by the CLIENT which are not covered by Exhibit 1 of this Agreement.

1.2 "Agreement" means this contract and includes change orders issued in writing.

1.3 "CLIENT" or "Client" means the agency, business or person identified on page 1 as "CLIENT" and is responsible for ordering and payment for work on this project.

1.4 "CONSULTANT" or "Consultant" means the company identified on page 1. CONSULTANT shall employ for the Services rendered, engineers, architects and surveyors licensed, as applicable, by the Kansas State Board of Technical Professions.

1.5 "Contract Documents" means those documents so identified in the Agreement for this Project, including Engineering, Architectural and/or Survey documents under this Agreement. Terms defined in General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.

1.6 "Engineering Documents" or "Architectural Documents" or "Survey Documents" means plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums or correspondence related to the work described in Exhibit 1 attached hereto.

1.7 "Consulting Services" or "Engineering Services" or "Architectural Services" or "Survey Services" means the professional services, labor, materials, supplies, testing and other acts or duties required of the CONSULTANT under this Agreement, together with Additional Services as CLIENT may request and evidenced by a supplemental agreement pursuant to the terms of this Agreement.

1.8 "Services" is a description of the required work as shown in **Exhibit 1**.

1.9 "Subsurface Borings and Testing" means borings, probings and subsurface explorations, laboratory tests and inspection of samples, materials and equipment; and appropriate professional interpretations of all the foregoing.

SECTION 2 – RESPONSIBILITIES OF CONSULTANT

2.1 SCOPE OF SERVICES: The CONSULTANT shall furnish and perform the various Professional Services of the Project to which this Agreement applies, as specifically provided in **Exhibit 1** for the completion of the Project.

2.2 GENERAL DUTIES AND RESPONSIBILITIES

2.2.1. **Personnel**: The CONSULTANT shall assign qualified personnel to perform professional Services concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal point of contact on this Project.

Name:	Brian P. Kingsley
Address:	1405 Wakarusa Drive
	Lawrence, KS 66049
Phone:	785-749-4474

2.2.2. **Standard of Care**: In the performance of professional Services, CONSULTANT will use that level of care and skill ordinarily exercised by reputable members of CONSULTANT's profession currently practicing in the same locality under similar conditions. No other representation, guarantee or warranty, express or implied, is included or intended in this agreement or in any communication (oral or written) report, opinion, document or instrument of service.

2.2.3. **Independent Contractor**: The CONSULTANT is an independent contractor and as such is not an employee of the Client.

2.2.4. **Insurance**: CONSULTANT will maintain insurance for this Agreement in the following types: (i) worker's compensation insurance as required by applicable law, (ii) comprehensive general liability insurance (CGL), (iii) automobile liability insurance for bodily injury and property damage and (iv) Professional liability insurance.

2.2.5. **Subsurface Borings and Material Testing**: If tests additional to those provided in Exhibit 1 are necessary for design, the CONSULTANT shall prepare a request for the necessary additional borings and procure at least two proposals, including cost, from Geotechnical firms who engage in providing Subsurface Borings and Testing Services. The CONSULTANT will provide this information to the Client and the Client will contract directly with the Geotechnical firm. The CONSULTANT will not charge an add-on percentage for the Geotechnical firm's work. The Client will pay the Geotechnical firm separately from this Agreement.

2.2.6. **Service by and Payment to Others**: Any work authorized in writing by the Client and performed by a third party, other than the CONSULTANT or their subconsultants in connection with the proposed Project, shall be contracted for and paid for by the Client directly to the third party or parties. Fees for extra work shall be subject to negotiation between the CLIENT and the third party. Fees shall be approved by the CLIENT prior to the execution of any extra work. Although the CONSULTANT may assist the CLIENT in procuring such Services of third parties, the CONSULTANT shall in no way be liable to either the CLIENT or such third parties in any manner whatsoever for such Services or for payment thereof.

2.2.7. **Subcontracting of Service**: The CONSULTANT shall not subcontract or assign any of the architectural, engineering, surveying or consulting Services to be performed under this Agreement without first obtaining the approval of the Client regarding the Services to be subcontracted or assigned and the firm or person proposed to perform the Services. Neither the CLIENT nor the CONSULTANT shall assign any rights or duties under this Agreement without the prior consent of the other party.

2.2.8. **Endorsement**: The CONSULTANT shall sign and seal final plans, specifications, estimates and data furnished by the CONSULTANT according to Kansas Statutes and Rules and Regulations.

2.2.9. **Force Majeure**: Should performance of Services by CONSULTANT be affected by causes beyond its reasonable control, Force Majeure results. Force Majeure includes, but is not restricted to, acts of God; acts of a legislative, administrative or judicial entity; acts of contractors other than contractors engaged directly by CONSULTANT; fires; floods; labor disturbances; epidemics; and unusually severe weather. CONSULTANT will be granted a time extension and the parties will negotiate an equitable adjustment to the price of any affected Work Order, where appropriate, based upon the effect of the Force Majeure on performance by CONSULTANT.

2.2.10. **Professional Responsibility**: The CONSULTANT will exercise reasonable skill, care and diligence in the performance of its Services as is ordinarily possessed and exercised by a licensed professional performing the same Services under similar circumstances.

2.2.11. **Inspection of Documents**: The CONSULTANT shall maintain Project records for inspection by the CLIENT during the contract period and for three (3) years from the date of final payment.

SECTION 3 – CLIENT RESPONSIBILITIES

3.1 GENERAL DUTIES AND RESPONSIBILITIES

3.1.1. **Communication**: The CLIENT shall provide to the Consultant information and criteria regarding the CLIENT's requirement for the Project; examine and respond in a timely manner to the Consultant's submissions and give notice to the Consultant whenever the CLIENT observes or otherwise becomes aware of any defect in the Services.

3.1.2. **Access**: The CLIENT will provide access agreements for the Consultant to enter public and private property when necessary.

3.1.3. **Duties**: The CLIENT shall furnish and perform the various duties and Services in all phases of the Project which are outlined and designated in Exhibit 1 as the CLIENT's responsibility.

3.1.4. **Program and Budget**: The CLIENT shall provide full information stating the CLIENT's objectives, schedule, budget with reasonable contingencies and necessary design criteria so that Consultant is able to fully understand the project requirements.

3.1.5. **Testing**: Any additional tests required to supplement the Scope of Services or tests required by law shall be furnished by the CLIENT.

3.1.6. **Legal, Insurance, Audit**: The CLIENT shall furnish all legal, accounting and insurance counseling Services as may be necessary at any time for the Project. The CLIENT shall furnish all bond forms required for the Project.

3.1.7. **Project Representative**: The CLIENT will assign the person indicated below to represent the CLIENT in coordinating this Project with the CONSULTANT, with authority to transmit instructions and define policies and decisions of the CLIENT.

Name:	Don Cawby, City Manager
Address:	439 Main Street
	Osawatomie, KS 66064
Phone:	913-755-2146

SECTION 4 – PAYMENT

4.1 COMPENSATION

4.1.1. **Maximum Total Fee and Expense**: The CLIENT agrees to pay the CONSULTANT a fee based on the actual hours expended on the Project at the rates indicated in the attached Fee Schedule; Exhibit 2 and the actual reimbursable expenses permitted under this Agreement and incurred on the Project, but not to exceed a maximum fee of $ 132,300.00 Dollars. This fee is based on the scope of Services outlined in Exhibit 1 of this Agreement and shall be completed on or before January 1, 2014 . Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.

4.1.2. **Hourly Rate**: Any Additional Services which are not set forth in this Agreement will be charged on the basis of the hourly rate schedule attached hereto as Exhibit 2, and reimbursable expenses not contemplated in this Agreement will be charged at actual cost plus ten (10) percent. No Additional Services or costs shall be incurred without proper written authorization of the CLIENT.

4.1.3. **Annual Rate Adjustment**: The payment amounts listed in this Agreement are based on the work being performed within one year of the contract date. Because of natural time delays that may be encountered in the administration and work to be performed for the project, each value will be increased at the rate of 3%, compounded annually, beginning after one year from the date of the contract and ending when that item is approved for billing.

4.1.4. **Reimbursable Expenses**: An estimate of reimbursable expenses plus ten (10) percent shall be included in the total maximum fee. Reimbursable expenses include, but are not limited to, expenses of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; expenses of printing and reproductions; postage; expenses of renderings and models requested by the CLIENT and other costs as authorized by the CLIENT. Reimbursable expenses will not include overhead costs or additional insurance premiums.

4.1.5. **Sales Tax**: Compensation as provided for herein is exclusive of any sales, use or similar tax imposed by taxing jurisdictions on any amount of compensation, fees or Services. Should such taxes be imposed, the CLIENT shall reimburse the CONSULTANT in addition to the contractual amounts provided. The CLIENT shall provide tax exempt number, if required, and if requested by the CONSULTANT.

4.1.6. **Billing**: CONSULTANT shall bill the CLIENT monthly for services and reimbursable expenses according to **Exhibit 2**. The bill submitted by CONSULTANT shall itemize the services and reimbursable expenses for which payment is requested, notwithstanding any claim for interest or penalty claimed in a CONSULTANT's invoice. The CLIENT agrees to pay the CONSULTANT within ten (10) days of approval by the governing body.

4.1.7. **Timing of Services**: CONSULTANT will perform the Services in a timely manner according to Exhibit 2. However, if during their performance, for reasons beyond the control of the CONSULTANT, delays occur, the parties agree that they will negotiate in writing an equitable adjustment of time and compensation, taking in to consideration the impact of such delays.

4.1.8. **Change in Scope**: For modifications in authorized scope of services or project scope and/or modifications of drawings and/or specifications previously accepted by the CLIENT, when requested by the CLIENT and through no fault of the CONSULTANT, the CONSULTANT shall be compensated for time and expense required to incorporate such modifications at CONSULTANT's standard hourly rates per Exhibit 2. Provided, however, that any increase in contract price or contract time must be requested by the CONSULTANT and must be approved through a written supplemental agreement prior to performing such services. CONSULTANT shall correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due to CONSULTANT's negligence, error or omission.

4.1.9. **Additional Services**: The CONSULTANT shall provide, with the CLIENT's concurrence, Services in addition to those listed in Exhibit 1 when such Services are requested in writing by the CLIENT. Prior to providing Additional Services, the CONSULTANT will submit a proposal outlining the Additional Services to be provided, estimation of total hours and a maximum fee based upon the hourly fee schedule attached hereto as Exhibit 2. Payment to the CONSULTANT, as compensation for these Additional Services, shall be in accordance with the attached hourly rate schedule attached as Exhibit 2. Reimbursable expenses incurred in conjunction with Additional Services shall be paid separately and those reimbursable expenses shall be paid at cost plus ten (10) percent. Records of reimbursable expenses and expenses pertaining to Additional Services and Services performed on an hourly basis shall be made available to the CLIENT if so requested in writing.

4.1.10. **Supplemental Agreement**: This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by written amendment signed by both parties. The contract price and contract time may only be changed by a written supplemental agreement approved by the CLIENT, unless it is the result of an emergency situation, in which case the CLIENT may give verbal, e-mail or facsimile approval which shall be the same as written and approved supplemental agreement.

SECTION 5 – MUTUAL PROVISIONS

5.1 TERMINATION

5.1.1. **Notice**: The CLIENT reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of the CONSULTANT, by providing

written notice of such termination to the CONSULTANT. Such notice will be with Twenty Four (24) hour's notice.

Upon receipt of such notice from CLIENT, the CONSULTANT shall, at CLIENT's option as contained in the notice; Immediately cease all Services and meet with CLIENT to determine what Services shall be required of the CONSULTANT in order to bring the Project to a reasonable termination in accordance with the request of the CLIENT. The CONSULTANT shall also provide to the CLIENT digital and/or mylar copies of drawings and documents completed or partially completed at the date of termination. The CONSULTANT is entitled to terminate this agreement by providing thirty (30) days written notice.

5.1.2. **Compensation for Convenience Termination**: If CLIENT shall terminate for its convenience, as herein provided, CLIENT shall compensate CONSULTANT for all Services completed to date prior to receipt of the termination notice.

5.1.3. **Compensation for Default Termination**: If the CLIENT shall terminate for cause or default on the part of the CONSULTANT, the CLIENT shall compensate the CONSULTANT for the reasonable cost of Services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. The CLIENT also retains all its rights and remedies against the CONSULTANT, including, but not limited to, its rights to sue for damages, interest and attorney fees.

5.1.4. **Incomplete Documents**: Neither the CONSULTANT, nor its subconsultant, shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this section, the CONSULTANT having been deprived of the opportunity to complete such documents and certify them as ready for construction and/or complete.

5.2 DISPUTE RESOLUTION

5.2.1. If a claim, dispute or controversy arises out of or relates to the interpretation, application, enforcement or performance of Services under this Agreement, CONSULTANT and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of CONSULTANT and CLIENT. If such negotiations are unsuccessful, CONSULTANT and CLIENT agree to attempt to settle the dispute by good faith mediation. If the dispute cannot be settled through mediation, and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in Kansas. CLIENT and CONSULTANT hereby waive the right to trial by jury for any disputes arising out of this Agreement. Except as otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.

5.3 OWNERSHIP OF INSTRUMENTS OF SERVICE

5.3.1. Reports, drawings, plans or other documents (or copies) furnished to CONSULTANT by the CLIENT shall, at CLIENT's written request, be returned upon completion of the Services hereunder; provided, however that CONSULTANT may retain one (1) copy of all such documents. Reports, drawings, plans, documents, software, field notes and work product (or copies thereof) in any form prepared or furnished by CONSULTANT under this Agreement are instruments of service. Exclusive ownership, copyright and title to all instruments of service remain with CONSULTANT. CLIENT's right of use of instruments of service, if any, is limited to that use on the Project. The instruments of service are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the work or on any other project.

5.4 INDEMNIFY AND HOLD HARMLESS

5.4.1. CLIENT shall indemnify and save CONSULTANT, its offices and employees harmless from and against any liability, claim, judgment, demand or cause of action arising out of or relating to: (i) CLIENT's breach of this Agreement; (ii) the negligent acts or omissions of CLIENT or its employees, contractors or agents; (iii) site access or damages to any surface or subterranean structures or any damage necessary for site access.

5.4.2. In addition, where the Services include preparation of plans and specifications and/or construction observation activities for CLIENT, CLIENT agrees to have its construction contractors agree in writing to indemnify and save harmless CONSULTANT from and against loss, damage, injury, or liability attributable to personal injury or property damage arising out of or resulting from such contractors' performance or nonperformance of their work.

5.4.3. CONSULTANT shall indemnify and save CLIENT and its employees and officials from loss to the extent caused or incurred as a result of the negligence or wrongful acts of the CONSULTANT, its offices or employees in performance of Services pursuant to this Agreement.

5.5 ENTIRE AGREEMENT

5.5.1. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

5.6 APPLICABLE LAW

5.6.1. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with laws of the State of Kansas.

5.7 ASSIGNMENT OF AGREEMENT

5.7.1. This Agreement shall not be assigned or transferred by either the CONSULTANT or the CLIENT without the written consent of the other.

5.8 NO THIRD PARTY BENEFICIARIES

5.8.1. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

5.9 LIMITATION OF LIABILITY

5.9.1. CLIENT's exclusive remedy for any alleged breach of CLIENT's standard of care hereunder shall be to require CONSULTANT to re-perform any defective Services. Notwithstanding any other provision of this Agreement, the total liability of CONSULTANT, its officers, directors and employees for liabilities, claims, judgments, demands and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to the total compensation actually paid to CONSULTANT for the Services. All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after completion of the Services.

5.9.2. CLIENT agrees that any claim for damages filed against CONSULTANT by CLIENT or any contractor or subcontractor hired directly or indirectly by CLIENT will be filed solely against CONSULTANT or its successors or assigns and that no individual person shall be made personally liable for damages in whole or in part.

5.9.3. CONSULTANT and CLIENT shall not be responsible to each other for any special, incidental, indirect or consequential damages (including lost profits) incurred by either CONSULTANT or CLIENT or for which either party may be liable to any third party, which damages have been or are occasioned by Services performed or reports prepared or other work performed hereunder.

5.10 COMPLIANCE WITH LAWS

5.10.1 CONSULTANT shall abide by known applicable federal, state and local laws, ordinances and regulations applicable to this Project until the Consulting Services required by this Agreement are complete. CONSULTANT shall secure occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.

5.11 TITLES, SUBHEADS AND CAPITALIZATION

5.11.1 Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

5.12 SEVERABILITY CLAUSE

5.12.1. Should any provision of this Agreement be determined to be void, invalid or unenforceable or illegal for whatever reason, such provisions shall be null and void; provided, however that the remaining provisions of this Agreement shall be unaffected hereby and shall continue to be valid and enforceable.

5.13 FIELD REPRESENTATION

5.13.1. Unless otherwise expressly agreed to in writing, CONSULTANT shall not be responsible for the safety or direction of the means and methods at the contractor's project site or their employees or agents, and the presence of CONSULTANT at the project site will not relieve the contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If necessary, CLIENT will advise any contractors that Consultant's Services are so limited. CONSULTANT will not assume the role of "prime contractor", "constructor", "controlling employer", "supervisor" or their equivalents, unless the scope of such Services are expressly agreed to in writing.

5.14 HAZARDOUS MATERIALS

5.14.1. The CONSULTANT and the CONSULTANT's subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal or exposure of persons to hazardous materials in any form at the Project site.

5.15 AFFIRMATIVE ACTION

5.15.1. The CONSULTANT agrees to comply with the provisions of K.S.A. 44-1030 in the Kansas Acts Against Discrimination.

5.16 SPECIAL PROVISIONS

5.16.1. Special Provisions may be attached and become a part of this agreement as **Exhibit 3**.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate this _____ day of _____, 20__.

CONSULTANT:		**CLIENT:**	
BG Consultants, Inc.		City of Osawatomie, KS	
By:	_____	By:	_____
Printed Name:	Brian Kingsley, P.E.	Printed Name:	Don Cawby
Title:	Vice President	Title:	City Manager

END OF CONSULTANT-CLIENT AGREEMENT

Exhibit 1 – SCOPE OF WORK

1. Bid items and project special provisions will conform to the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction, 2008 Edition, or applicable Special Provisions. The improvements include items detailed in the Opinion of Probable Project Cost Estimate for **2012 WWTP Improvements - Priority 1 Headworks Improvements identified in the Technical Memorandum for 2012 WWTP Improvements.**

2. Provide engineering design of **WWTP Headworks** improvements, including horizontal and vertical alignment.

3. Provide a preliminary estimate of probable construction cost.

4. Prepare preliminary plans on 24"x36" sheets. Plans will be Field Checked with City Staff.

5. Provide one set of plans for each of the private and public utility owners having facilities located in the area of the project. Assist the City with compiling a list of known private and public utilities including a summary of utility adjustment coordination for City records.

6. Prepare final plans and specifications with a final estimate of probable construction cost.

7. Prepare known permit application documents needed for construction. The Consultant anticipates the need for a permit from:

   - KDHE - The National Pollution Discharge Elimination System Notice of Intent
   - KDHE – Sanitary Sewer System Upgrade Permit

8. No Environmental Assessment or an Environmental Impact Statement concerning the National Environmental Policy Act will be prepared. The Consultant does not anticipate the need for this work. Should there become a need for either of these documents, the preparation of the documents will be provided through an addendum to this Agreement at the time the need is established. Applying for and obtaining a Section 404 Permit from the U.S. Army Corps of Engineers is not anticipated or included in the services.

9. BG Consultants, Inc. will provide bid phase services including assisting the City with plan distribution, answering contractor questions and preparing a recommendation for award of the construction contract.

10. Assist the City with administration of the construction contract.

11. Provide part-time personnel to assist with construction observation. Provide full-time personnel to assist with construction observation when required for sanitary sewer construction.

12. Shop drawings for materials will be submitted to the Consultant for review. After review the Consultant will either return a copy of the submitted shop drawing to the Contractor with changes marked on the shop drawing, or the Consultant will return a copy of the submitted shop drawing stamped “Approved”. The Consultant will keep a copy of each reviewed shop drawing complete with mark up comments.

Exhibit 2 – COST AND SCHEDULE

Design services set forth in Exhibit 1 items 1 through 9 will be billed hourly, at discounted City Engineering hourly rates, NOT TO EXCEED **$72,800.00**. All billings will be made on a monthly basis for the prior month's work. Payment for each billing shall be due and payable within 30 days of billing by the Consultant.

Services will be performed a schedule including the following milestones:

1. Preliminary Construction Plans within 3 months of notice to proceed by the City.
2. Final Construction Plans within 30 days of KDHE approval.

Construction services set forth in Section I items 10 through 12 will be billed hourly, at discounted City Engineering hourly rates, NOT TO EXCEED **$59,500.00**. All billings will be made on a monthly basis for the prior month's work. Payment for each billing shall be due and payable within 30 days of billing by the Consultant.

Services will be performed in an effort to meet CDBG funding requirements including the following milestones:

1. The fee included within this contract is based upon construction being accomplished within 50 working days. Construction duration beyond this duration may result in additional fees. Additional fees associated with construction duration would require City Council and KDHE approval, as appropriate, and would be identified in a supplement to this agreement.

Exhibit 3 – SPECIAL PROVISIONS

1. This agreement is entered into contingent upon the City receiving award of a CDBG funding and KDHE SRF loan for matching funding for the Improvement.

2. The Consultant shall operate within all known KDHE SRF requirements including the following (See Attachments to Exhibit 3):
    a. Appendix E-1 - Participation By Disadvantaged Business Enterprises
    b. Appendix E-3 - DBE Utilization
    c. Subpart C - Certification Regarding Debarment, Suspension, and Other Responsibility Matters
    d. Appendix D – Certification Regarding Lobbying
    e. Kansas Act Against Discrimination

EXHIBIT 2

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CAD SYSTEM AND OPERATOR*	$97.00	$79.00
CLERICAL*	$50.00	$48.00

Note: 1) The hourly rates shown above are effective for services through December 31st of the contract year and are subject to revision annually.

2) * For any non exempt personnel in positions marked with an asterisk (*), overtime will be billed at 1.5 times the hourly labor billing rates shown.

Special Note: "Discounted" rates are only applicable for City Engineering Contracts

Engineer's Opinion of Probable Project Cost
2012 WWTP Improvements - Priority 1 Headworks Improvements, Osawatomie, KS
12-1061L
September 4, 2012

ALTERNATIVE NO. 3A: NEW ¼ inch BAR SCREEN AND NEW GRIT CHAMBER

Item	Description	Estimated Quantity	Units		Unit Price		Total Price
1	Mobilization		Lump Sum	$	23,500.00	$	23,500.00
2	Clearing and Grubbing		Lump Sum	$	500.00	$	500.00
3	Bypass Piping Installation		Lump Sum	$	6,500.00	$	6,500.00
4	Bypass Pumping Operations		Lump Sum	$	7,500.00	$	7,500.00
5	Concrete Structure Modifications		Lump Sum	$	42,500.00	$	42,500.00
6	Multi-Rake Mechanical Barscreen (1/4")		Lump Sum	$	108,500.00	$	108,500.00
7	Non Potable Washwater Assembly		Lump Sum	$	5,000.00	$	5,000.00
8	Washer Compactor Equipment		Lump Sum	$	68,000.00	$	68,000.00
9	Grit System Replacement		Lump Sum	$	110,000.00	$	110,000.00
10	New Equipment Installation		Lump Sum	$	27,000.00	$	27,000.00
11	Old Equipment Demolition		Lump Sum	$	12,000.00	$	12,000.00
12	Control Upgrade and Electrical Installation		Lump Sum	$	15,000.00	$	15,000.00
13	New Headworks Building		Lump Sum	$	175,000.00	$	175,000.00
					Construction Cost	$	601,000.00
					Contingency (10%)	$	60,100.00
					Total Construction	$	661,100.00
					Design Engineering	$	72,800.00
					Construction Inspection	$	59,500.00
					Legal, Administration and Financing	$	19,800.00
					Total Opinion of Project Cost	**$**	**813,200.00**

KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
DIVISION OF ENVIRONMENT
BUREAU OF WATER

KANSAS PUBLIC WATER SUPPLY LOAN FUND
KANSAS WATER POLLUTION CONTROL REVLOVING LOAN FUND

Participation By Disadvantaged Business Enterprises Information Sheet

As a recipient of EPA SRF Capitalization Grants, the Kansas Department of Health and Environment (KDHE) is required by 40 CFR Part 33 to seek and is encouraged to utilize small, minority, and women-owned businesses in procurement under loan agreements associated with those grants . Because this project will receive funding, at least in part, from KDHE through a Kansas Public Water supply Loan Fund (KPWSLF) or a Kansas Water Pollution Control Revolving Loan Fund (KWPCRLF) loan agreement, those requirements are applicable to the loan recipient (municipality), engineering firm responsible for construction phase services, and prime contractor.

This information sheet explains requirements of the KPWSLF and KWPCRLF for Disadvantaged Business Enterprises (DBE) utilization. A copy of this Information Sheet must be included within engineering contracts for construction phase services and must be included within the contract documents of construction specifications.

Definitions

Disadvantaged Business Enterprise - entities owned and/or controlled by socially and economically disadvantaged individuals (as described in 42 USC 7601 and 42 USC 4370d - which includes Women's Business Enterprises (WBE) and Minority Business Enterprises (MBE) as defined in this information sheet); a Small Business Enterprise (SBE); a Small Business in Rural Area (SBRA); a Labor Surplus Area Firm (LSAF); or a Historically Underutilized Business (HUB) Zone Small Business Concern or a concern under a successor program.

Socially disadvantaged individual – individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities, and are further defined as:

Black Americans	Asian Pacific Americans	Indian Tribes
Hispanic Americans	Native Hawaiian Organizations	Women
Native Americans	Historically Black Colleges and Universities	

Economically disadvantaged individual - those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital or credit opportunities, as compared to others in the same business area who are not socially disadvantaged.

Women's Business Enterprise (WBE) – a business concern which is at least 51% owned or controlled by women for purposes of 42 USC 7601 of 42 USC 4370d.

Minority Business Enterprises (MBE) - a Disadvantaged Business Enterprise other than a SBE, SBRA, LSAF, or WBE.

KDHE Implementation Requirements for DBE Procurement Opportunities

KDHE has an objective of using an amount equal to 4.1% of the capitalization grant as awarded by EPA to KDHE, for construction procurement performed by MBE entities and 6.9% of the capitalization grant for WBE entities. This is referred to as a fair share objective. The loan recipient (municipality), engineering firm responsible for construction phase services, and prime contractor are required to adopt this same fair share objective. The fair share objective is not a quota and EPA cannot penalize KDHE, the loan recipient, engineering firm, or the prime contractor for not meeting MBE or WBE participation objectives.

The prime contractor and consulting engineer responsible for construction phase services **are** required to make the good faith efforts and apply the administrative requirements listed below for any subcontracts procured after **May 18, 2009**.

Good Faith Efforts

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities.

   This step may include sending letters or making other personal contacts with DBEs. DBEs should be contacted when other potential subcontractors/suppliers are contacted, within reasonable time (i.e. minimum of fifteen days) prior to bid submission or closing date for receipt of initial offers. Those letters or other contacts should communicate the following:

   i. Specific description of the work to be subcontracted or supplies to be purchased;

   ii. How and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation;

   iii. Date the quotation is due to the prime contractor;

   iv. Name, address, and phone number of the person in the prime contractor's firm whom the prospective DBE subcontractor/supplier should contact for additional information.

2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs.

4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

5. Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

Administrative Requirements

The prime contractor/engineering firm responsible for construction phase services:

1. Must pay its subcontractor for satisfactory performance not more than 30 days from the prime contractor's receipt of payment.

2. Must notify KDHE in writing prior to termination of a DBE subcontractor for convenience.

3. Must employ the good faith efforts when soliciting a replacement subcontractor, if the original subcontractor fails to complete work for any reason.

4. Shall provide EPA Form 6100-2—DBE Program Subcontractor Participation Form to all of its DBE subcontractors. Subcontractors can submit this form to KDHE if there are any concerns regarding the project.

5. Must have its DBE subcontractors complete EPA Form 6100-3—DBE Program Subcontractor Performance Form, and submit it with the bid or proposal package.

6. Must complete and submit EPA Form 6100-4—DBE Program Subcontractor Utilization Form with the bid or proposal package (use additional copies of form if needed).

7. Shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CRF part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

Finding DBE Firms

The Central Contractor Registration (CCR) maintains a database for the U.S. Federal Government that can be searched for various DBE contractors certified by SBA. The database is located on the web at https://www.bpn.gov/CCRSearch/Search.aspx .

The Kansas Department of Transportation Directory of Disadvantaged Business Enterprise (DBE) can be found on the web at http://www.ksdot.org/divAdmin/DBEConstruction/dbedir.aspx**.**

The Minority Business Development Agency of the Department of Commerce maintains a business locator database on the web at http://www.mbda.gov .

KDHE and the municipality are required to maintain a list of bidders that have competed for loan fund projects. This list can be used in conjunction with the directories listed above to find DBE firms. This list can be found on the web at http://www.kdheks.gov/pws/loan/SRFbidlist.xls.

DBE firms are not limited by the directories listed above. Prime contractors should use any means necessary to locate and contact DBE firms.

In order for a DBE to participate as an MBE or WBE, that entity must be certified by one of the following; the (1) Environmental Protection Agency (EPA), (2) Small Business Administration (SBA), (3) US Department of Transportation, or (4) any other state or local government or private organization certification that has standards that meet or exceed the EPA certification program. MBE's and WBE's must be certified in order for procurement to count towards meeting Fair Share Goals.

Determination of Compliance

Prime contractors must demonstrate compliance with DBE requirements in order to be deemed responsive prior to contract award. Demonstration of compliance shall include submittal of EPA Form 6100-3, EPA Form 6100-4, and a list of DBE subcontractors contacted and the method used to contact them (the attached Demonstration of Compliance with DBE Good Faith Efforts Worksheet can be used for this purpose).

Engineering firms responsible for construction phase services must demonstrate compliance with DBE requirements prior to the construction contract award. Demonstration of compliance shall include submittal of EPA Form 6100-3, EPA Form 6100-4, and a list of DBE subcontractors contacted and the method used to contact them (the attached Demonstration of Compliance with DBE Good Faith Efforts Worksheet can be used for this purpose).

The municipality is required to submit a copy of this information to KDHE as well as submit the Applicant Assurance with Respect to Good Faith Efforts for DBE Utilization form prior to the award of the construction contract. The municipality is also required to submit to KDHE by April 15 and October 15 (during project construction), EPA Form 5700-52A - MBE/WBE Utilization under Federal Grants, Cooperative Agreements, and Interagency Agreements. If MBE/WBE firms are utilized, proof of certification must be submitted with EPA Form 5700-52A

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

Environmental
Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Participation Form

NAME OF SUBCONTRACTOR[1]	**PROJECT NAME**
ADDRESS	**CONTRACT NO.**
TELEPHONE NO.	EMAIL ADDRESS
PRIME CONTRACTOR NAME	

Please use the space below to report any concerns regarding the above EPA-funded project (e.g., reason for termination by prime contractor, late payment, etc.).

_____
_____
_____
_____
_____

CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES RECEIVED FROM THE PRIME CONTRACTOR	AMOUNT SUBCONTRACTOR WAS PAID BY PRIME CONTRACTOR

_____ _____
Subcontractor Signature Title/Date

[1]Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

EPA FORM 6100-2 (DBE Subcontractor Participation Form)

OMB Control No: _____
Approved: _____
Approval Expires: _____

Environmental
Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Performance Form

NAME OF SUBCONTRACTOR[1]	**PROJECT NAME**
ADDRESS	**BID/PROPOSAL NO.**
TELEPHONE NO.	**E-MAIL ADDRESS**
PRIME CONTRACTOR NAME	

CONTRACT ITEM NO.	**ITEM OF WORK OR DESCRIPTION OF SERVICES BID TO PRIME**	**PRICE OF WORK SUBMITTED TO PRIME CONTRACTOR**

Currently certified as an MBE or WBE under EPA's DBE Program? _____ Yes _____ No

_____ _____
Signature of Prime Contractor Date

_____ _____
Print Name Title

_____ _____
Signature of Subcontractor Date

_____ _____
Print Name Title

[1]Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

EPA FORM 6100-3 (DBE Subcontractor Performance Form)

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

Environmental
Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Utilization Form

BID/PROPOSAL NO.	**PROJECT NAME**
NAME OF PRIME BIDDER/PROPOSER	**E-MAIL ADDRESS**
ADDRESS	
TELEPHONE NO.	**FAX NO.**

The following subcontractors[1] will be used on this project:

COMPANY NAME, ADDRESS, PHONE NUMBER, AND E-MAIL ADDRESS	TYPE OF WORK TO BE PERFORMED	ESTIMATED DOLLAR AMOUNT	CURRENTLY CERTIFIED AS AN MBE OR WBE?

I certify under penalty of perjury that the forgoing statements are true and correct. In the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302(c).

Signature of Prime Contractor _____ Date _____

Print Name _____ Title _____

[1]Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

EPA FORM 6100-4 (DBE Subcontractor Utilization Form)

Demonstration of Compliance with DBE Good Faith Efforts Worksheet

Project Name 2012 WWTP Improvements, Osawatomie, KS

KPWSLF or KWPCRLF Project No. _____

Prime Contract Bidder/Engineering Firm BG Consultants, Inc.

Address _____

Contact Person: _____ Telephone No._____

The following firms were made aware of subcontracting/supplier opportunities related to the project listed above.

DBE Subcontractor/Supplier contacted No subs used on this project
Address _____
Contact Person: _____ Telephone No. _____
Email_____ Method used to contact (circle one): Phone Mail Fax
Is entity also a certified as a MBE_____ or WBE_____? (if no leave blank)
MBE/WBE status certified by (circle one) EPA SBA Other_____

DBE Subcontractor/Supplier contacted _____
Address _____
Contact Person: _____ Telephone No. _____
Email_____ Method used to contact (circle one): Phone Mail Fax
Is entity also a certified as a MBE_____ or WBE_____? (if no leave blank)
MBE/WBE status certified by (circle one) EPA SBA Other_____

DBE Subcontractor/Supplier contacted _____
Address _____
Contact Person: _____ Telephone No. _____
Email_____ Method used to contact (circle one): Phone Mail Fax
Is entity also a certified as a MBE_____ or WBE_____? (if no leave blank)
MBE/WBE status certified by (circle one) EPA SBA Other_____

DBE Subcontractor/Supplier contacted _____
Address _____
Contact Person: _____ Telephone No. _____
Email_____ Method used to contact (circle one): Phone Mail Fax
Is entity also a certified as a MBE_____ or WBE_____? (if no leave blank)
MBE/WBE status certified by (circle one) EPA SBA Other_____

Comments _____
_____
_____

Prepared By: _____ Date:_____

(Use additional copies of this sheet if needed)

APPLICANT ASSURANCE WITH RESPECT TO
GOOD FAITH EFFORTS FOR DBE UTILIZATION

I hereby certify that with reference to KPWSLF or KWPCRF Project No. _____, I have reviewed the Good Faith Efforts made by BG Consultants, Inc (consultant/contractor) in relation to DBE utilization and find that the steps satisfy the requirements set out in KPWSLF/KWPCRLF Participation by Disadvantaged Business Enterprises Information Sheet.

Please Check One:

___Attached is the Demonstration of Compliance with DBE Good Faith Efforts Worksheet (or equivalent).

_X_No subcontracting opportunities will be offered for this contract.

___Bidder/Engineering firm claims no DBE subcontractors exist for the type of work available for subcontracts. I have reviewed all lists and databases identified in the KPWSLF/KWPCRLF Participation by Disadvantaged Business Enterprises Information Sheet and used other reasonable means to determine and locate DBE firms, and agree with this claim.

Don Cawby, City Manager
Authorized Representative of Applicant (Print / type)

_____ _____
Authorized Representative of Applicant (Signature) Date

City of Osawatomie, KS
Legal Name of Applicant

§32.225 How do I know if a transaction in which I may participate is a covered transaction?

As a participant in a transaction, you will know that it is a covered transaction because the agency regulations governing the transaction, the appropriate agency official, or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.

Subpart C—Responsibilities of Participants Regarding Transactions

DOING BUSINESS WITH OTHER PERSONS

§32.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

(a) Checking the *EPLS;* or

(b) Collecting a certification from that person if allowed by this rule; or

(c) Adding a clause or condition to the covered transaction with that person.

§32.305 May I enter into a covered transaction with an excluded or disqualified person?

(a) You as a participant may not enter into a covered transaction with an excluded person, unless the EPA grants an exception under §32.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

§32.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the EPA grants an exception under §32.120.

§32.315 May I use the services of an excluded person as a principal under a covered transaction?

(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should make a decision about whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the EPA grants an exception under §32.120.

§32.320 Must I verify that principals of my covered transactions are eligible to participate?

Yes, you as a participant are responsible for determining whether any of your principals of your covered transactions is excluded or disqualified from participating in the transaction. You may decide the method and frequency by which you do so. You may, but you are not required to, check the *EPLS.*

§32.325 What happens if I do business with an excluded person in a covered transaction?

If as a participant you knowingly do business with an excluded person, we may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

§ 32.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to—

(a) Comply with this subpart as a condition of participation in the transaction. You may do so using any method(s), unless § 32.440 requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person with whom the participant enters into a covered transaction at the next lower tier.

DISCLOSING INFORMATION—PRIMARY TIER PARTICIPANTS

§ 32.335 What information must I provide before entering into a covered transaction with the EPA?

Before you enter into a covered transaction at the primary tier, you as the participant must notify the EPA office that is entering into the transaction with you, if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in § 32.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in § 32.800(a); or

(d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

§ 32.340 If I disclose unfavorable information required under § 32.335, will I be prevented from participating in the transaction?

As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under § 32.335 will not necessarily cause us to deny your participation in the covered transaction. We will consider the information when we determine whether to enter into the covered transaction. We also will consider any additional information or explanation that you elect to submit with the disclosed information.

§ 32.345 What happens if I fail to disclose information required under § 32.335?

If we later determine that you failed to disclose information under § 32.335 that you knew at the time you entered into the covered transaction, we may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ 32.350 What must I do if I learn of information required under § 32.335 after entering into a covered transaction with the EPA?

At any time after you enter into a covered transaction, you must give immediate written notice to the EPA office with which you entered into the transaction if you learn either that—

(a) You failed to disclose information earlier, as required by § 32.335; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 32.335.

DISCLOSING INFORMATION—LOWER TIER PARTICIPANTS

§ 32.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.

§ 32.360 What happens if I fail to disclose the information required under § 32.355?

If we later determine that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, we

may pursue any available remedies, including suspension and debarment.

§32.365 What must I do if I learn of information required under §32.355 after entering into a covered transaction with a higher tier participant?

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that—

(a) You failed to disclose information earlier, as required by §32.355; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in §32.355.

Subpart D—Responsibilities of EPA Officials Regarding Transactions

§32.400 May I enter into a transaction with an excluded or disqualified person?

(a) You as an agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under §32.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§32.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

As an agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under §32.120.

§32.410 May I approve a participant's use of the services of an excluded person?

After entering into a covered transaction with a participant, you as an agency official may not approve a participant's use of an excluded person as a principal under that transaction, unless you obtain an exception under §32.120.

§32.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

(a) You as an agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the transactions, however, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under §32.120.

§32.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

If a transaction at a lower tier is subject to your approval, you as an agency official may not approve—

(a) A covered transaction with a person who is currently excluded, unless you obtain an exception under §32.120; or

(b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§32.425 When do I check to see if a person is excluded or disqualified?

As an agency official, you must check to see if a person is excluded or disqualified before you—

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if agency approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required.

Waste Water Project Number

C20

United States Environmental Protection Agency
Washington, DC 20460

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

(b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to $10,000 or imprisonment for up to 5 years, or both.

BG Consultants, Inc., Brian Kingsley, Vice President

Typed Name & Title of Authorized Representative

Signature of Authorized Representative Date

☐ I am unable to certify to the above statements. My explanation is attached.

EPA Form 5700-49 (11-88)

This form has been adopted for use as a Kansas Water Pollution Control Revolving Fund document

United States
Environmental Protection Agency

EPA Project Control Number

CERTIFICATION REGARDING LOBBYING

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Brian Kingsley, Vice President

Typed Name & Title of Authorized Representative

Signature and Date of Authorized Representative

EPA Form 6600-06 (Rev. 06/2008) Previous editions are obsolete.

KANSAS ACT AGAINST DISCRIMINATION

CONTRACT PROVISIONS OF KANSAS STATUTES ANNOTATED
(K.S.A.) 44-1030 – State and Local Government contracts; Mandatory Provisions

(a) Except as provided by subsection (c), every contractor for or on behalf of the State and any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration, or repair of any public building or public work or for the acquisition of materials, equipment, supplies, or services shall contain provisions by which the contractor agrees that:

(1) The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, or ancestry;

(2) In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;

(3) If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A.44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;

(4) If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency;

(5) The contractor shall include the provisions of subsections (a)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

(b) The Kansas Human Rights Commission shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas Act Against Discrimination.

(c) The provisions of this section shall not apply to a contract entered into by a contractor:

(1) Who employs fewer than four employees during the term of such contract; or

(2) Whose contracts with the governmental entity letting such contract cumulatively total $5,000 or less during the fiscal year of such governmental entity.

STATE OF KANSAS
ACT AGAINST DISCRIMINATION
CONTRACT PROVISION CERTIFICATION FORM

During the performance of this contract, the contractor agrees as follows:

(1) The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, or ancestry;

(2) In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;

(3) If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A.44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;

(4) If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency;

(5) The contractor shall include the provisions of (1) through (4) in every applicable subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

PROJECT/CONTRACT NAME AND NO.

MUNICIPALITY Osawatomie, KS

CONTRACTOR'S SIGNATURE_____

TITLE Vice President

KDHE PROJECT NO._____

DATE_____

Past-Current-Proposed Sewer Loans
2010-2029

	2008A	SRF 1314	SRF 1395	2012A Refi*	New Loan	New Loan	Total
Beginning Balance	$ 3,520,000.00	$ 616,020.46	$ 1,284,420.42	$ 1,410,618.72	$ 815,233.00	$ 501,250.00	$ 6,736,923.88
Payments							
2010	$ 192,400.00	$ 100,128.96	$ 150,584.50				$ 443,113.46
2011	192,870.00	100,128.96	150,584.50				443,583.46
2012	192,250.00	50,064.48	75,292.25	$ 115,914.75			433,521.48
2013	192,585.00			241,271.48			433,856.48
2014	193,830.00			241,271.50	$ 21,399.87	$ 7,518.75	464,020.12
2015	192,940.00			241,271.48	20,380.83	15,037.50	469,629.81
2016	193,005.00			241,271.47	20,380.83	15,037.50	469,694.80
2017	193,980.00			144,659.82	79,055.83	15,037.50	432,733.15
2018	192,820.00			144,659.83	79,055.83	15,037.50	431,573.16
2019	193,615.00			144,659.81	79,055.83	15,037.50	432,368.14
2020	193,275.00				79,055.83	61,030.67	333,361.50
2021	193,845.00				79,055.83	61,030.67	333,931.50
2022	193,280.00				79,055.83	61,030.67	333,366.50
2023	192,625.00				79,055.83	61,030.67	332,711.50
2024	193,880.00				79,055.83	61,030.67	333,966.50
2025	193,955.00				79,055.83	61,030.67	334,041.50
2026	192,895.00				79,055.83	61,030.67	332,981.50
2027	193,745.00				79,055.83	61,030.67	333,831.50
2028	193,415.00				79,055.83	61,030.67	333,501.50
2029	192,950.00					30,515.33	223,465.33
Principal Balance End of 2029	**$ 2,430,000.00**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$2,430,000.00**

**Balance is double counted. Subtracted from Beginning Balance Total*

Sewer Loan Projections

Portion of 2012A for SRF Loan 1314

							Beginning Balance
							411,673.72
Year	**Date**	**Payment**	**Principal**	**Interest**	**Total**	**Annual**	**Balance**
2012	1-Sep	1	$ 43,802.69	$ 2,744.49	$ 46,547.18	$ 46,547.18	$ 367,871.03
2013	1-Mar	2	-	3,678.71	3,678.71		367,871.03
	1-Sep	3	89,254.25	3,678.71	92,932.96	96,611.67	278,616.78
2014	1-Mar	4	-	2,786.17	2,786.17		278,616.78
	1-Sep	5	91,039.34	2,786.17	93,825.51	96,611.68	187,577.44
2015	1-Mar	6	-	1,875.77	1,875.77		187,577.44
	1-Sep	7	92,860.12	1,875.77	94,735.89	96,611.66	94,717.32
2016	1-Mar	8	-	947.17	947.17		94,717.32
	1-Sep	9	94,717.32	947.17	95,664.49	96,611.66	-

Sewer Loan Projections

Portion of 2012A for SRF Loan 1395

							Beginning Balance
							$998,945.00
Year	**Date**	**Payment**	**Principal**	**Interest**	**Total**	**Annual**	**Balance**
2012	1-Sep	1	$ 62,707.94	$ 6,659.63	$ 69,367.57	$ 69,367.57	$ 936,237.06
2013	1-Mar	2		9,362.37	9,362.37		936,237.06
	1-Sep	3	125,935.07	9,362.37	135,297.44	144,659.81	810,301.99
2014	1-Mar	4		8,103.02	8,103.02		810,301.99
	1-Sep	5	128,453.78	8,103.02	136,556.80	144,659.82	681,848.21
2015	1-Mar	6		6,818.48	6,818.48		681,848.21
	1-Sep	7	131,022.86	6,818.48	137,841.34	144,659.82	550,825.35
2016	1-Mar	8		5,508.25	5,508.25		550,825.35
	1-Sep	9	133,643.31	5,508.25	139,151.56	144,659.81	417,182.04
2017	1-Mar	10		4,171.82	4,171.82		417,182.04
	1-Sep	11	136,316.18	4,171.82	140,488.00	144,659.82	280,865.86
2018	1-Mar	12		2,808.66	2,808.66		280,865.86
	1-Sep	13	139,042.51	2,808.66	141,851.17	144,659.83	141,823.35
2019	1-Mar	14		1,418.23	1,418.23		141,823.35
	1-Sep	15	141,823.35	1,418.23	143,241.58	144,659.81	-

Sewer Loan Projections

New Loan 1 - Headworks

Years	Interest Rate	Service Fee	Gross Rate
15	2.500%	0.250%	2.750%

Principal	$ 813,200.00
Orig. Fee	2,033.00
Total	**$ 815,233.00**

Year	Payment	Principal	Interest	Service Fee	Total	Annual	Balance
2013							
2014	1		$ 10,190.41	$ 1,019.04	$ 11,209.45		$ 815,233.00
	2		10,190.41	1,019.04	10,190.41	$ 21,399.87	815,233.00
2015	3		10,190.41	1,019.04	10,190.41		815,233.00
	4		10,190.41	1,019.04	10,190.41	20,380.83	815,233.00
2016	5		10,190.41	1,019.04	10,190.41		815,233.00
	6		10,190.41	1,019.04	10,190.41	20,380.83	815,233.00
2017	7	$ 29,337.50	10,190.41	1,019.04	39,527.92		785,895.50
	8	29,704.22	9,823.69	982.37	39,527.92	79,055.83	756,191.28
2018	9	30,075.52	9,452.39	945.24	39,527.92		726,115.75
	10	30,451.47	9,076.45	907.64	39,527.92	79,055.83	695,664.28
2019	11	30,832.11	8,695.80	869.58	39,527.92		664,832.17
	12	31,217.51	8,310.40	831.04	39,527.92	79,055.83	633,614.66
2020	13	31,607.73	7,920.18	792.02	39,527.92		602,006.92
	14	32,002.83	7,525.09	752.51	39,527.92	79,055.83	570,004.10
2021	15	32,402.86	7,125.05	712.51	39,527.92		537,601.23
	16	32,807.90	6,720.02	672.00	39,527.92	79,055.83	504,793.33
2022	17	33,218.00	6,309.92	630.99	39,527.92		471,575.33
	18	33,633.22	5,894.69	589.47	39,527.92	79,055.83	437,942.11
2023	19	34,053.64	5,474.28	547.43	39,527.92		403,888.47
	20	34,479.31	5,048.61	504.86	39,527.92	79,055.83	369,409.16
2024	21	34,910.30	4,617.61	461.76	39,527.92		334,498.86
	22	35,346.68	4,181.24	418.12	39,527.92	79,055.83	299,152.18
2025	23	35,788.51	3,739.40	373.94	39,527.92		263,363.66
	24	36,235.87	3,292.05	329.20	39,527.92	79,055.83	227,127.79
2026	25	36,688.82	2,839.10	283.91	39,527.92		190,438.98
	26	37,147.43	2,380.49	238.05	39,527.92	79,055.83	153,291.55
2027	27	37,611.77	1,916.14	191.61	39,527.92		115,679.78
	28	38,081.92	1,446.00	144.60	39,527.92	79,055.83	77,597.86
2028	29	38,557.94	969.97	97.00	39,527.92		39,039.92
	30	39,039.92	488.00	48.80	39,527.92	79,055.83	-

Sewer Loan Projections

New Loan 2 - Sludge Press & Optimization

Years	Interest Rate	Service Fee	Gross Rate
15	3.000%	0.250%	3.250%

Principal	$ 500,000.00
Orig. Fee	1,250.00
Total	**$ 501,250.00**

Year	Payment	Principal	Interest	Service Fee	Total	Annual	Balance
2013							
2014							
	1		$ 7,518.75	$ 626.56	$ 7,518.75	$ 7,518.75	$ 501,250.00
2015	2		7,518.75	626.56	7,518.75		501,250.00
	3		7,518.75	626.56	7,518.75	15,037.50	501,250.00
2016	4		7,518.75	626.56	7,518.75		501,250.00
	5		7,518.75	626.56	7,518.75	15,037.50	501,250.00
2017	6		7,518.75	626.56	7,518.75		501,250.00
	7		7,518.75	626.56	7,518.75	15,037.50	501,250.00
2018	8		7,518.75	626.56	7,518.75		501,250.00
	9		7,518.75	626.56	7,518.75	15,037.50	501,250.00
2019	10		7,518.75	626.56	7,518.75		501,250.00
	11		7,518.75	626.56	7,518.75	15,037.50	501,250.00
2020	12	$ 22,996.58	7,518.75	626.56	30,515.33		478,253.42
	13	23,341.53	7,173.80	597.82	30,515.33	61,030.67	454,911.88
2021	14	23,691.65	6,823.68	568.64	30,515.33		431,220.23
	15	24,047.03	6,468.30	539.03	30,515.33	61,030.67	407,173.20
2022	16	24,407.74	6,107.60	508.97	30,515.33		382,765.47
	17	24,773.85	5,741.48	478.46	30,515.33	61,030.67	357,991.61
2023	18	25,145.46	5,369.87	447.49	30,515.33		332,846.16
	19	25,522.64	4,992.69	416.06	30,515.33	61,030.67	307,323.51
2024	20	25,905.48	4,609.85	384.15	30,515.33		281,418.03
	21	26,294.06	4,221.27	351.77	30,515.33	61,030.67	255,123.97
2025	22	26,688.47	3,826.86	318.90	30,515.33		228,435.50
	23	27,088.80	3,426.53	285.54	30,515.33	61,030.67	201,346.70
2026	24	27,495.13	3,020.20	251.68	30,515.33		173,851.56
	25	27,907.56	2,607.77	217.31	30,515.33	61,030.67	145,944.00
2027	26	28,326.17	2,189.16	182.43	30,515.33		117,617.83
	27	28,751.07	1,764.27	147.02	30,515.33	61,030.67	88,866.77
2028	28	29,182.33	1,333.00	111.08	30,515.33		59,684.43
	29	29,620.07	895.27	74.61	30,515.33	61,030.67	30,064.37
2029	30	30,064.37	450.97	37.58	30,515.33	30,515.33	-

PROPOSED

CODE REF.	ORD. #	DESCRIPTION	PREVIOUS FEE(S)	LAST CHANGED	CURRENT FEE
SEWER SERVICE CHARGES					
	Ord 3481	Inside City Limits			
		Volume charge based on metered water used during preceding December & January		12-Nov-99	
		User charge	$1.55	14-Dec-06	$2.33 per month
		Net capital charge	$14.50	"	$21.75 per month
		Minimum monthly charge (user charge + net capital charge)	$16.05	"	$24.08 per month/housing unit
		Volume charge per 100 gallons of metered water	$0.24 per 100 gallons	9-Feb-12	$.28 per 100 gallons
		Outside City limits		14-Dec-06	50% over rates listed above
		Service to the State Hospital			
		User charge	$2.33 per month	14-Dec-06	$2.33 per month
		Net capital charge	$8,930.06 per month	"	$8,930.06 per month
		Minimum monthly charge (user charge + net capital charge)	$8,932.39 per month	"	$8,932.39 per month
		Volume charge per 100 gallons of metered water	$0.24 per 100 gallons	9-Feb-12	$.28 per 100 gallons
		Extra Strength Sewage Surcharge	No charge	28-Jul-05	S=Vs x 0.00624 [$.2364 (BOD-300) + $.1734 (SS-350)]
		BOD			$0.2364 per pound
		Suspended Solids			$0.1734 per pound
	Ord 3496	Service Connection		13-Dec-07	
		connection within existing districts	$250.00		$350.00
		reconnection	$50.00		$50.00
	Ord 3457	Amortization Assessment fee - outside the bounds of an assessed improvement district	$1,000.00	14-May-98	$1,000.00
		Private system inspection & permit fee - does not include regular plumbing permit fee		28-Jul-05	$50.00

Water & Sewer Rate Comparisons

	Gardner	Paola	Spring Hill	Baldwin	Eudora	Current Oz - Res	Current Oz - Com	Proposed Oz - Res	Proposed Oz - Com
Water									
Customer Charge	$ 10.40	$ 14.00	$ 8.00	$ 6.50	$ 13.21	$ 13.00	$ 18.25		
min included						1,500	1,500		
Charge / 100 gal	$ 0.465	$ 0.500	$ 0.725	$ 1.007	$ 0.507	$ 0.400	$ 0.400		
other tiers	40,000/$.38					15,000/$.34	15,000/$.34	No changes	
						65,000/$.30			
Bill w/ 3500 gal	*$ 26.68*	*$ 31.50*	*$ 33.38*	*$ 41.73*	*$ 30.96*	*$ 21.00*	*$ 26.25*		
Sewer									
Customer Charge	$ 10.20	$ 22.94	$ 24.15	$ 16.00	$ 20.93	$ 24.08	$ 24.08	$ 24.08	$ 24.08
min included			2,000.00						
Charge / 1000 gal	$ 6.50	$ 2.90	$ 7.75	$ 5.15	$ 3.94	$ 2.40	$ 2.40	$ 2.80	$ 2.80
Bill w/ 3000 gal	*$ 29.70*	*$ 31.64*	*$ 31.90*	*$ 31.45*	*$ 32.75*	*$ 31.28*	*$ 31.28*	*$ 32.48*	*32.48*
Combined	$ 56.38	$ 63.14	$ 65.28	$ 73.18	$ 63.71	$ 52.28	$ 57.53	$ 53.48	$ 58.73

City of Osawatomie
www.osawatomieks.org

Osawatomie City Hall
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Osawatomie, KS 66064
Phone: (913)755-2146
Fax: (913)755-4164

STAFF AGENDA MEMORANDUM

DATE OF MEETING: September 27, 2012

AGENDA ITEM: **RICE Contract**

PRESENTER: Don Cawby, City Manager

ISSUE SUMMARY: On July 12, you authorized me to move ahead with negotiating a contract with the lowest of two bidders on the RICE compliance work at the power plant. The negotiations were to verify the scope of work, warranty issue and other related issues.

The low bidder was Exline, Inc. from Salina, Kansas. Exline performed the conversion on the units at the Ottawa power plant. Exline warranties their products and work for one year from the date of installation. DCI, the producer of the actual converter, warranties their produce for three years or 8,000 hours, whichever comes first.

We have completed this negotiation and have a final contract of $242,036 for the installation of catalytic converters on the City's three generators. The bid also includes a performance bond for the project.

Originally we had set aside $300,000 to perform the work. Based upon the bids, I reduced the budgeted amount to $260,000 in the revised 2012 budget.

The City Attorney and I have extensively reviewed the contract and believe it to be a good contract for the City.

COUNCIL ACTION NEEDED: Review and discuss the contract.

STAFF RECOMMENDATION TO COUNCIL: Authorize the Mayor to approve the contract with Exline, Inc. for the RIC conversion of our generating units.

CONTRACT AGREEMENT

Agreement made, effective as of September 27, 2012, by and between, The City of Osawatomie, Kansas, A Municipal Corporation, of 439 Main, Osawatomie, Miami County, Kansas, hereinafter referred to as CITY, and Exline, Inc., of 3256 E. Country Club Road, Salina, Saline County, Kansas hereinafter referred to as CONTRACTOR.

In consideration of the terms and covenants of this agreement, and other valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

Section 1. Contractor. CONTRACTOR is a corporation organized and existing under the laws of the State of Kansas, with its principal office at 3256 E. Country Club Road, Salina, Kansas.

Section 2. Scope of Work. The labor and materials to be furnished and the work to be done by CONTRACTOR are set forth in Exhibit I, attached hereto and incorporated herein by reference.

Section 3. Performance of Work.

3.1 CONTRACTOR shall furnish all supervision, materials, supplies, tools, and equipment, except as otherwise provided in this agreement, and perform all labor required for the completion of the above-described work in accordance with all provisions of the specifications, plans, and addenda, all of which are hereby made a part of this agreement, and to the satisfaction of CITY.

Section 4. Compliance.

4.1 All Work shall be performed in compliance with all applicable federal, state and local laws, orders, codes, rules and regulation.

4.2 The CONTRACTOR will be supplied with copies of all permits, clearances, releases, certificates and special conditions, including but not limited to those related to environmental matters (herein referred to collectively as Permits), obtained by CITY to perform the Work. Copies of any additional Permits acquired by the CONTRACTOR to perform the Work shall be supplied to CITY. The CONTRACTOR shall comply with all conditions within each Permit.

4.3 The CONTRACTOR will ensure that all CONTRACTOR personnel have received all training required by applicable federal, state and local laws, orders, codes, rules and regulations relevant to accomplishment of the Work. Training on implementation of any additional environmental mitigation measures appropriate for the Work will be specified by CITY before commencement of the Work.

4.4 CONTRACTOR shall fully reimburse CITY for any and all costs, losses and/or expenses, of whatever kind or type that CITY may incur as the result of CONTRACTOR's failure to fully comply with and fulfill any of the provisions of this Section 4.

Section 5. Consideration.

5.1 CITY shall pay CONTRACTOR for the Work performed and all materials supplied by CONTRACTOR hereunder in the amount and manner provided in Exhibit I.

5.2 Exhibit I shall cover and include all the considerations to be received by CONTRACTOR from CITY for the performance of the Work described in Exhibit I, and shall cover and include all overhead, superintendents, labor, use of equipment furnished, and all other cost and expense incurred by CONTRACTOR in the performance of said Work.

5.3 CONTRACTOR shall pay promptly all indebtedness for equipment, materials, supplies and labor used in the Work. CONTRACTOR shall not permit any lien or charge to attach to the result produced by the Work or the premises upon which the Work is being performed; but if any shall so attach, CONTRACTOR promptly shall remedy all damage and pay every expense incidental thereto. CONTRACTOR shall hold CITY and its Affiliates free and harmless from all claims, losses, (including reasonable attorney's fees), and liabilities resulting from CONTRACTOR's failure to pay any such charges or to discharge any mechanics' and material men's liens or similar charges.

5.4 No payment made by CITY hereunder shall be deemed to constitute an admission by CITY that the charges covered thereby are correct under the terms of the Agreement. CITY reserves the right to dispute the amount or type of any such charge in good faith. Any such dispute, and the withholding of any disputed amount by CITY, shall not constitute a default by CITY under this Agreement.

5.5 Nothing contained herein shall preclude the parties, by means of mutually agreed upon written amendments to this Agreement, from permanently altering in whole or in part the Labor and Equipment Rate Schedule and/or Unit Price Lists contained in Exhibit II hereof.

Section 6. State and Local Taxes.

6.1 CONTRACTOR shall be responsible for payment of all applicable state and local taxes resulting from all Work performed or materials supplied by CONTRACTOR (including its subcontractors) under this Agreement. It is the responsibility of CONTRACTOR to familiarize itself with all applicable state and local taxes and to observe and comply with all state and local laws, ordinances, regulations, orders and decrees that relate thereto, including the filing of all applicable state and local tax returns. In addition, it is the responsibility of CONTRACTOR to be familiar with all state and local tax exemptions for which the Work qualifies and to avail itself of the exemption. The prices, sums, rates and other charges set forth in Exhibit II shall cover and include all such taxes, including, but not limited to, sales and use taxes. If the Work covered under the Agreement is taxable for sales or use tax purposes, the tax must be separately stated on the invoice, together with the state and/or local jurisdiction for which same is collected. If the tax cannot be separately stated because it is included in the prices, sums, rates, and other charges, the invoice must clearly state that any applicable sales or use tax is included in the invoiced amount, and must furthermore, without limiting the foregoing, set forth the state and/or local jurisdictions for which CONTRACTOR has paid such taxes.

6.2 CONTRACTOR shall indemnify, defend and hold harmless CITY, CITY's officers, agents, employees and Affiliates against any such claim or liability arising out of compliance with, or violation of, any such state and local tax laws, ordinances, regulations, orders or decrees, whether by CONTRACTOR or its subcontractors. In the event CITY is assessed sales or use tax by any state or local jurisdiction for Work performed or materials supplied by CONTRACTOR under this Agreement, CONTRACTOR agrees to reimburse CITY for the total amount of tax, interest and penalty so assessed and paid.

Section 7. Indemnification.

7.1 CONTRACTOR shall release, indemnify, protect, defend and save harmless CITY, its officers, agents, employees and Affiliates from and against any and all loss of life or property or injury or damage to person, the environment or the property of any person, firm, or corporation, including the parties hereto and their respective affiliates, officers, agents, and employees, caused by or arising directly or indirectly out of the performance of any of the Work covered by this Agreement.

7.2 CONTRACTOR shall protect CITY, its officers, agents, employees and Affiliates from all claims resulting from damage to facilities of other parties whether or not such facilities are indicated on plans or marked in the field.

7.3 Neither party will be liable to the other in contract, tort, or on any other basis, for any consequential damages of any nature, including, but not limited to, lost profits or revenues, loss of customer

goodwill, business interruption costs, overhead costs, costs of capital, or loss of use of money. Consequential damage also includes attorneys' fees, except as otherwise specifically provided for, in this Agreement.

7.4 CONTRACTOR at all times shall comply with all of CITY's safety regulations as well as federal, state, and local laws, ordinances, regulations, orders, decrees and permits in any manner affecting the conduct of the Work, including applicable state and federal social security and worker's compensation laws, rules, and regulations, and shall indemnify, defend and save harmless CITY, its Affiliates, its officers, agents, and employees against any claim or liability arising out of compliance with, or based on the violation of, any such laws, ordinances, regulations, orders, decrees or permits, whether by itself, its employees or subcontractors.

7.5 Should any part of the Work be subcontracted by CONTRACTOR, it shall be the responsibility of CONTRACTOR to obtain from each subcontractor an agreement to indemnify CITY incorporating all terms of this Section 7.

7.6 Nothing contained within the terms of this Section 7 is intended to impose upon CONTRACTOR liability for the actions of CITY or for the actions of third parties, other than those parties specifically set forth elsewhere in this Section 7.

Section 8. Insurance. CONTRACTOR shall furnish certificates of insurance coverage as follows in the following or minimum legal limits, whichever is greater naming CITY as an additional named insured, giving to CITY a thirty (30) day notice of cancellation noted on the certificate of insurance and providing to CITY a waiver of subrogation of any claims for which payment is made under the policy: (a) workers' compensation - legal limits or, otherwise in location where the State of Kansas provides insurance, evidence that CONTRACTOR is in good standing; (b) comprehensive general liability insurance - bodily injury in the amount of One Million Dollars ($1,000,000.00) for each person: bodily injury in the amount of One Million Dollars ($1,000,000.00) for each accident; property damage (including blasting, collapse, and underground coverage) in the amount of One Million Dollars ($1,000,000.00) for each occurrence; (c) automobile liability insurance - bodily injury in the amount of One Million Dollars ($1,000,000.00) for each person; bodily injury in the amount of One Million Dollars ($1,000,000.00) for each accident; property damage in the amount of One Million Dollars ($1,000,000.00) for each occurrence; (d) certificates evidencing the insurance coverage required by this agreement must be furnished in duplicate before performing any work at the construction site and shall provide that thirty (30) days written notice will be given CITY, prior to any change or cancellation; and (e) if any work to be performed under this agreement is further sublet, CONTRACTOR will be required to arrange for insurances as provided in this agreement.

Section 9. Changes, Extra Work.

9.1 Extra services shall not be performed, nor shall the Scope of Work be increased or decreased, unless expressly authorized by CITY in writing and agreed to by CONTRACTOR based upon Exhibit II of this Agreement. The reasonable cost of studies and analyses authorized by CITY to determine scope changes shall be reimbursable to CONTRACTOR, and added to the cost of the Agreement.

9.2 Authorized/approved services will be paid in accordance with the most current rates and compensation schedules attached as Exhibit II of this Agreement.

Section 10. Assignment and Subcontracting.

10.1 CONTRACTOR shall not assign this Agreement or subcontract any of the Work without the written consent of CITY, and any such assignment or subcontracting of any such Work without such consent shall be null and void. CITY's consent to subcontracting or assignment, if granted, shall not relieve CONTRACTOR of any of its liabilities and responsibilities hereunder. CITY shall have the right to approve or disapprove the specific subcontractor as well as the right to subcontract in general. Each approved subcontract shall contain provisions which specifically bind the subcontractor to the applicable terms and

provisions of this Agreement.

10.2 Notwithstanding the foregoing, CONTRACTOR shall have the right to assign all, but not part, of the sums owing to it by CITY. Such assignment shall not become effective until thirty (30) days after written notice thereof, signed by CONTRACTOR, has been received by CITY, and all payments made by CITY prior to such effective date shall be valid.

Section 11. Temporary Utilities. Utilities of the nature normally mobilized by CITY (water, power, telephone, storage space, and the like) will be made available for CONTRACTOR's use, contingent upon overall job requirements and needs of others. If CITY has facilities available for board and lodging of employees, the facilities will be made available to CONTRACTOR's employees, when space is available, at the rate established for the project. CITY will not, however, guarantee availability of facilities unless specifically provided for otherwise.

Section 12. Equal Opportunity. During the performance of this subcontract, CONTRACTOR agrees not to discriminate against any employee because of race, color, creed, or national origin.

Section 13. Public Protection.

13.1 CONTRACTOR shall provide, erect, and maintain proper warning signals, signs, lights, barricades, and fences on and along the line of the work and shall take all other necessary precautions for the protection of the work and safety of the public.

13.2 CONTRACTOR shall indemnify CITY from and against any and all liability for damage to the work, or for injury or damage to persons or property occurring on or about the project work area or in connection with the work.

Section 14. Safety.

14.1 CONTRACTOR shall make effort to prevent injuries to any workers employed in carrying on operations covered by this agreement and to adopt and place in effect such reasonable practical suggestions as may be offered by CITY to promote safety and safe working conditions.

14.2 Should CONTRACTOR consistently fail to maintain CONTRACTOR's equipment in safe operating condition or should CONTRACTOR's operation be characterized by abnormally frequent injuries to workers, then at the option of CITY, this agreement may, upon twenty-four (24) hours written notice to CONTRACTOR, be canceled and CONTRACTOR required to remove immediately all of CONTRACTOR's equipment and employees from the work site.

Section 15. Performance Bond. The CONTRACTOR shall furnish a performance bond in form satisfactory to CITY with good and sufficient sureties in an amount at least equal to one hundred percent of the contract price as security for the faithful performance of this contract and also a payment bond in an amount not less than one hundred percent of the contract price for all indebtedness incurred for labor furnished, materials , equipment or supplies, used or consumed in connection with or in or about the public improvement made pursuant to this contract in compliance with K.S.A. 60-1111.

Section 16. Warranty. CONTRACTOR agrees to warrant the quality of all contract work and materials set forth in Exhibit III, attached hereto and incorporated herein by reference.

Section 17. Clean-Up. On completion of any unit of the work, and on final completion of the work, CONTRACTOR shall clean up all refuse and rubbish around or alongside the work caused by CONTRACTOR, and to remove promptly all excess materials, tools, structures, and the like, that may have been brought on the work site or erected by CONTRACTOR. In the event of the failure of CONTRACTOR to do so, CITY may, after giving reasonable notice, clean up the premises at the cost and expense of

CONTRACTOR.

Section 18. Status as Independent Owner. It is agreed that CONTRACTOR is an independent owner, acting on CONTRACTOR's own and is not an employee of CITY.

Section 19. Binding Effect. This agreement shall bind the heirs, executors, administrators, successors and assigns of the parties to this agreement.

Section 20. Governing Law. This Agreement shall be governed by and construed in compliance with the domestic laws of the State of Kansas without giving effect to any choice-of-law or conflict-of-law provision or rule (whether of the State of Kansas or of any other jurisdiction) that would cause the application of the laws of any jurisdiction except the State of Kansas.

Section 21. Attorney Fees. In the event that any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, the successful party's attorney's fees.

Section 22. Entire Agreement. This agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind of preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this agreement.

Section 23. Modification of Agreement. Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

Section 24. Paragraph Headings. The titles to the paragraphs of this agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this agreement.

By signing this agreement, each individual executing this agreement on behalf of a business entity represents and warrants that he, she or it is duly authorized by indemnitor(s) to bind indemnitor(s) to all of the terms and conditions of this agreement.

CITY:
The City of Osawatomie, Kansas

Date: _____ _____
Philip A. Dudley, Mayor

ATTEST:

Date: _____ _____
Ann Elmquist, CITY CLERK

CONTRACTOR:
Exline, Inc.

Date: _____ _____
Robert W. Exline, Jr., President

Contract Agreement
EXHIBIT I

PRICE QUOTATION
11-016751-3

PLEASE INDICATE THIS
NUMBER WHEN ORDERING

PO BOX 1487 * 3256 E. COUNTRY CLUB ROAD
SALINA, KANSAS 67402-1487
800-255-0111 * 785-825-4683 * FAX 785-826-4425

DATE 07-17-2012	Page 1 of 2
YOUR INQUIRY DATED	
AVAILABILITY 6-8 WKS ARO	
TERMS Net 30	FOB Salina, KS
CUSTOMER REPRESENTATIVE Terry Hall - I & A	

City of Osawatomie
Attn: Springer, Marty
PO Box 37
100 11th Street
Osawatomie, KS 66064

EXLINE, Inc., is pleased to offer the following quotation:

Item	Quantity	Description	Unit Price	Amount
		This is a (budgetary) quote to provide turnkey operation for the installation of a catalytic converter on unit #2 and catalytic converter/silencers on units #4 &#5, data monitoring/recording equipment, crankcase vent filtration system and final emissions testing on all three units. if customer accepts quote further specifications will need to be verified. which could include price increasing.All surfaces are to be structurally sound and in good conditions where mounting equipment. All work is scheduled to be completed in one trip with an additional trip to perform final emissions testing.		
1	1	CATALYST/SILENCER COMBO / CATALYTIC CONVERTERS Unit #2) QUICK-LID™ Model DC65Q-24 catalytic converter equipped with one (1) catalyst element, 304 stainless steel catalyst center-body construction, C-Channel element construction with gasket-free internal sealing system, provision for future upgrade, ANSI 150 lb bolt pattern carbon steel flanges (as required), and eight (8) ½" standard monitoring ports. This catalyst will add approx. 2.5" w.c. of backpressure. Unit #4) QUICK-LID™ Model DC64Q-16 leg mounted industrial catalytic silencer -catalytic converter is stainless steel construction, mild steel silencer body construction, ANSI 150 lb bolt pattern carbon steel flanges, and four ½" standard monitoring ports. High temperature flat black painted finish and ports per customer requirements. The housings can be coated to a specific paint specification ie…Al thermal spray or powder coating at an additional cost. This silencer will result in an average sound attenuation of 20-25dBa and a backpressure of approx. 5.4" w.c. Unit #5) QUICK-LID™ Model DC69.5Q-24 leg mounted industrial catalytic silencer -catalytic converter is stainless steel construction, mild steel silencer body construction, ANSI 150 lb bolt pattern carbon steel flanges, and four ½" standard monitoring ports. High temperature flat black painted finish and ports per customer requirements. The housings can be coated to a specific paint specification ie…Al thermal spray or powder coating at an additional cost. This silencer will result in an average sound attenuation of 20-25dBa and a backpressure of approx. 7.6" w.c. DATA LOGGER ECMD-102 Emissions Compliance Monitoring and Data logging System (Enhanced) 120 days of data. Customer to supply 24VDC min 1.7Amps power to each units location ECMD Accessory Kit including Qt.2 each 0-50 "w.c. pressure transducers Qt.2 TCK105 Thermocouple "k" type along with a junction box w/terminal strip, 1/4" SS tubing fittings to connect the end devices to the Junction Box CRANKCASE VENT FILTRATION All engines will have crankcase vent filtration systems provided by Hilco. Filtration system will operate at an efficiency of 99.97%.	239,166.00	239,166.00

PRICE QUOTATION
11-016751-3

PLEASE INDICATE THIS
NUMBER WHEN ORDERING

PO BOX 1487 * 3256 E. COUNTRY CLUB ROAD
SALINA, KANSAS 67402-1487
800-255-0111 * 785-825-4683 * FAX 785-826-4425

DATE 07-17-2012	Page 2 of 2
YOUR INQUIRY DATED	
AVAILABILITY 6-8 WKS ARO	
TERMS Net 30	FOB Salina, KS
CUSTOMER REPRESENTATIVE Terry Hall - I & A	

City of Osawatomie
Attn: Springer, Marty
PO Box 37
100 11th Street
Osawatomie, KS 66064

EXLINE, Inc., is pleased to offer the following quotation:

Item	Quantity	Description	Unit Price	Amount
		EMISSIONS TESTING **Final emissions testing will be performed by AEROMET. They will coordinate with EPA and issue certifications after testing is complete.**		
2	**1**	**Aditional cost for the required Pay Bond for the quoted amount of $239,166.00**	**2,870.00**	**2,870.00**
		NOTES: **1) Standby time will be charged for any time our crew is unable to perform the quoted scope of work due to engine availability or customer schedules, etc. per our M & T Rate Schedule.** **2) Labor price is based upon working six (6), ten (10) hour days, Monday through Saturday, Per Diem on Sunday.** **3) Customer to furnish adequate overhead hoisting in engine room, air for tools and restroom/break room.** **4) Any asbestos testing and or removal required to complete the quoted scope of work will be billed at cost plus 15%** **5) Customer is responsible for all required local, state, and federal permits.** **6) Customer must supply 24vdc, 10 amps minimum within 10 feet of unit(s).** **FREIGHT HAS BEEN INCLUDED IN THIS JOB PRICE.** **Thanks for the opportunity to quote the turnkey operation of bringing your engines into compliance with the new RICE NESHAP requirements.** **Rich Meisenheimer** **(785) 201-4594**		
			Total	**$242,036.00**
		Freight and Sales/Use Taxes are not included in the price quotation. Additional charges, if any, will be added to the invoice upon completion of work. Exline, Inc. Terms and Conditions apply to all work and services provided by the Company.		

CONDITIONS: Prices and delivery are based on costs and conditions existing on the date of quotation and are subject to change. Typographical and stenographic errors subject to correction. Purchaser assumes liability for patent and copyrights infringements when goods are made to Purchasers specifications. Conditions are specifically stated herein shall be governed by established trade customs. Terms inconsistent with those stated herein which may appear on Purchasers formal order will not be binding on the Seller.

Quote valid Until 08-16-2012 Signed

P.O. # Date Accepted Approved By

3256 East Country Club Rd.· PO Box 1487
Salina, KS 67402-1487
785-825-4683 · Fax 785-826-4425
1-800-255-0111
www.exline-inc.com

Ignition and Automation Division Rate Schedule

Classification	Standard 8 Hour Day 5 Day Week	Overtime Weekends & Holiday
Welding		
Lead Welder	$ 100.00	$100.00
Welder Helper	$ 65.00	$ 95.00
Technicians		
Control Tech Super	$ 68.00	$ 102.00
Control Tech A	$ 58.00	$ 87.00
Helper	$ 48.00	$ 72.00
Travel Time		
All Personnel	Standard Labor Rates (above) for Classification	

Other Rates:

Welding Truck	$45.00/hr
Service Truck	$20.00/hour
Consumables/Environmental	3% of billable labor
H2s Monitor (per unit)	$12.00/day
LEL Monitor (per unit)	$12.00/day
Oscilloscope	$70.00/day

Standby Time:

During Workday — Standard Labor Rates (above) for Classification

Daily Rates:

Technical Personnel — $480/day

Other Charges:

Commercial Transportation	Actual Cost+10%
Lodging Expenses	Actual Cost+10%
Per Diem	40.00/day
Vehicle Mileage	1.50 per mile
Rental Equipment	Cost plus 15%
Material and Contract/Outside Services	Cost plus 15%

Excludes all state and local taxes. Taxes will be added to invoice as applicable.
Rates do not include special equipment tools and rental equipment such as hoists, cranes, mobile equipment and scaffolding.
Above rates applicable within the continental 48 states.
Any necessary outside machine shop services are not included in these rates.
Our personnel will present daily time reports for your signature and provide a copy for your records. **EFFECTIVE: July 2011**

Industrial Repair & Manufacturing, Specializing In Reciprocating Engines & Compressors
Shop & Infield Services · Mechanical & Technical Services · Turnkey Overhauls
Ignition & Automation
Since 1872

PRODUCT and SERVICE WARRANTY

I. EXLINE PRODUCT WARRANTY

"Exline Products" covered under this **WARRANTY** are warranted to be free from defects in materials and workmanship, when installed and used in the manner for which they are intended, for a period of 12 months from the date of shipment from Exline. Products characterized by Exline as having been *Remanufactured* are covered by this **Warranty** the same as newly manufactured Exline Products.

"Exline Products" include: (i) products manufactured by Exline, as well as parts or components of such products as are manufactured exclusively for Exline, by any other party, to Exline specifications and drawings produced by Exline.

"Non-Exline Products" **not covered by this Warranty**, include: (i) products supplied by Exline manufactured by another party. Such Non-Exline Products are resold by Exline in their original form and are not modified by Exline in any way. Purchaser's remedy for defective Non-Exline Products shall be limited to the applicable warranty of the manufacturer or supplier.

II. EXLINE SERVICE WARRANTY

Exline warrants its Services, such as overhauls, repairs, site supervision and installation services, including **WARRANTY** Services, to be free from defects in materials and workmanship for a period of 12 months from the date of service completion/start-up. Exline Products installed as part of a Service provided, will be covered by this **WARRANTY** for a period of 12 months from date of installation. Following **WARRANTY** Services, the period of warranty coverage for the unexpired portion of the **PRODUCTS WARRANTY** shall also apply.

III. LIMITATIONS

The sole obligation of Exline hereunder is to repair or replace, at its option, and without charge, any Exline Product which is defective, or, in the case of defective Services, to reperform such Services. Other than the foregoing repair, replacement, or reperformance, the purchaser shall have no other remedy against Exline, and Exline shall not be liable for loss or damage arising from statute, law, strict liability in tort, or negligence resulting from any defect in a Exline Product or in Exline Services, even though the defect was caused by negligence, breach of warranty or strict liability in tort of Exline. **IN NO EVENT SHALL EXLINE, INC. BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR LOSS OF USE OF ANY EQUIPMENT, INSTALLATION, SYSTEM, OPERATION OR SERVICE INTO WHICH THE EQUIPMENT, PARTS OR MATERIALS MAY BE PUT, OR THE SERVICES PERFORMED. THIS LIMITATION ON VENDOR'S LIABILITY SHALL APLLY TO ANY LIABLILITY FOR DEFAULT UNDER OR IN CONNECTION WITH THE GOODS OR SERVICES DELIVERED HEREUNDER, WHETHER BASED ON WARRANTY, FAILURE OF OR DELAY IN DELIVERY OR OTHERWISE.** In any event, Exline shall not be liable for incidental and /or consequential damages including loss of income or profits, lost sales, or economic loss.

IV. CONDITIONS

Such repair, replacement, or reperformance will be affected at a location of Exline's choice (including Exline plants and service facilities, Exline subsidiary plants, or authorized service facilities). In replacing any Exline Product pursuant to this **WARRANTY**, Exline may replace such Exline Product with a modified or improved product or component. Purchasers claiming warranty service should contact the Customer Service department at it's Salina, KS facility.

V. OTHER EXCLUSIONS

This **WARRANTY** does **NOT APPLY TO**:

- Exline Products which, in Exline's opinion, have been damaged by misuse, misapplication, negligence, or accident.
- Exline Products on which disassembly and/or repairs have been attempted without prior authorization from Exline.
- Any Exline Product if any component part has been repaired or replaced by any part not manufactured or furnished by Exline.
- Products or Services, totally or partially, under the condition of customer furnished engineered specifications/design and/or procedures for lack of serviceability resulting from faulty engineered specifications/design and/or procedures.

Apart from the obligations set forth herein (unless otherwise agreed in writing) Exline makes no other warranty or condition, expressed or implied (by statute, common law, trade usage or otherwise) and specifically excludes the implied warranties of merchantability and fitness for a particular purpose, as well as all other warranties expressed or implied.

City of Osawatomie
www.osawatomieks.org

Osawatomie City Hall
439 Main Street • PO Box 37
Osawatomie, KS 66064
Phone: (913)755-2146
Fax: (913)755-4164

STAFF AGENDA MEMORANDUM

DATE OF MEETING: September 27, 2012

AGENDA ITEM: **Police Car Purchase**

PRESENTER: Don Cawby, City Manager

ISSUE SUMMARY: I am requesting that the City Council approve the purchase of a used police car not to exceed $14,000. We may still plan to negotiate an even lower amount. For this purchase, we are targeting a 2010 Dodge Charger from Joe Watt Police Cars in Vinita, Oklahoma. (The description is attached.) Joe Watt specializes in used police vehicles.

We currently have $11,000 left in the CIP Vehicle budget for 2012, which was to be used for an additional work truck. However, with the retirement of Steve Coffelt, we don't have the pressing need for a truck as we do for the replacement of patrol cars.

Through low-mile, used car purchases we are attempting to replace the fleet over the next couple of years and to get consolidated to one color, make and model as much as possible to make repair and stocking of parts easier. We also are planning on eliminating one car from the fleet.

We have also been able to acquire used LED light bars for the City of Shawnee for the Charger for a couple hundred dollars each, which will reduce the cost of new cars.

I would argue that purchasing used, low-mileage cars is the best solution for our City at this time. I would also like to suggest that we consider a change in our financial policies to allow for the purchase for used vehicles up to a certain amount or possibly just on police vehicles.

COUNCIL ACTION NEEDED: Review and discuss.

STAFF RECOMMENDATION TO COUNCIL: Approve the expenditure.

2010 Dodge Charger $14,900

Contact **Sales** at **Joe Watt Police Cars**
Phone: **(918) 256-2229**
438030 E Hwy 60, Vinita, OK 74301

Fuel economy (MPG)

City	Hwy
17	25

Specs

Ext Color	Black	**Engine**	3.5L 250.0hp
Int Color		**VIN**	``2B3AA4CV9AH181632
Mileage	26,713	**Transmission**	Automatic
Body Style	Sedan		
Stock ID	181632	**Doors**	4 doors
Fuel	Gas		

Features

SAFETY : N/A ; COMFORT : N/A ; SEAT : N/A ; WINDOWS : N/A ; SOUNDS SYSTEM : N/A ; OTHER FEATURES : N/A

Description

Printed Sep 25, 2012

September 26, 2012

Don Cawby
City Manager
City of Osawatomie, KS
439 Main Street, PO Box 37
Osawatomie, KS 66064

Re: City Council Resignation

Dear City Manager and Council;

Please accept this letter as notification of my resignation from the City Council effective immediately. As my family and I prepare to move, I will no longer be able to represent my district. I appreciate the opportunity I have had to serve and feel that the City is in good hands and moving in the right direction.

Sincerely,

John M. Klein

the third Thursday of those months. (K.S.A. 14-111; Ord. 3583, Sec. 1; Code 2008)

1-204. SAME; QUORUM. In all cases, it shall require a majority of the council members-elect to constitute a quorum to do business. (K.S.A. 14-111; Ord. 3266, Sec. 9; Code 2008)

1-205. POWERS OF THE MAYOR. The mayor shall preside at all meetings of the governing body. The mayor shall have the tie-breaking vote on all questions when the members present are equally divided. The mayor shall:

(a) Take care that the ordinances of the city are complied with;

(b) Sign the commissions and appointments of all officers elected or appointed;

(c) Endorse the approval of the governing body on all official bonds;

(d) From time to time communicate to the city council such information and recommend such measures as he or she may deem advisable;

(e) Have the power to approve or veto any ordinance as the laws of the state shall prescribe; (K.S.A. 14-301:305; Ord. 3266, Sec. 5; Code 2008)

1-206. PRESIDENT OF THE COUNCIL. The city council shall elect one of its own body as president of the council. The president of the council shall preside at all meetings of the council in the absence of the mayor. In the absence of both the mayor and the president of the council, the council shall elect one of its members as "acting president of the council." The president and acting president, when occupying the place of mayor, shall have the same privileges as other council members but shall exercise no veto. (K.S.A. 14-208, 14-308, 12-2003; Ord. 3266, Sec. 6; Code 2008)

1-207. VACANCIES IN GOVERNING BODY; HOW FILLED. A vacancy occurring in the office of a City Council member, whether such vacancy occurs by reason of the removal of the council member from their ward or by reason of their death, resignation, failure of the council member to qualify for office, or the disqualification of a council member from holding such office, shall be filled by an election held among the remaining members of the City Council. Whenever such vacancy occurs in the office of a City Council member, the Mayor shall at a regular or special meeting of the Council inform the Council of the vacancy and form a nominating committee, composed of the Mayor, the President of the Council, and the council member remaining in the ward affected to seek out candidate(s) from the ward affected to fill such vacancy. Within forty (40) days of the Mayor informing the Council of a vacancy, the nominating committee shall recommend candidate(s) to the Council. Individual Council members may also recommend candidates to fill such vacancy. Following receipt of the recommendation of the nominating committee at a regular meeting of the Council or at a special meeting duly called for the purpose of filling such vacancy, the Council may by motion nominate a person or persons for consideration of the Council. Any successor in office elected by the Council to fill such vacancy must be elected by a majority of the remaining elected council members of said City. (Ord. 3605, Sec. 1; Code 2008)