

OSAWATOMIE CITY COUNCIL  
**REVISED** AGENDA  
**January 8, 2015**  
6:30 p.m., Memorial Hall

1. Call to order
2. Roll Call
3. Pledge of Allegiance
4. Invocation
5. 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 January 8 Agenda
  - B. Approve Appropriation Ordinance 2014-12
  - C. Approve WWTP Improvements Project Pay App 7
6. Presentations; Comments from the Public
  - Citizen participation will be limited to 5 minutes. Please stand & be recognized by the Mayor.*
7. Public Hearing – none
8. Unfinished Business
  - A. Contract for Sports Complex Building
  - ~~B. Contract for Police Station Garage/Sally Port~~
- New Business
  - A. Appointments – None
  - B. Golf Course Management
  - C. Resolution Adopting Region J Kansas Multi-Hazard, Multi-Jurisdictional Hazard Mitigation Plan
  - D. ISO Fire Rating Update
  - E. Request from Loft on Sixth for Easement and Economic Assistance
  - F. Discussion of Recreation Programs
9. Council Reports
10. Mayor's Report
11. City Manager's Report
12. Executive Session(s)
13. Other Discussion/Motions
14. Adjournment

*REGULAR MEETING – January 22, 2015*  
*REGULAR MEETING – February 12, 2015*

# APPLICATION AND CERTIFICATE FOR PAYMENT

AIA Document G702

PAGE ONE OF 1 PAGES

TO OWNER: City of Osawatomie, Kansas  
P.O. Box 37  
439 Main Street  
Osawatomie, Kansas 66064

PROJECT: Wastewater Treatment Facility Imps.  
Osawatomie, Kansas

APPLICATION NO.: 7  
 PERIOD TO: 12/31/2014  
 PROJECT NOS.: 2014-058

Distribution to:  
 OWNER  
 ARCHITECT  
 CONTRACTOR

FROM CONTRACTOR: Midland Contractors, Inc.  
835 NE Hwy 24  
Topeka, Kansas 66608

VIA ARCHITECT: BG Consultants, Inc  
4806 Vue Du Lac Place  
Manhattan, Kansas 66503

CONTRACT DATE: 4/24/2014

CONTRACT FOR:

## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM.....	\$626,000.00
2. Net change by Change Orders.....	\$13,087.93
3. CONTRACT SUM TO DATE (Line 1 ± 2).....	\$639,087.93
4. TOTAL COMPLETED & STORED TO DATE.....	\$568,793.30

(Column G on G703)

### 5. RETAINAGE:

a. <u>5</u> % of Completed Work	\$28,164.67
(Columns D + E on G703)	
b. <u>5</u> % of Stored Material	\$275.00
(Column F on G703)	

Total retainage (Line 5a + 5b or

Total in Column I of G703)..... \$28,439.67

6. TOTAL EARNED LESS RETAINAGE..... \$540,353.63

(Line 4 less Line 5 Total)

### 7. LESS PREVIOUS CERTIFICATES FOR PAYMENT

(Line 6 from prior Certificate)..... \$476,645.75

8. CURRENT PAYMENT DUE..... \$63,707.88

### 9. BALANCE TO FINISH, INCLUDING RETAINAGE

(Line 3 less Line 6) \$98,734.30

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$9,483.07	\$0.00
Total approved this Month	\$3,604.86	\$0.00
TOTALS	\$13,087.93	\$0.00
NET CHANGES by Change Order	\$13,087.93	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: MIDLAND CONTRACTORS, INC.

By: 

Date: 12-31-14

State of: Kansas  
 County of: Shawnee

Subscribed and sworn to before me this 31st. day of December, 2014



Notary Public:   
 My Commission expires: 4-9-2015

### APPROVALS

City of Osawatomie Kansas

Date



BG Consultants, Inc.

1-7-15

Date

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Wastewater Treatment Facility Imps., Osawatomie,KS

NUMBER: 7  
 APPLICATION DATE: 12-31-14  
 PERIOD FROM: 12/1/14  
 TO: 12/31/14  
 PROJECT NUMBER: 2014-058

ITEM No.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED			TOTAL		BALANCE TO FINISH (C-G)	RETAINAGE
			Previous Applications	This Application Work In Place	Stored Mat'ls (not in D or E)	COMPLETED & STORED TO DATE (D+E+F)	% (G/C)		
1	Mobilization	\$17,000.00	\$17,000.00	\$0.00	\$0.00	\$17,000.00	100%	\$0.00	\$850.00
2	Construction Staking	\$4,500.00	\$4,500.00	\$0.00	\$0.00	\$4,500.00	100%	\$0.00	\$225.00
3	Bypass Pumping	\$23,700.00	\$21,330.00	\$1,185.00	\$0.00	\$22,515.00	95%	\$2,370.00	\$1,125.75
4	Finish Grading	\$7,700.00	\$6,930.00	\$0.00	\$0.00	\$6,930.00	90%	\$770.00	\$346.50
<b>Headworks Building</b>									
5	Headworks Demolition	\$9,100.00	\$9,100.00	\$0.00	\$0.00	\$9,100.00	100%	\$0.00	\$455.00
6	Headworks Abandonment	\$2,200.00	\$2,200.00	\$0.00	\$0.00	\$2,200.00	100%	\$0.00	\$110.00
7	Connect to Existing Water Pipe	\$900.00	\$900.00	\$0.00	\$0.00	\$900.00	100%	\$0.00	\$45.00
8	Connect to Existing Sewer	\$5,100.00	\$5,100.00	\$0.00	\$0.00	\$5,100.00	100%	\$0.00	\$255.00
9	6" Ductile Iron Pipe	\$6,650.00	\$6,650.00	\$0.00	\$0.00	\$6,650.00	100%	\$0.00	\$332.50
10	6" Ductile Iron Fittings	\$2,800.00	\$2,800.00	\$0.00	\$0.00	\$2,800.00	100%	\$0.00	\$140.00
11	2" PVC Water Pipe	\$1,600.00	\$1,600.00	\$0.00	\$0.00	\$1,600.00	100%	\$0.00	\$80.00
12	2" PVC Water Pipe Fittings	\$1,320.00	\$1,320.00	\$0.00	\$0.00	\$1,320.00	100%	\$0.00	\$66.00
13	Concrete Channel Improvements	\$25,100.00	\$25,100.00	\$0.00	\$0.00	\$25,100.00	100%	\$0.00	\$1,255.00
14	Corrosion Protection Lining	\$32,880.00	\$32,880.00	\$0.00	\$0.00	\$32,880.00	100%	\$0.00	\$1,644.00
15	Channel Equipment	\$16,500.00	\$14,850.00	\$0.00	\$0.00	\$14,850.00	90%	\$1,650.00	\$742.50
16	FRP Channel Grating	\$8,236.00	\$1,500.00	\$0.00	\$5,500.00	\$7,000.00	85%	\$1,236.00	\$350.00
17	Mechanical Improvements	\$13,500.00	\$12,825.00	\$0.00	\$0.00	\$12,825.00	95%	\$675.00	\$641.25
18	Electrical Improvements	\$120,100.00	\$102,085.00	\$6,005.00	\$0.00	\$108,090.00	90%	\$12,010.00	\$5,404.50
19	Control Improvements	\$8,900.00	\$6,230.00	\$1,335.00	\$0.00	\$7,565.00	85%	\$1,335.00	\$378.25
20	HVAC Improvements	\$93,300.00	\$0.00	\$46,650.00	\$0.00	\$46,650.00	50%	\$46,650.00	\$2,332.50
21	Headworks Building	\$120,134.00	\$114,127.30	\$6,006.70	\$0.00	\$120,134.00	100%	\$0.00	\$6,006.70
<b>Belt Press Building</b>									
22	Belt Press Building Demolition	\$16,400.00	\$16,400.00	\$0.00	\$0.00	\$16,400.00	100%	\$0.00	\$820.00
23	Mechanical Improvements	\$30,800.00	\$30,800.00	\$0.00	\$0.00	\$30,800.00	100%	\$0.00	\$1,540.00
24	Electrical Improvements	\$22,300.00	\$22,300.00	\$0.00	\$0.00	\$22,300.00	100%	\$0.00	\$1,115.00
25	Control Improvements	\$6,200.00	\$6,200.00	\$0.00	\$0.00	\$6,200.00	100%	\$0.00	\$310.00
26	Sludge Cake Lean To	\$22,700.00	\$22,700.00	\$0.00	\$0.00	\$22,700.00	100%	\$0.00	\$1,135.00
27	Concrete Dumpster Pad (6" Thick)	\$6,380.00	\$6,380.00	\$0.00	\$0.00	\$6,380.00	100%	\$0.00	\$319.00
<b>Change Order #1</b>									
	Block Color	\$1,122.78	\$1,122.78	\$0.00	\$0.00	\$1,122.78	100%	\$0.00	\$56.14
<b>Change Order #2</b>									
	Gate Frame Change	\$735.73	\$735.73	\$0.00	\$0.00	\$735.73	100%	\$0.00	\$36.79
<b>Change Order #3</b>									
	Aluminum Covers and Misc.	\$4,615.28	\$4,005.28	\$379.23	\$0.00	\$4,384.51	95%	\$230.77	\$219.23
<b>Change Order #4</b>									
	Plumbing, Getter Relo, OH Door Opener	\$3,009.28	\$2,061.28	\$0.00	\$0.00	\$2,061.28	68%	\$948.00	\$103.06
<b>Change Order #5</b>									
	DanCo Data Logger	\$3,604.86	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$3,604.86	\$0.00

Contract Summary

\$639,087.93	\$501,732.37	\$61,560.93	\$5,500.00	\$568,793.30	89%	\$71,479.63	\$28,439.67
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**MIDLAND METALS**

A Division of Midland Contractors, Inc.  
 835 NE US Highway 24  
 Topeka, KS 66608  
 Phone: 785-234-8800  
 Fax: 785-234-8802  
 A DBE Certified Company

**Invoice**

Date	Invoice #
12/31/2014	809

## Bill To

Midland Contractors, Inc.  
 835 NE US Highway 24  
 Topeka, KS 66608

Customer P.O. / Job #

Midland Metals Job #	Terms
	Net 30

Item	Description	Qty	Rate	Amount
01 PROGRESS B...	FRP Grate		5,500.00	5,500.00
	Sales Tax - Non Taxable		0.00%	0.00

<b>Total</b>	\$5,500.00
<b>Payments/Credits</b>	\$0.00
<b>Balance Due</b>	\$5,500.00



# Record of Ordinances

ORDINANCE NO. 2014-12

DATE WARRANTS ISSUED:  
December 31, 2014

Page No. 1

AN ORDINANCE MAKING APPROPRIATION FOR THE PAYMENT OF CERTAIN CLAIMS.

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

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

CLAIMANT	NATURE OF CLAIM OR SERVICE	CLAIM NUMBER	AMOUNT
KMEA	GRDA Electricity	1548	88,832.38
KMEA	WAPA Electricity	1549	8,671.33
KMEA	SPA Hydro Electricity	1550	2,756.42
KMEA	Nearman Electricity	1551	35,597.83
Alamar Uniforms	Tactical Shirts, Strykes Pants	44865	422.42
American Library Association	Membership Dues	44866	135.00
Brenntag Mid-South, Inc.	Alum Ground, Sodium Hypochlorite	44867	18,276.96
Brewer's Automotive Repair	Fuel Pump, Tire Repairs, Coil Boot	44868	610.17
CenturyLink	Long Distance	44869	164.81
CenturyLink	Services	44870	1,657.50
Wanda Chisam	Cleaning of Old Stone Church	44871	429.00
City of Osawatomie	Utilities	44872	8,682.13
Coleman Equipment, Inc.	Relays	44873	23.98
Croft Trailer Supply, Inc.	U Bolts, Spring Seat	44874	457.29
Design 4 Printing	Business Cards	44875	73.50
Ditch Witch	Tooth Spacer	44876	62.22
Donna & Viola's Shirts	Basketball Shirts, Reflective Vinyl	44877	285.00
EMG, Inc.	Energy Consulting	44878	1,012.88
Galls	Badge Customization, Hats	44879	186.35
HD Supply Waterworks	3/4 Corp MIPXP	44880	245.30
Kansas City Wilbert	Grave Openings	44881	2,817.50
Kansas One Call System, Inc.	Locates	44882	40.80
KS Section-American Water Works	Basic Operator Training Workshop	44883	60.00
Knapheide Truck Equipment Center	8.5' Pro Plus Snow Plow, Edge Kit	44884	6,252.89
L&K Services	Refuse, Sludge Haul Off, Yard waste	44885	34,033.80
Lybarger Oil	Fuel	44886	6,001.92
Martin Pringle	City Prosecutor, Municipal Matters	44887	4,177.86
Miami County Sheriff's Office	Prisoner Care	44888	6,680.00
Miami County Solid Waste	Landfill Fees	44889	15.00
Miami County, Kansas	Visitor's Guide	44890	250.00
Moon's IGA	Cleaning Supplies, Batteries, Buns	44891	163.31
Navart's Office Products	Notary Stamps, Receipt Books	44892	781.61
New Century Dodge	Keys	44893	142.13
Osawatomie Pet Clinic	Examination	44894	25.00
Pace Analytical	Analytical Charges	44895	371.00
Paola Do It Best Hardware	LTX Glazing, PVC Elbow	44896	23.43
Paola Glass Company	Glass	44897	47.75
Paving Maintenance Supply, Inc.	Crack Seal Machine	44898	37,775.00
Pitney Bowes	Postage Meter Lease	44899	122.38
Postmaster	PO Box	44900	192.00

CLAIMANT	NATURE OF CLAIM OR SERVICE	CLAIM NUMBER	AMOUNT
R&L Fire & Security Specialists	Monitoring Alarm-Cabin	44901	143.40
Rejis Commission	LEWeb Subscription	44902	31.50
Ricoh	Copies-PD	44903	527.15
Romans Outdoor Power	O-Ring, Pipe	44904	27.86
Rural Water District #1	Services	44905	232.33
Scott A Michie	Consulting Services	44906	363.00
Sidener Environmental Service	Spring, Stem Bolt, Disc Retainer	44907	169.72
Smitty's Lawn & Garden Equipment	Manual KHI Englisher	44908	47.07
Morgan Soucie	Basketball Official	44909	60.00
State Industrial Products	Cleaning Supplies	44910	135.31
Suddenlink	Internet	44911	264.90
Wade Quarries	Gravel	44912	1,810.84
Winkler, Domoney & Schultz	Municipal Court Judge	44913	4,120.00
Zep Sales & Service	Mop Heads, Water Wand	44914	116.19
Ace Pest Control, LLC	Pest Control	44915	475.00
American Equipment Co.	Cutting Edge, Plow Shoe Assembly	44916	294.73
AT&T	RTU'S	44917	222.40
Atco International	Ice-Go	44918	112.00
AWE, Inc.	Early Literacy Station	44919	2,649.00
Baker & Taylor	Books	44920	434.45
Bollings Bargain	Tarps, Bungees	44921	15.85
Chicken Annie's	FD Appreciation Banquet	44922	529.50
Delta Dental	Dental Insurance	44923	2,829.33
Dish Network	Services	44924	100.12
Family Center	Boots, Fuel Tank, Pump, Flags	44925	2,221.73
Grainger	Timer Relay, Gasket Punch Set	44926	312.65
KC Bobcat	Seal, Gas Spring, Bearing, Lever Grip	44927	345.76
Kansas Historical Society	Microfilm Reels	44928	700.00
Miami Lumber	Concrete Mix, Insulation, Plywood	44929	272.01
Oil Patch Pump & Supply	Gloves, PVC Cap, Plug, Nipple	44930	104.72
Olathe Medical Services	Physical-Fenoughty	44931	43.00
Pat's Signs	Business Cards	44932	63.00
Suddenlink	Internet	44933	133.85
Superior Vision	Vision Insurance	44934	610.16
Elizabeth Trigg	Card Stock, Juice, Craft Supplies	44935	155.29
USA Blue Book	Gasket Material, Chart Pens	44936	146.70
Vernon's Electric & Repair	Alternator	44937	442.97
Winterscheid Auto Parts	Socket Set, Filters, Water Pump	44938	1,685.34
BG Consultants, Inc.	Consulting Services	44939	11,486.07
City of Osawatomie	Golf Course CMB License	44940	75.00
Computers & More, LLC	Filtered Mailboxes, Ethernet Cable	44941	236.15
Conrad Fire Equipment, Inc.	Fang Saw Blade	44942	93.75
Contract Furnishings	Lateral Files	44943	900.00
Elliott Insurance	Add/Delete Crack Seal Machine	44944	96.00
Richard Fisher, Jr. LLC	Attorney Fees	44945	1,125.00



## Record of Ordinances

DATE WARRANTS ISSUED:  
December 31, 2014

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CLAIMANT	NATURE OF CLAIM OR SERVICE	CLAIM NUMBER	AMOUNT
Gallagher Benefit Services, Inc.	Administration Fee	44946	372.00
Hach Company	DPD Vial, Lab Turb	44947	205.71
Industrial Sales	PVC	44948	225.19
Kansas Gas Service	Services	44949	8,223.74
Kansas State Treasurer	Training Funds	44950	809.00
KoneCranes, Inc.	2014 OSHA Compliance & Maint.	44951	800.00
Madden Rental	Portable Toilet Rental	44952	70.00
Miami County Health Department	Hepatitis B	44953	55.00
Miami County Treasurer	Property Tax	44954	2,305.45
ND&H Attorney's at Law, LC	Attorney Fees	44955	925.00
NEKLS	DVD/CD Cases, Computer Game	44956	39.96
NPG Newspapers	Condemnations, STO Ordinance	44957	1,652.80
Quill	Lateral File Cabinet, Toner, Batteries	44958	954.10
Redwood Toxicology Laboratory	Drug Testing Supplies	44959	224.00
Reflective Group	Services	44960	86.37
Ricoh	Copier Lease-PD	44961	183.90
Ricoh	Copier Lease	44962	280.78
Darrell Smith	Attorney Fees	44963	150.00
Sunrise Oilfield Supply	Fork Lift Rental	44964	150.00
The Café	Employee Breakfast	44965	487.50
Training @ Your Place	Set Up Laptop	44966	47.50
Visa	Lodging, Craft Supplies, Padlock	44967	1,563.53
Visa	Lodging, Craft Supplies, DVD	44968	1,263.94
Brad Waggoner	Proshop	44969	34.80
Midland Contractors	WWTP Imp.-Application #6	44970	56,786.97
KMEA	EMP Electricity	1552	34,940.70
BSN Sports	Basketballs	44971	121.44
KCPL	Services	44972	1,117.73
Key Equipment	Pro-Sweep Main Broom	44973	389.00
Kriz-Davis Co.	Ballast, Wire, Fixture, Bulbs	44974	1,886.63
Mane Drama Salon	Makeup Application-Frozen Event	44975	60.00
Royal Metal Industries, Inc.	Square Tubing	44976	388.96
Sprint	Services	44977	20.49
Suddenlink	Internet	44978	59.95
Postmaster	Utility Billing	44979	1,000.00
Kansas Department of Revenue	Sales Tax	1553	7,687.74
Kansas Department of Revenue	Compensating Use Tax	1554	885.16
Kansas Department of Revenue	Sales Tax	1555	118.16
AES Lawn Parts	Air Cleaner Housing	44980	13.52
American Equipment Co.	Headlights, Bolt Set	44981	277.14
Applied Maintenance Supplies	Terry Lined Gloves	44982	129.14
Bollings Bargain	Extension Cord, Bottle Jack	44983	46.90
Brenntag Mid-South, Inc.	Ammonium Sulfate	44984	911.50
C&G Merchants Supply, Inc.	Tablecloth	44985	19.37
Century Link	RTU'S	44986	236.56

## Record of Ordinances

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December 31, 2014

Page No. 4

CLAIMANT	NATURE OF CLAIM OR SERVICE	CLAIM NUMBER	AMOUNT
Century Link	Services	44987	1,025.62
Century Link	Long Distance	44988	171.19
Champion Brands, LLC	Oil, Paint, Champion Hytran	44989	1,255.15
Coleman Equipment, Inc.	Seal Kits, Gasket Kit	44990	194.50
Computers & More, LLC	Computer, Power Converter	44991	1,674.65
Darco Equipment Service Co.	Breather	44992	13.75
Donna's & Viola's Shirts	Basketball Shirts	44993	1,333.00
Elliott Insurance	Add Snow Plow	44994	16.00
Grainger	Packing Seal	44995	62.33
Intervet, Inc.	Microchip Scanner	44996	750.00
JCI Industries, Inc.	Service Call on Pump	44997	426.00
Kansas State Treasurer	Training Funds	44998	799.50
K.C. Bobcat	Tire	44999	752.00
Key Equipment & Supply	Belt Tensioner, Belt, Idler	45000	385.92
Kincaid Ready Mix	Concrete	45001	502.50
L&K Services	Sludge Haul Off	45002	1,722.24
Lacal Equipment, Inc.	Steel Snow Blades	45003	879.32
Logan Contractors Supply, Inc.	Hammer, Pain, Hand Edger, Broom	45004	835.84
Louisburg Ford Sales, Inc.	Fuel Sensor, Weatherstrip	45005	184.26
Maceks, Inc.	Windshield	45006	232.00
Martin Pringle	Municipal Matters, City Prosecutor	45007	4,685.53
Miami County Fire District #1	Emergency Reporting	45008	103.50
Miami County Solid Waste Dept..	Complex Demo	45009	697.82
Mid-States Energy Works, Inc.	Rebuild Feeder Breakers	45010	3,268.00
Midwest Industrial Lighting	Rough Surface Bulbs	45011	399.24
Navrat's Office Products	Laser Checks, Copy Paper	45012	1,131.10
NPG Newspapers	Resolution 693	45013	222.20
Oil Patch Pump & Supply, Inc.	Nipple, Plug	45014	4.51
Olathe Winwater Works Co.	Tap Mate Shaft, Repair Clamps	45015	1,281.33
Pace Analytical	Analytical Charges	45016	251.00
Pat's Signs	Decals	45017	348.00
Pitney Bowes	Postage Meter Lease	45018	189.50
Scott Michie	Consulting Services	45019	220.45
Debbie Talley	Memorial Hall Janitorial	45020	375.00
TBS Electronics, Inc.	Radio Repair	45021	60.00
Walmart	Safety Vests, Printer, Clock, Pump	45022	149.24
Payroll 12/12/14			103,276.23
Fica 12/12/14			7,364.54
Payroll 12/24/14			93,645.55
Fica 12/24/14			6,623.00
KPERS			17,895.17
			689,130.66





**STAFF AGENDA MEMORANDUM**

**DATE OF MEETING:** January 8, 2014

**AGENDA ITEM:** **Concessions / Restrooms Building Contract**

**PRESENTER:** Don Cawby, City Manager

**ISSUE SUMMARY:** On November 11, the City Council approved the selection of Wendt's Construction and directed staff to draft a contract based upon the bid. Attached is a draft contract with Wendt's Construction for \$120,000 to construct the Concessions and Restroom Building at the sports complex. The original bid for the project was \$105,000, but we have made modifications after working through the project planning with Mr. Wendt.

**COUNCIL ACTION NEEDED:** Review and take action on the contract.

**STAFF RECOMMENDATION TO COUNCIL:** Approve the draft contract, subject to a final legal review by the City Attorney and any non-substantive amendments to the contract, and the Mayor's signature.

**CONSTRUCTION CONTRACT**  
FOR  
CONCESSIONS BUILDING AT THE KARL E. COLE SPORTS COMPLEX

BETWEEN  
THE CITY OF OSAWATOMIE  
AND  
WENDT'S CONSTRUCTION

**THIS AGREEMENT**, is made and entered into this 9<sup>th</sup> day of January, 2015, by and between the City of Osawatomie, Kansas, hereinafter termed the "City", and Wendt's Construction, hereinafter termed in this agreement, "Contractor", for the construction and completion of Project , designated, described and required by the Project Manual and Bid proposal, to wit:

**CONTRACT COST:** The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of **ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000)** for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

**LIQUIDATED DAMAGES:** The contract is comprised of one large project (sometimes referred to as "Total Project Work") and, in some cases, is partitioned into smaller subprojects referred to in this agreement as "Project Segments." A total completion date shall be set forth for both the Total Project Work and, when applicable, the Project Segments. Liquidated damages shall apply to the Total Completion Date for the Total Project Work (as may be extended under the Contract) and, when applicable, the Total Completion Date for each Project Segment (as may be extended under the Contract), in accordance with this Agreement and the Special Conditions. Liquidated Damages are described in greater detail below and the applicable rates for the subject Project are set forth in the **Special Conditions**, attached hereto and incorporated herein by this reference.

Within ten (10) calendar days after receipt of written notice to commence from the City, the Contractor shall commence the Work to be done under this Contract. The Contractor agrees to complete the Total Project Work and Project Segments hereunder within the contract time period set forth in the Contract, or as it may be extended under the terms of this Contract. At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a project schedule setting forth, in detail, the proposed sequence of activities and the dates on which such activities shall be completed. The schedule shall also set forth the dates on which the Project Segments (if applicable to the Contract) shall be totally complete.

Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion when required under the Contract is a material provision of this

Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the required date for Total Completion for the Total Project or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Total Completion date. Such amount shall be deducted from any amounts due Contractor under this agreement.

The Contractor agrees that, in the event Project Segments are not Totally Complete, the City may also assess other liquidated damages for each calendar day beyond the date for Total Completion in an amount set forth in the Special Conditions. The Contractor agrees that such assessment is a reasonable estimate of the damages that may be sustained by the City in the event the project is delayed and that such amount is not a penalty.

Further, the Contractor agrees that, in the event Contractor does not carry out such work at such rates of progress as required by the Construction Schedule, the City may, at its option and without Contractor receiving any additional compensation therefore, require Contractor to increase the number of qualified supervisory personnel and/or workers and the amount of equipment employed in the performance of the Work to such extent as City may deem necessary or desirable. In addition, City, at its option, may supplement Contractor's manpower by entering into contracts with other contractors to perform the Work. All costs that are incurred by City, in this regard, including reasonable attorney's fees, shall be deducted from any sums due Contractor or City may make demand on Contractor for reimbursement of such costs.

1. **DEFINITIONS:**

1.1 Following words are given these definitions:

**BID DOCUMENTS** shall mean all documents related to submitting a Bid, including, but not limited to, the Advertisement for Bids, Instruction to Bidders, Bid Form, Bid Bond and the proposed Project Manual, including any Addenda issued prior to receipt of Bids.

**BID PROPOSAL** shall mean the offer or proposal of the Bidder submitted on the prescribed form set forth the prices for the work to be performed.

**BIDDER** shall mean any individual: partnership, corporation, association or other entity submitting a Bid for the work.

**BONDS** shall mean the bid, maintenance, performance, and statutory or labor and materials payment bonds, together with such other instruments of security as may be required by the Contract Documents.

**CHANGE ORDER** is a written order issued after the Agreement is executed by which the City and the Contractor agree to construct additional items of work, to adjust the quantities of work, to modify the Contract time, or, in lump sum contracts, to change the character and scope of work shown on the Project Manual.

**CITY** shall mean the City of Osawatomie, Kansas, acting through a duly appointed representative.

**CONTRACT** or **CONTRACT DOCUMENTS** shall mean the Construction Agreement, the accepted Bid Proposal, Contractor's Performance Bond, Contractor's Maintenance Bond, Statutory Bond, Project Manual and any other documents that have bearing the Work prescribed in the Project.

**CONTRACT PRICE** shall be the amount identified in the Construction Agreement between the City and the Contractor as the total amount due the Contractor for total completion of the Work as per the Contract Documents.

**CONTRACT TIME** shall be the number of calendar days stated in the Contract Documents for the completion of the work or shall be a specific date as designated in the Construction Agreement.

**CONTRACTOR** shall mean the entity entering into the Contract for the performance of the work covered by this Contract, together with his/her duly authorized agents or legal representatives.

**DEFECTIVE WORK** shall mean work, which is unsatisfactorily, faulty or deficient, or not in conformity with the Project Manual.

**DESIGN-BUILD DOCUMENTS** shall mean all documents related to the design of the project, submitting a Design-Build Bid, including, but not limited to, the Advertisement for Proposals, Instructions for such proposals, and any submitted Design-Build Proposals, including any Addenda issued prior to receipt of Design-Build Bid proposals.

**ENGINEER** shall mean the individual, firm or entity designated in the Contract Documents, which has been employed or contracted by the City for the performance of engineering services in connection with the Work.

**FIELD ORDER** shall mean a written order issued by the Project Manager that orders minor changes in the work, but which does not involve a change in the contract price or contract time.

**FIELD SUPERINTENDENT** shall mean the Public Works Field Superintendent of the City of Osawatomie or designee.

**FINAL ACCEPTANCE** shall mean the date when the City accepts in writing that the construction of the Work is complete in accordance with the Contract Documents such that the entire Work can be utilized for the purposes for which it is intended and Contractor is entitled to final payment.

**INSPECTOR** shall mean the engineering or technical inspector or inspectors duly authorized by the City to monitor the work and compliance tests under the direct supervision of the Project Manager.

**NOTICE OF AWARD** shall mean the written notice by the City to the apparent successful Bidder stating that upon compliance with the conditions precedent enumerated therein, within the time specified, the City will sign and deliver the Agreement.

**NOTICE TO PROCEED** shall mean the written notice by the City to the Contractor fixing the date on which the Contract time is to commence and on which the Contractor shall start to perform its obligations under the Contract Documents. Without the prior express written consent of the City, the Contractor shall do no work until the date set forth in the Notice to Proceed.

**PAY ESTIMATE NO. \_\_\_** or **FINAL PAY ESTIMATE** shall mean the form to be used by the Contractor in requesting progress and final payments, including supporting documentation

required by the Contract Documents.

**PLANS** shall mean and include all drawings which may have been prepared by or for the City or submitted by the Contractor to the City during the progress of the Work, all of which show the character and scope of the work to be performed.

**PROJECT MANAGER** shall mean the person appointed by the Public Works Director for this project as named in the Special Conditions.

**PUBLIC WORKS DIRECTOR** shall mean the duly appointed Director of Public Works & Utilities for the City of Osawatomie or his designee.

**SHOP DRAWINGS** shall mean all drawings, diagrams, illustrations, schedules and other data which are specifically prepared by the Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distribution and submitted by the Contractor to illustrate material or equipment for some portion of the work.

**SPECIFICATIONS** shall mean those portions of the Project Manual consisting of written technical descriptions of materials, equipment, construction methods, standards and workmanship as applied to the Work and certain administrative details applicable thereto. They may include, but not necessarily be limited to: design specifications, e.g. measurements, tolerances, materials, inspection requirements and other information relative to the work; performance specifications, e.g., performance characteristics required, if any; purchase description specifications, e.g. products or equipment required by manufacturer, trade name and/or type; provided, however, equivalent alternatives (including aesthetics, warranty and manufacturer reputation) may be substituted upon written request and written approval thereof by the City.

**SUB-CONTRACTOR** shall mean an individual, firm or corporation having a direct contract with the Contractor or with another subcontractor for the performance of a part of the Work.

**SUBSTANTIAL COMPLETION** shall be defined as being less than 100 percent of the work required that will be completed by a specified date as agreed to in writing by both parties.

**TOTAL COMPLETION** shall be defined as fulfilling 100 percent of the work required in this contract by the date specified herein.

**UNIT PRICE WORK** shall mean work quantities to be paid for based on unit prices. Each unit price shall be deemed to include the Contractor's overhead and profit for each separately identified item. It is understood and agreed that estimated quantities of times for unit price work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract price. Determinations of actual quantities and classifications of unit price work shall be made by the City.

**WORK** shall mean the work to be done to complete the construction required of the Contractor by the Contract Documents, and includes all construction, labor, materials, tools, equipment and transportation necessary to produce such construction in accordance with the Contract Documents.



- 1.2 Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.
- 1.3 Whenever in these Contract Documents the words “as ordered,” “as directed,” “as required,” “as permitted,” “as allowed”, or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the Project Manager is intended.
- 1.4 Whenever any statement is made in the Contract Documents containing the expression “it is understood and agreed”, or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5 The words “approved”, “reasonable”, “suitable”, “acceptable”, “properly”, “satisfactorily”, or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the Project Manager.
- 1.6 When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 1.7 All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

## **2. ENTIRE AGREEMENT:**

- 2.1 The Contract Documents, together with the Contractor's Performance, Maintenance and Statutory bonds for the Work, constitute the entire and exclusive agreement between the City and the Contractor with reference to the Work. Specifically, but without limitation, this Contract supersedes all prior written or oral communications, representations and negotiations, if any, between the City and the Contractor. The Contract may not be amended or modified except by a modification as hereinabove defined. These Contract Documents do not, nor shall they be construed to, create any contractual relationship of any kind between the City and any Subcontractor or remote tier Subcontractor.
- 2.2 The Contract shall be construed in accordance with the laws of the State of Kansas.

## **3. INTENT AND INTERPRETATION**

- 3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any

- Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.
- 3.2 All limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.
- 3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Project Manager of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Project Manager of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.
- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.
- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.

- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Project Manager before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.
- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.
- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the work, but may contain conditions or requirements which will not be required in the performance of the work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the work under contract, such stipulation or requirement will have no meaning relative to the performance of said work.
- 3.15 Pursuant to K.S.A. No. 16-113, if the Contractor to whom the Contract is awarded is not a resident firm of the State of Kansas, he shall execute and file "Certificate of Appointment of Process of Agent" with the Clerk of the District Court at the Miami County Courthouse. These forms may be obtained at the Office of the Clerk of the District Court. After execution of the documents, they shall be filed with the Clerk of the District Court. These certificates are pursuant to the General Statutes of Kansas, and shall be filed prior to the formal execution of the Contract Documents. Failure to comply with these requirements shall disqualify the Contractor for the awarding of this Contract.

#### **4. WORK SUPERINTENDENT**

- 4.1 The Contractor shall provide and maintain, continually on the site of Work during its progress, an adequate and competent superintendent of all operations for and in connection with the work being performed under this Contract, either personally or by a duly authorized

superintendent or other representative. This representative shall be designated in writing at the preconstruction meeting.

- 4.2 The superintendent, or other representative of the Contractor on the Work, who has charge thereof, shall be fully authorized to act for the Contractor, and to receive whatever orders as may be given for the proper prosecution of the work, or notices in connection therewith. Use of Subcontractors on portions of the work shall not relieve the Contractor of the obligation to have a competent superintendent on the work at all times.
- 4.3 The City shall have the right to approve the person who will be the Superintendent based on skill, knowledge, experience and work performance. The City shall also have the right to request replacement of any superintendent.
- 4.4 The duly authorized representative shall be official liaison between the City and the Contractor regarding the signing of pay estimates, change orders, workday reports and other forms necessary for communication and Work status inquiries. Upon Work commencement, the City shall be notified, in writing, within five (5) working days of any changes in the Contractor's representative. In the absence of the Contractor or representative, suitable communication equipment, which will assure receipt of messages within one (1) hour during the course of the workday, will also be required.
- 4.5 The Contractor will be required to contact the Project Manager daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the Project Manager's representative is able to monitor properly the Work.

## **5. PROJECT MANAGER**

- 5.1 It is mutually agreed by and between the parties to this Contract Agreement that the Project Manager shall act as the representative of the City and shall observe, as required, the work included herein.
- 5.2 In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Contract that the Project Manager shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Project Manager shall determine, where applicable, questions in relation to said Work and the construction thereof; that Project Manager shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Project Manager's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Project Manager render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with the Project Manager and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the

right to submit the question to determination in the future.

- 5.3 The Project Manager, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Project Manager as set forth in this Contract. The Project Manager shall be the City's representative from the effective date of this Contract until final payment has been made. The Project Manager shall be authorized to act on behalf of the City only to the extent provided in this Contract.
- 5.4 The City and the Contractor shall communicate with each other in the first instance through the Project Manager.
- 5.5 The Project Manager shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Project Manager shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.
- 5.6 The Project Manager will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Project Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Manager to City, based on Project Manager's on-site observations of the Work in progress as an experienced and qualified design professional and on Project Manager's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Project Manager will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Project Manager in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.
- 5.7 The Project Manager may refuse to recommend the whole or any part of any payment if, in Project Manager's opinion, it would be incorrect to make such representations to City. Project Manager may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Project Manager's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or

- replacement,
  - The Contract Price has been reduced by Written Amendment or Change Order,
  - The City has been required to correct defective Work or complete Work in accordance with the Project Manual.
  
- 5.8 The City may refuse to make payment of the full amount recommended by the Project Manager because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Project Manager) stating the reasons for such action.
  
- 5.9 The Project Manager will have the authority to reject Work, which is defective or does not conform to the requirements of this Contract. If the Project Manager deems it necessary or advisable, the Project Manager shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
  
- 5.10 The Project Manager will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
  
- 5.11 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
  
- 5.12 The Project Manager, upon written request from the Contractor shall conduct observations to determine the date of substantial completion and the date of final acceptance. The Project Manager will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
  
- 5.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
  
- 5.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the work except as may otherwise be provided.
  
- 5.15 Any plan or method of work suggested by the Project Manager, or other representatives of the

City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.

- 5.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 5.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 5.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 5.19 Such observation shall not relieve the Contractor from any obligation to perform said work strictly in accordance with the Project Manual.

## **6. WORK SCHEDULE:**

- 6.1 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence work to be done under this Contract.
- 6.2 The rate of progress shall be such that the Work shall have been completed in accordance with the terms of the Contract Documents on or before the completion date for the construction period named in the contract agreement, subject to any extension or extensions of such time made as hereinafter provided.
- 6.3 The Contractor shall be required to furnish the Project Manager with a schedule setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that portions of the work will be started and completed.
- 6.4 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; such changes shall be made in the schedule and resubmitted for consideration.

- 6.5 If the Contractor has not completed Work segments and is within a non-performance penalty period, he/she shall not be allowed to undertake a new Work segment until the Work segment in dispute is completed, unless expressly permitted by the City.
- 6.6 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM).
- 6.7 No work shall be undertaken on Saturdays, Sundays and Holidays (New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and Christmas Day) without the express written approval of the Project Manager. If it is necessary to perform proper care, maintenance or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 6.8 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.
- 6.9 The Contractor shall provide 24 hours notice prior to commencing any work to the Project Manager. The Contractor shall communicate immediately any changes in the work schedule to the Project Manager.

## **7. DELAYS AND EXTENSIONS OF TIME**

- 7.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the work within the time herein fixed, he has taken into consideration and made allowances for all of the ordinary delays and hindrances incident to such work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.
- 7.2 Should the Contractor, however, be delayed in the prosecution and completion of the work by reason of delayed shipment orders, or by any changes, additions, or omissions therein ordered in writing by the City, or by strikes or the abandonment of the work by the men engaged thereon through no fault of the Contractor, or by any act taken by the U.S. Government such as the commandeering of labor or materials, embargoes, etc., which would affect the fabrication or delivery of materials and/or equipment to the work; or by neglect, delay or default of any other contractor of the City, or delays caused by court proceedings; the Contractor shall have no claims for damages or additional compensation or costs for any such cause or delay; but he shall in such cases be entitled to such extension of the time specified for the completion of the work as the City and the Project Manager shall award in writing on



account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Project Manager in writing within one (1) week from the time when any such alleged cause for delay shall occur.

**8. ADVERSE WEATHER:**

8.1 Extensions of time for adverse weather shall be granted only under the conditions as hereinafter provided.

8.2 For conditions of weather or conditions at the site, so unusual as not to be reasonably anticipated, as determined by the Project Manager, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.

8.3 Adverse Weather is defined as atmospheric conditions or the impact thereof at a definite time and place, which are unfavorable to construction activities such that they prevent work on critical activities for 50 percent or more of the Contractor's scheduled workday.

8.4 Unusually Severe Weather is defined as weather, which is more severe than the adverse weather anticipated for the season, location, or activity involved.

8.5 Time Extensions for Unusually Severe Weather:

- In order for any request for time extension due to unusually severe weather to be valid, the Contractor must document both of the following conditions:
- The weather experienced at the Work site during the Contract period is more severe than the adverse weather anticipated for the Work location during any given month.
- The unusually severe weather actually caused a delay to the completion of the Work. The delay must be beyond the control and without fault or negligence by the Contractor.

8.6 The following schedule of monthly-anticipated adverse weather delays will constitute the baseline for monthly weather time evaluations. The Contractor's Progress Schedule must reflect these anticipated adverse weather delays in all weather-affected activities:

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY

WORK DAYS BASED ON FIVE (5) DAY WORK WEEK

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	8	7	6	7	7	5	5	5	4	5	9

- 8.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on their daily construction report, the occurrence of adverse weather and resultant impact to normally scheduled work.
- 8.8 The number of actual adverse weather delay days shall include days affected by actual adverse weather (even if adverse weather occurred in the previous month), and shall be calculated chronologically from the first to the last day of each month, and be recorded as full workdays.
- 8.9 If the number of actual adverse weather delay days in a given month exceeds the number of days anticipated above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.
- 8.10 The determination that unusually severe weather occurred does not automatically mean an extension of time will be granted. The Contractor must substantiate the unusually severe weather delayed work activities on the critical path of the Progress Schedule.
- 8.11 Full consideration for equivalent fair weather workdays shall be given. If the number of actual adverse weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
- 8.12 The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the Date of Substantial Completion shall not be changed because of unusually favorable weather.
- 8.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.
- 8.14 The Contractor shall summarize and report all actual adverse weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of adverse weather conditions on the scheduled critical activities shall be included.
- 8.15 Any claim for extension of time due to unusually severe weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures established by the Regulations of the Contract and Special Conditions and as described above.
- 8.16 The Contractor shall include and indicate the monthly-anticipated adverse weather days, listed above, in their Progress Schedule.

8.17 The Contractor shall indicate the approved adverse weather days (whether less or more than the anticipated days) in their monthly Progress Schedule update.

**9. PAYMENT PROCEDURE:**

9.1 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

9.2 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each progress payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the work covered by the payment request.

9.3 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.

9.4 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.

9.5 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.

9.6 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract amount. Percentage deductions will be computed at the stated percentage of the amount earned.

- 9.7 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 9.8 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
  - Claims of third parties against the City or the City's property;
  - Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
  - Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
  - Evidence that the Work will not be completed in the time required for substantial or final completion;
  - Persistent failure to carry out the Work in accordance with the Contract;
  - Damage to the City or a third party to whom the City is, or may be, liable;
  - Evidence that the work is not progressing according to agreed upon schedule by both parties.
- 9.9 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.
- 9.10 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

## **10. COMPLETION AND FINAL PAYMENT**

- 10.1 Work completion shall be defined as all elements of the Work or work segment, being complete including all subsidiary items and "punch-list" items.
- 10.2 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the Project Manager thereof in writing. Thereupon, the Project Manager will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Project Manager will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Project Manager is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted

by the City from the Contractor's full payment.

- 10.3 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 10.4 The City shall make final payment of all sums due the Contractor within thirty days of the later of the Project Manager's execution of a final Certificate for Payment.
- 10.5 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

## **11. CLAIMS BY THE CONTRACTOR**

- 11.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 11.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.
- 11.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

- 11.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.
- 11.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract amount based on the proposed quantity and the contract unit price).
- 11.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 11.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 11.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 11.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim

for an extension of time shall be waived.

- 11.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 11.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 11.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

## **12. CHANGES IN THE WORK**

- 12.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.
- 12.2 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 12.3 Any change in the Contract Price resulting from a Change Order shall be by mutual agreement between the City and the Contractor as evidenced by the change in the Contract Price being set forth in the Change Order, and, together with any conditions or requirements related thereto, being initialed by both parties.
- 12.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the

Work, the Contractor shall proceed with the work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Project Manager requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Project Manager's Certificate for Payment.

- 12.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.
- 12.6 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim including impact against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

### **13. INSURANCE AND HOLD HARMLESS.**

- 13.1 The Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, both above and below the ground, along, beneath, above, across or near the site or sites of the work being performed under this Contract, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept placed at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 13.2 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless



the City, the Project Manager, and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any intentional or negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist.

- 13.3 All property damaged shall be repaired or replaced to a condition immediately prior to the time of damage, and to the satisfaction of the City.
- 13.4 All loss or damage arising out of the nature of the work to be done, or from the action of the elements, or from floods or overflows, or from ground water, or from unusual obstructions or difficulties, or any other natural or existing circumstances either known or unforeseen, which may be encountered in the prosecution of the said work shall be sustained and borne by the Contractor at its own cost and expense.
- 13.5 The Contractor shall give reasonable notice to the City or owners of public or private property and utilities when such property is liable to injury or damage through the performance of the Work, and shall make all necessary arrangements with such City or owners relative to the removal and replacement or protection of such property or utilities.
- 13.6 The Contractor shall satisfactorily shore, support, and protect all structures and all pipes, sewers, drains, conduits, and other utility facilities, and shall be responsible for any damage resulting thereto. The Contractor shall not be entitled to any damages or extra compensation because of any postponement, interference, or delay caused by any such structures and facilities being on the line of the Work whether they are shown on the plans or not, specifically including, but not limited to, damages due to delay in utility relocation.
- 13.7 The Contractor shall secure and maintain, throughout the duration of this Contract, insurance from a company authorized to do business in the State of Kansas. Such insurance shall be of such types and in such amounts as may be necessary to protect himself and the interests of the City and agents of the City against all hazards or risks of loss as hereinafter specified including an endorsement covering explosion, collapse, blasting and damage to underground property if applicable as specified in these Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate insurance coverage shall not relieve it of any contractual responsibility or obligation. The insurance shall be provided on an occurrence basis and, not claims made basis.
- 13.8 The City and the Project Manager shall be a named insured on such policies. Satisfactory certificates of insurance shall be filed with the City prior to starting any construction work on

this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy coverage thereby is changed or canceled.

- 13.9 The Contractor shall secure and maintain through the duration of this Contract insurance on an occurrence basis of such types and in such amounts as may be necessary to protect the Contractor and the City and agents of the City against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation, including but not limited to, the indemnification obligation.
- 13.10 Satisfactory certificates of insurance shall be filled with the City prior to the Contractor starting any construction work on this Contract. The Certificates shall state that the thirty (30) days written notice will be given to the City before any policy covered thereby is changed or cancelled. Failure by the Contractor to furnish the required insurance within the time specified in the notice of award of the Contract by the City, at the City option, may be the basis for the City exercising its right to terminate the Contract.
- 13.11 The liability limits shall be as stated:
- Worker's Compensation and Employer's Liability: This insurance shall protect the Contractor against all claims under applicable state worker's compensation laws. The Contractor shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a worker's compensation law. This policy shall include an "all states" endorsement.
  - Automobile Liability:. This insurance shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. Unless otherwise specified, Contractor's insurance shall include the following:
    - \$300,000 single limit (on contracts less than \$100,000)
    - \$1,000,000 single limit (on contracts \$100,000 and more)
  - Commercial General Liability. This insurance shall be written in comprehensive form including Products, completed operations and Personal and Advertising injury and shall protect the Contractor against all claims arising from injuries to members of the public or damage to property of others arising out of any act or omission of the Contractor or its agents, employees, or subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the Contractor under this Contract entitled "Insurance and

Hold Harmless." The property damage liability coverage shall contain no exclusion relative to blasting, explosion, collapse of building, or damage to underground property. Unless otherwise specified, Contractor's insurance shall include the following:

\$1,000,000 combined single limit (on contracts in excess of \$100,000)

\$300,000 combined single limit (on contracts in excess of \$10,000 to \$100,000)

\$100,000 combined single limit (on contracts of \$10,000 and less)

- Additional Insurance: Excess Liability coverage or additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Instructions to Bidders or Special Conditions.

#### 14. INDEMNITY

- 14.1 For purposes of indemnification requirements as set forth throughout the Contract, the following terms shall have the meaning set forth below:

"The Contractor" means and includes Contractor, all of his/her affiliates and subsidiaries, his/her Subcontractors and material men and their respective servants, agents and employees; and "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Contract whether arising before or after the completion of the work required hereunder.

- 14.2 For purposes of this Contract, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract, the Contractor hereby agrees to indemnify, defend and hold harmless the City from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractor, his/her employees, agents, Subcontractors and suppliers.

- 14.3 It is agreed as a specific element of consideration of this Contract that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further, notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature.

- 14.4 Nothing in this section shall be deemed to impose liability on the Contractor to indemnify the City for Loss when the negligence or other actionable fault the City is the sole cause of Loss.
- 14.5 With respect to the City's rights as set forth herein, the Contractor expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purpose of this section.

## **15. SUCCESSORS AND ASSIGNS**

- 15.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.
- 15.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 15.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City. Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.
- 15.4 The Contractor shall not award subcontracts which total more than forty-five (45%) of the Contract Price and shall perform within its own organization work amounting to not less than fifty-five percent (55%) of the total Contract Price. Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject defective work, material or equipment not in compliance with the requirements of the Contract Documents. The Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.
- 15.5 The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof without previous written consent from the City. In case such consent is given, the Contractor, shall be permitted to subcontract a portion thereof, but shall perform with his/her own organization work amounting to not less than fifty five (55%) of the total Contract Price. No subcontracts, or other transfer of Contract, shall release the Contractor of its liability

under the Contract and bonds applicable thereto.

- 15.6 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of the Subcontractor and to give the Contractor the same power to terminate any Subcontract as the City has to terminate the Contractor under any provisions of the Contract Documents.
- 15.7 Prior to the City's approval of the Contract bid, the successful bidder shall submit to the City for acceptance, a list of names of all Subcontractors proposed for portions of the work and shall designate which work each is to perform.
- 15.8 The City shall, prior to the City's approval of the Contract bid, notify the successful bidder, in writing, if the City, after due investigation, has reasonable objection to any Subcontractor on such list, and the Contractor shall substitute a Subcontractor acceptable to the City at no additional cost to the City or shall be allowed to withdraw his/her Bid, and the City shall either re-bid the Work or accept the next best lowest and responsible bidder. The failure of the City to make objection to a Subcontractor shall constitute an acceptance of such Subcontractor but shall not constitute a waiver of any right of the City to reject defective work, material or equipment not in conformance with the requirements of the Project Manual.

## **16. NON-DISCRIMINATION LAWS**

- 16.1 The Contractor further agrees that the Contractor shall abide by the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Work and furnish any certification required by any federal, state or local governmental agency in connection therewith.
- 16.2 In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer", or similar phrase to be approved by the Kansas Human Rights Commission (Commission);
- 16.3 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;
- 16.4 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; and
- 16.5 The Contractor shall include the provisions of this section in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.

- 16.6 The provisions of this section shall not apply to a contract entered into by a Contractor who employs fewer than four employees during the terms of such contract; or whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

**17. RELATIONS WITH OTHER CONTRACTORS:**

- 17.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.
- 17.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.
- 17.3 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.
- 17.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.
- 17.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

**18. RIGHT OF CITY TO TERMINATE**

- 18.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, or supply enough properly skilled workers, supervisory personnel or proper

equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if this Contract is assigned by Contractor without authorization or if Contractor is adjudged as bankrupt, or if a general assignment of assets be made for the benefit of creditors; or if a receiver is appointed, or otherwise is guilty of a substantial violation of a provision of this Contract, then the City may by written notice to the Contractor, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor and its surety shall be liable to the City for all excess cost sustained by the City because of such prosecution and completion including any additional legal, Project Manager or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein.

- 18.2 The City, within its sole discretion, may elect to terminate the Contract with the Contractor for convenience upon three (3) days written Notice to Contractor. In the event of such termination, Contractor shall cease immediately all operations and shall be compensated for all work performed as of the date of termination in accordance with the terms of payment in this contract. Contractor shall not be entitled to any anticipatory profits of other costs other than direct costs of demobilization.

**19. MISCELLANEOUS:**

- 19.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.
- 19.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal, state or county laws, City laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.
- 19.3 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and to the City. Nothing herein

contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.

- 19.4 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract amount and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.
- 19.5 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.
- 19.6 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 19.7 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 19.8 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 19.9 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.
- 19.10 The Contractor shall keep fully informed of all existing and current regulations of the City, and County, State, and National Laws, which in any way limit or control the actions or



operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.

- 19.11 Nothing contained in these Project Manual shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 19.12 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 19.13 No action or failure to act by the City, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 19.14 Contractor specifically acknowledges and confirms that: 1.) he/she has visited the site, made all inspections he deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by he as specified herein and in other Contract Documents and knowingly accepts the same; 2.) he/she has furnished copies of all Contract Documents to his/her insurance carrier(s) and his/her surety(ies); and 3.) his/her insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 19.15 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 19.16 This agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas.

**WITNESSETH:**

***WHEREAS**, the City has caused to be prepared, approved and adopted a Project Manual describing construction materials, labor, equipment and transportation necessary for, and in connection with, the construction of a public improvement, and has caused to be published an advertisement inviting sealed Bid, in the manner and for the time required by law; and*

**WHEREAS**, the Contractor, in response to the advertisement, has submitted to the City in the manner and at the time specified, a sealed Bid in accordance with the terms of this Agreement; and

**WHEREAS**, the City, in the manner prescribed by law, has publicly opened, examined and canvassed the Bids submitted, and as a result of such canvass has determined and declared the Contractor to be the lowest and best responsible bidder for the construct of said public improvements, and has duly awarded to the said Contractor a contract therefore upon the terms and conditions set forth in this Agreement for the sum or sums named in the Bid attached to, and made a part of this Agreement; and

**WHEREAS**, the Contractor has agreed to furnish at its own cost and expense all labor, tools, equipment , materials and transportation required to construct and complete in good, first class and workmanlike manner, the Work in accordance with the Project Manual; and

**WHEREAS**, this Agreement, and other Contract Documents on file with the City Clerk of Osawatomie, Kansas, all of which Contract Documents form the Contract, and are as fully a part thereof as if repeated verbatim herein; all work to be to the entire satisfaction of the City or City's agents, and in accordance with the laws of the City, the State of Kansas and the United States of America; and

**WHEREAS**, in consideration of the compensation to be paid the Contractor, and of the mutual agreements herein contained, the parties hereto have agreed and hereby agree, the City for itself and its successors, and the Contractor for itself, himself, herself or themselves, its, his/her, hers or their successors and assigns, or its, his/her, hers or their executors and administrators, as follows:

**IN WITNESS WHEREOF**, the City, has caused this Agreement to be executed in its behalf, thereunto duly authorized, and the said Contractor has executed five (5) counterparts of this Contract in the prescribed form and manner, the day and year first above written.

**CITY OF OSAWATOMIE**

\_\_\_\_\_  
(date of execution)

By: \_\_\_\_\_  
(signed)

Mark Govea, Mayor

City of Osawatomie

439 Main Street

Osawatomie, Kansas 66064

**WENDT'S CONSTRUCTION**

36675 Osawatomie Road

By: \_\_\_\_\_  
(signed)

Osawatomie, Kansas 66064

John Wendt, Owner

(913) 731-5703

Wendt's Construction

\_\_\_\_\_  
(date of execution)

SEAL

ATTEST:

APPROVED BY:

\_\_\_\_\_  
City Clerk, Ann Elmquist

\_\_\_\_\_  
City Attorney, Richard S. Wetzler

(If the Contract is not executed by the President of the Corporation or general partner of the partnership, please provide documentation, which authorizes the signatory to bind the corporation or partnership. If a corporation, the Contractor shall furnish the City a current certificate of good standing, dated within ten (10) days of the date of this Contract.)

**SPECIAL CONDITIONS****NOTE**

These "Special Conditions" contain modifications in the form of additions, deletions and substitutions, to the General Conditions of the Contract, and to other parts of the specifications. Where any part of the "General Conditions" is so modified by the "Special Conditions" the unaltered provisions shall remain in effect.

- 1.1 PROJECT INTENT - The Contractor is made aware that his/her work is limited to specific items (as shown in the Project Manual and listed in the bid proposal) and does not include the electrical work which may be performed by the City or the City's contractors. Close coordination will be needed between the City and all contractors so that the work may proceed in an orderly and timely fashion. The Contractor will need to take this coordination into account for the length of this project and give adequate notice for each stage of construction so that others may perform their work.
- 1.2 TIME - The Total Project Work under this Contract shall be Totally Complete by **May 4, 2015**
- 1.3 LIQUIDATED DAMAGES - Liquidated Damages, as referenced in the contract agreement, shall be deducted in the amount of **\$100.00/per calendar day** for Total Project Work. Contractor agrees that such assessment is a reasonable estimate of the damages that may be sustained by the City in the event the project is delayed and that such amount is not a penalty.

END OF SECTION



**WENDT'S CONSTRUCTION**  
36675 Osawatomie Road  
Osawatomie, KS 66064

# PROPOSAL

Page No. 1 of 1 Pages

(913) 755-4495

To: City of Osawatomie  
5th + Main  
Osawatomie, KS 66064

JOB NAME / NO. <u>Sports Complex</u>	
LOCATION <u>Osawatomie, KS</u>	
PHONE <u>755-2146</u>	DATE <u>12-8-14</u>

1880

We hereby submit specifications and estimates for:

construction of 21' x 42' building. Bid includes all material and labor as stated in the original bid #101 with the exceptions stated in change order #102 dated 12-8-14 and as shown on drawing dated 12-8-14.

Original bid #101	\$ 105,000
Change order #102	\$ <u>8,775</u>
Total Cost without Brick	\$ 113,775

Plus brick	\$ <u>3,650</u>
Total Cost with Brick	\$ 117,425

**WE PROPOSE** hereby to furnish material and labor - complete in accordance with these specifications, for the sum of:

\_\_\_\_\_ dollars (\$ \_\_\_\_\_).

Payable as follows:

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alterations or deviation from above specifications involving extra cost will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized Signature

NOTE: This proposal may be withdrawn by us if not accepted within \_\_\_\_\_ days.

**ACCEPTANCE OF PROPOSAL** - The prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

## Wendt's Construction

### **Karl E. Cole Sports Complex Concession/Bathroom Bid**

#101

This bid is for the construction of a building pad, floor and 21' x 42' metal building with a shingled roof. This bid is figured on the pad being built in the area of the existing building. If this is built in parking lot it could cost more to construct the pad. This bid includes all material and labor to construct such building as quoted with the following exceptions: bathroom and kitchen accessories, which includes countertops, cabinets, and shelves.

The bid came in higher than I expected for a couple of reasons. First, I felt the need to increase the wall height to 9' so the soffit and lighting fixtures are harder for kids to reach. The subcontractors also came in higher than expected.

Originally the city was to construct the building pad but I elected to build the pad and pass on the electric to the city. Without any idea of the equipment or placement of equipment it is impossible to give an accurate estimate. Secondly the city electric crew would like to wire the building and I am fine with that, therefore my bid does not include the electric system. I will design a plan and locate all boxes if the city desires.

#### Bid includes the following:

- ✓ Spraying for termites before concrete placement
- ✓ Concrete floor and footing as per plan with 4000# concrete
- ✓ Plumbing 2 inch copper manifold in chase
- ✓ Pex piping to fixtures
- ✓ 3 ADA tank toilet
- ✓ 4 regular toilets
- ✓ 2 urinals
- ✓ 6 hand sinks
- ✓ 40 gal. tank
- ✓ Mop sink
- ✓ 3 compartment sinks
- ✓ 2 floor sinks
- ✓ 6 floor drains
- ✓ Hose bibs in baths, kitchen and chase

- ✓ 2 inch backflow preventer
- ✓ 6 inch main sewer

Without a kitchen design I do not know how many sinks are needed or the placement of any sink. My bid figures sinks close to chase and/or bathroom walls. I would also help design kitchen if given a list of equipment if it would help out. The design will also need to be sent in for State approval.

Price for building as quoted and drawn \$105,000, terms to be worked out later.

**Wendt' Construction**  
**Karl E. Cole Sports Complex Bid**

**Change Order #102:**

Remove the tanks from the toilets and install flush valves

Add steel utility door

Combination AC/heater wall unit (like motels)

Larger windows

Two roll down galvanized security doors to cover windows

Add sink to men's bathroom

Total Change Order Items \$8,775

**Brick Option:**

Install brick ledge 3' high on all four sides \$3,650



**SPORTS COMPLEX CONCESSION / BATH ROOM**

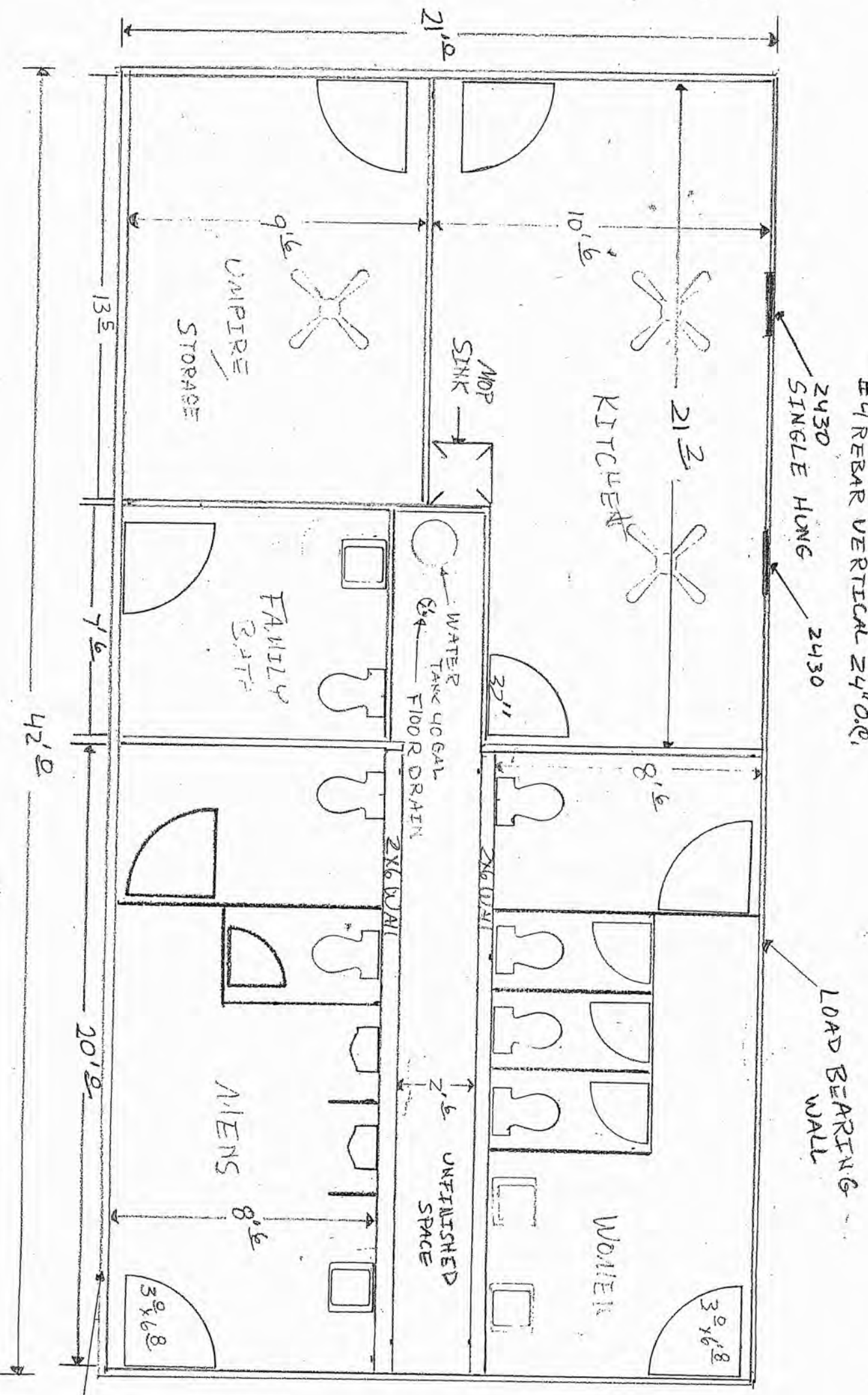
CONTRACTOR WENDY

**FLOOR DETAIL**



**FOOTING / FOUNDATION DETAIL**

12" WIDE 36" DEPTH  
3 #4 REBAR HORIZONTAL  
#4 REBAR VERTICAL 24" O.C.  
2430 SINGLE HUNG 2430



HEADERS FOR WINDOWS AND DOORS DID 2x10 (EXT) HEADERS FOR INT DOOR - 2x4  
WALL STUDS 16" O.C. 2x4 EXCEPT WHERE NOTED  
TRUSSES - 2x4 - 24" O.C. 4/12 ROOF STYLE GABLE  
CEILING HEIGHT - 9'-0"  
SIDING - 26 GA METAL. SOFFIT - 16" VINYL  
ROOF - 7/16 O.S.B. 30yr TIMBERLINE  
WALL BRACING METHOD #3  
ACQ BOTTOM PLATES ON ALL WALLS.  
EXT WALL BOLTS. 1/2" EMBEDDED  
3' O.C. AND 12" FROM END OF PLATE.  
EXT DOORS, WELDED FRAMES, GALV,  
GALV DOORS  
LEVERS KEYPED THE SAME  
5" GUTTER

5/8 DRYWALL ON ALL CEILINGS  
KITCHEN: WALLS 1/2" PURPLE ROCK COVERED WITH F.R.P. PANELS  
VAMPIRE RM: 1/2" PURPLE ROCK PAINTED  
WOMEN, MEN, FAMILY BATH:  
1/2" DORA ROCK ON PUMPING WALL.  
1/2" PLYWOOD ON ALL OTHER WALLS  
WALL COVERING: 12" x 12" TILE FROM FLOOR UP 5'. TOP 4 FEET F.R.P. PANELS

LOAD BEARING WALL

SCALE 1/4" = 1'-0"



## STAFF AGENDA MEMORANDUM

**DATE OF MEETING:** January 8, 2015

**AGENDA ITEM:** **Golf Course Operations**

**PRESENTER:** Don Cawby, City Manager

**ISSUE SUMMARY:** This summer I spoke with both the City Council and the Golf Course Advisory Committee about the need to do a thorough assessment of options for the operation of the Osawatomie Golf Course. This was sparked by a continued drop in revenue, increasing subsidies to the program, the inability to improve equipment or make other needed capital improvements, and the lack of reliable data to base operational decisions on.

After a couple of months of researching other operational possibilities, I informed both the City Council and the Golf Course Advisory Committee that the first step we should undertake was to put the facility out for a lease or contract operation. At the time, a lease (which is contractor taking on all profit and risk from the operation) was thought to be a very unlikely option. However, we believed that we needed to at least offer that option so that we were sure we had chased down that option and insured that reputable operators were not interested. Those suspicions were confirmed, when major operators in the area did not respond to a lease option. We did receive one lease proposal from an individual operator, but it was decided by the Advisory Committee to not pursue the proposal based on the submission.

Instead when proposals were requested, the City received three proposals from firms that would consider contract operation of the course. Contract operation differs from a lease arrangement, where the owner provides a fixed price for the contractor to operate, but derives some or all of the benefit from the arrangement. The Advisory Committee selected two operators to interview and decided to move forward and negotiate with Maxim Golf for a possible operation agreement.

While we are still in contract negotiations with Maxim at this time, I have asked Bryan Minnis, CEO of Maxim Golf, to speak to the Council on his plan and approach for the golf course. The

purpose of this presentation is to discuss Maxim's approach to course operations and to get familiar with Bryan and his team before you are likely to consider a contract with them at the next Council meeting.

**COUNCIL ACTION NEEDED:** None.

**STAFF RECOMMENDATION TO COUNCIL:** Provide direction to staff if needed.

# 2015 Osawatomie Golf Course Strategic Plan Overview



presented by

 Maxim Golf Solutions



## Who we are

Bryan Minnis – Founder / Chief Executive Officer

Jimmy Angelotti, GCSAA – Chief Operating Officer

Kursten Metelmann – Chief Sales Officer

Dr. Don Dunn – Vice President Business Development

Steve Miles – Chief Technology Officer

Lee Keith – Chief Analytics Officer

Jason Buck – Chief Marketing Officer



## Bryan Minnis - Profile

Bryan Minnis' golf career spans more than 30 years. From his humble beginnings as a caddie and player assistant staff member at Chillicothe Country Club to his oversight of multi-million dollar golf operations, Bryan's career has afforded him the opportunity to serve the golf community in several capacities throughout multiple markets. Because of his many and varied accomplishments he is considered one of the most respected golf course operators and sales and marketing experts in the golf industry. Bryan has served as Director of Golf and Director of Sales and Marketing for such distinguished clubs as Alvamar Country Club (Lawrence, KS), The National Golf Club of Kansas City (Kansas City, MO), The Wigwam Resort (Goodyear, AZ), Deer Lake Golf Club (Springfield, MO), and Kemper Sports' Shoal Creek and Hodge Park (Kansas City, MO). Bryan is currently part of the ownership group and serves as the Director of Operations for Alvamar Inc., which owns and operates Alvamar Country Club. In addition to his ownership and management background, Bryan was also the Director of Instruction at Palm Valley Golf Club in Goodyear, Arizona and Head Golf Professional at Stonecreek the Golf Club in Paradise Valley, Arizona. Bryan played collegiate golf at William Jewell College and then professionally on the Ben Hogan Tour, Western States Mini-Tour, and in the Southwest Section of the PGA. His diverse golf background coupled by his proven ability to drive revenues for multiple clubs both private and public, has distinguished him as one of the leaders within the industry.

The logo features a stylized green and yellow sunburst or golf ball icon to the left of the company name.

# Maxim Golf Solutions

## What we do

Maxim Golf Solutions was formed to meet the needs of golf course owners and operators who could benefit from the expertise of industry professionals offering affordable services and sensible solutions to the challenges faced in today's golf economy. Maxim Golf Solutions is a Kansas City, Missouri based Limited Liability Company that specializes in comprehensive consulting services designed to help golf course ownership and management succeed in their goals to maximize the potential of their operations.

Our executive team is comprised of industry professionals who specialize in very specific areas of golf club operation, and who also have a broad understanding of the golf industry on both a local and national level.

Maxim Golf Solutions brings over 100 years of professional experience with them that relates specifically to the needs of both private and public golf entities. Our group of professionals represents high level expertise and experience in every facet of club operations including: Golf Shop Operations, Food & Beverage, Grounds & Maintenance, Sales & Marketing, Membership, Training, Clubhouse Management, & Technology.

Maxim Golf Solutions prides itself in its ability to translate the experience and success of each of its executives into solutions for owners and operators looking to improve their business.

Maxim's executives meet formally on a weekly basis to discuss the needs and review the performance of each clients operation. Each executive carries with them an equal share of the company's success and responsibility for our client's success.



# Define a New Identity

- Create a greater Private Club experience within the Semi-Private context of the Course.
  - Member only Golf and Social Events
    - Member/Guest, Member/Member, New Year's Eve
  - Increased Member Benefits
    - Special Tee-Time capabilities
    - Discounts on F&B and Merchandise
    - Discounts on Golf Instruction and Guest Rates
    - Partnerships with Ozone. Grand Loft Events, other Reciprocal Clubs (golf and non-golf)
  - Small Upgrades to Facilities
    - Practice facility, clubhouse, cart barn, teeing areas, etc.





# Revenue Growth Strategy for Membership

- Suggested/Potential Membership Category Additions/Deletions
  - Single
  - Senior Single
  - Family
  - Senior Family
  - Single Out of County
  - Family Out of County
  - Reciprocal Club



# Membership Goals for 2015-2016

- Membership Goals by Category

What a healthy balance would look like

– Single	30
– Senior Single	30
– Family	20
– Senior Family	10
– Single O/C	25
– Family O/C	10

Total Memberships Goal = 125



# Revenue Growth Strategy for Public Play

- Promote heavy out of area offers to come play at Osawatomie
  - Reciprocal tee-time rates
  - Come back offers
  - Retail, Hotel, Restaurant, Service Provider special offers via affiliation
  - The Clubmember partnership
  - Heavy donation to charitable and other large gathering events (bring a foursome and play for only a \$15 cart fee per player)
  - Player reward systems for non-members who frequent the club
  - Combination events – Park days at the course, Lake days at the course, Skill events at the range, Holiday event happenings.



# Public Play Rounds & Rev. Goals for 2015-2016

- Rounds 2015 Goal
  - 4,666 public rounds at an average of \$12.86 green fee
- Rounds 2014 Actual (through September)
  - 3,553 public rounds at an average of \$10.51 green fee

*Gains in tournament, league, and play from outside Osawatomie will be the 3 key elements in raising round and revenue totals.*



# Maxim Golf Solutions

- Better reporting for financial and metric evaluation
  - Detailed round recording
  - Green/Fee cart fee average per round
  - F&B average per round
  - Promotion response tracking
  - Detailed weather / course interruption reporting
  - Monthly inventory tracking / COGS
  - Detailed expense tracking (course, golf shop, range)



# Maxim Golf Solutions

## – Strategic Business Plan Development

- Specifically detailed financial, operational, and service objectives with clearly defined measures and procedures for obtaining objectives
- Budgets
- Marketing Plan

## – Employee/Volunteer Service Manual Development

- Mission statement
- Core values
- Code of conduct
- Appearance and customer interaction standards
- Job descriptions and checklists



# Maxim Golf Solutions

## – Marketing and Sales

- Website maintenance and enhancement
- Marketing materials creation
- Social media maintenance and enhancement
- Golf shows / trade shows / events
- In house promotion (come back offers / gift certificates)
- Email database growth and marketing
- Print/Online/Cable/Radio advertising negotiation
- Cooperative advertising development
- Brand recognition development

## Frequently Asked Questions, Regional Hazard Mitigation Planning

The basis for this FAQ came from the Kansas Department of Emergency Management. It was changed to reflect the Miami County participating entities need to explain the system to our leaders.

### Question 1: What is hazard mitigation?

Mitigation is commonly defined as sustained action taken to reduce or eliminate long-term risk to people and their property from hazards and their effects. Hazard mitigation planning provides communities with a roadmap to aid in the creation and revision of policies and procedures, and the use of available resources, to provide long-term, tangible benefits to the community. A well designed hazard mitigation plan provides communities with realistic actions that can be taken to reduce potential vulnerability and exposure to identified hazards.

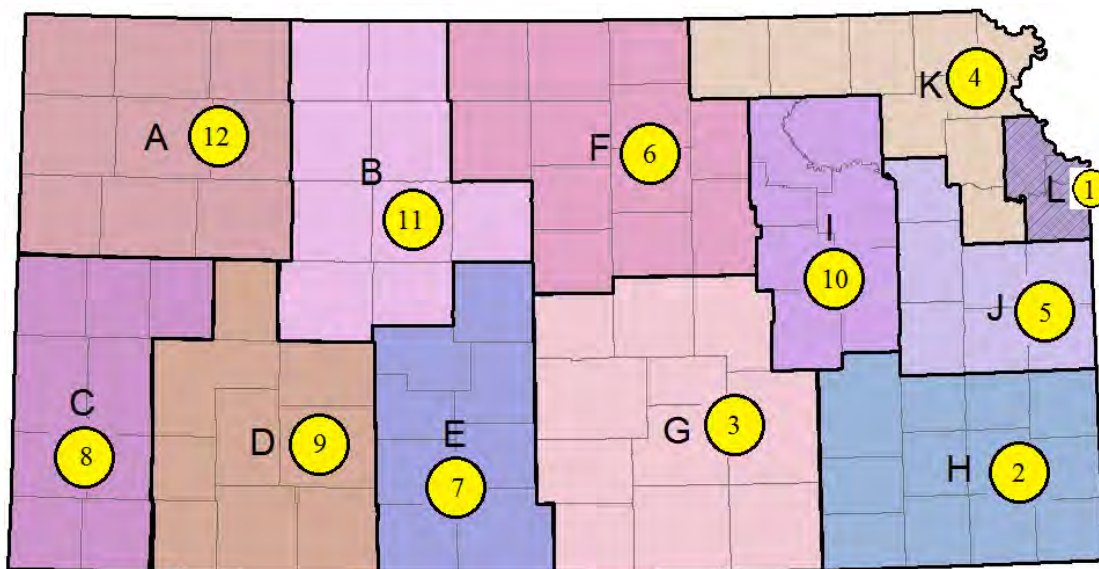
### Question 2: Why are we doing this?

This plan is being developed to make participating jurisdictions eligible for applicable federal disaster assistance, including Federal Emergency Management Agency's (FEMA) Hazard Mitigation Grant Program, Pre-Disaster Mitigation program, and Flood Mitigation Assistance program. To be eligible, federal requirements mandate that your hazard mitigation plan be updated every five years.

### Question 3: Why are we doing this now?

While we recognize that many of you have multiple years left on your plan some of your neighboring counties are about to expire. In order to get everyone on the same page and same clock we are updating and consolidating your region now.

Below is a map showing the regions and the order of completion:





**Question 4: Do we have to participate in the regional planning process? What are the consequences if I don't?**

No, participation in the regional mitigation plan is not mandatory. Your other options to maintain your mitigation plan include the following: hire a contractor and pay with your own funds, update current mitigation plan yourself, do nothing and allow your mitigation plan to expire

If an entity chooses not to participate, and does not update their current hazard mitigation plan, upon plan expiration the entity will no longer be eligible for most hazard mitigation assistance grant funds.

**Question 5: How much does it cost?**

This is being provided as a free service by KDEM. There is no direct cost to you other than your time.

**Question 6: How was this process organized?**

A regional Hazard Mitigation Planning Committee (HMPC) was formed by participating County Emergency Managers, a State of Kansas Mitigation Planner (Jeanne Bunting), and the plan author (Matt Eyer). The HMPC oversaw all aspects of plan creation. In addition, each participating jurisdiction completed and reviewed information for the plan. The following are the general responsibilities for participants:

- HMPC representatives (Emergency Managers) were responsible for inviting all jurisdictions within their county to participate in the process. A list of previous participants was shown at the first planning meeting to help with the identification.
- HMPC representatives (Emergency Managers) were the point of contact for all incoming data from participating jurisdictions within their county. This allowed the Emergency Manager to make sure everyone is participating (if they so elect).
- HMPC representatives (Emergency Managers) were responsible for reviewing the draft and final plans.
- The State Mitigation Planner received all completed paper work and tracked all participants.
- The Plan Author updated and consolidated all information from county plans to create regional plan.
- Representatives from each participating jurisdiction were responsible for completing the data collection guide, reviewing mitigation action items from the previous plan, and submitting any new mitigation action items (if desired).

**Question 7: There were four meetings scheduled.**

There were three scheduled meetings from KDEM for this planning process. We also held a meeting at the Paola Fire Station for all participating entities to explain the process in completing the data collection guide and reviewing the mitigation action items.

The following is a brief description of each meeting:

**Meeting 1:** The regional plan process began with a kickoff meeting. The kickoff meetings were intended for all jurisdictions, special districts, school districts, rural electric cooperatives, rural water districts, fire departments, public, and anyone else that would benefit from the plan. This meeting covered the historical participation, benefits of participation, participation requirements and provided attendees with the required data collection forms.

**Meeting 2:** This meeting took place in Miami County and all participating partners met to understand the process in completing the data collection guide and reviewing the mitigation action items.

**Meeting 3:** This meeting was only for HMPC Representatives (Emergency Managers). This meeting covered current participation from each jurisdiction, provided a review of the plan, and allowed for input on planning elements.

**Meeting 4:** This meeting was held approximately two months after the third meeting and was open to all participants and stakeholders of the plan. During this meeting the final draft plan was available for review. Loose ends are tied up, and the public comment period was discussed.

#### **Question 8: Where did the mitigation actions come from?**

Each mitigation action from the previous plan was carried forward to the regional plan. (Any actions in the previous plan labeled "multi-jurisdictional" have been assigned to each relevant participating jurisdiction as FEMA no longer accepts actions listed as multi-jurisdictional). New mitigation actions were also added if needed.

#### **Question 9: Can a jurisdiction that did not participate join at a later date?**

Unfortunately, once the plan has been finalized and approved by FEMA no other jurisdictions may join the plan. However, they are welcome and encouraged to join the next planning effort.

The full plan (906 pages) can be reviewed at:

<http://www.miamicountyks.org/DocumentCenter/Home/View/2000>

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION ADOPTING THE REGION J KANSAS  
MULTI-HAZARD, MULTI-JURISDICTIONAL HAZARD  
MITIGATION PLAN.**

**WHEREAS**, the City of Osawatomie recognizes the threat that natural hazards pose to people and property within our community; and

**WHEREAS**, undertaking hazard mitigation actions will reduce the potential for harm to people and property from future hazard occurrences; and

**WHEREAS**, the U.S. Congress passed the Disaster Mitigation Act of 2000 (“Disaster Mitigation Act”) emphasizing the need for pre-disaster mitigation of potential hazards; and

**WHEREAS**, the Disaster Mitigation Act made available hazard mitigation grants to state and local governments; and

**WHEREAS**, an adopted Multi-Hazard Mitigation Plan is required as a condition of future funding for mitigation projects under multiple Federal Emergency Management Agency (FEMA) pre- and post-disaster mitigation grant programs; and

**WHEREAS**, the City of Osawatomie fully participated in the FEMA prescribed mitigation planning process to prepare this Multi-Hazard Mitigation Plan; and

**WHEREAS**, the Kansas Division of Emergency Management and FEMA Region VII officials have reviewed the (Region J) Multi-Hazard, Multi-Jurisdictional Hazard Mitigation Plan, and approved it contingent upon this official adoption of the participating governing body; and

**WHEREAS**, the City of Osawatomie desires to comply with the requirements of the Disaster Mitigation Act and to augment its emergency planning efforts by formally adopting the (Region J) Multi-Hazard, Multi-Jurisdictional Hazard Mitigation Plan; and

**WHEREAS**, adoption by the Governing Body for the City of Osawatomie demonstrates the jurisdictions’ commitment to fulfilling the mitigation goals and objectives outlined in this plan, and

**WHEREAS**, adoption of this legitimizes the plan and authorizes responsible agencies to carry out their responsibilities under the plan.

**NOW, THEREFORE, BE IT RESOLVED**, that the City of Osawatomie adopts the (Region J) Multi-Hazard, Multi-Jurisdictional Hazard Mitigation Plan as an official plan; and

**BE IT FURTHER RESOLVED**, the City of Osawatomie will submit this Adoption Resolution to the Kansas Division of Emergency Management.

**PASSED AND ADOPTED** by the Governing Body of the City of Osawatomie, Kansas this 12th day of June, 2014, a majority being in favor thereof.

**APPROVED AND SIGNED** by the Mayor.

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L. Mark Govea, Mayor

(SEAL)

ATTEST:

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Ann Elmquist, City Clerk



## STAFF AGENDA MEMORANDUM

**DATE OF MEETING:** January 8, 2015

**AGENDA ITEM:** Loft on Sixth Request

**PRESENTER:** Don Cawby, City Manager

**ISSUE SUMMARY:** Last fall, the State Fire Marshal was called to inspect the Loft on Sixth (formerly the Grand Loft) at 435 Sixth Street because of complaints about safety of the facility. The building's owner has retained both an architect and contractor to design and build modifications to meet the State's requirements. Recently the plan submitted by the Loft was approved by the State Fire Marshal's office.

However, the plan that was submitted will require the City of Osawatomie to deal with the following issues:

- allow some encroachments into the City right of way,
- lose some public parking on Sixth Street,
- and work with the owner to bring a fire line to the building.

City staff has worked with the Loft and its contractor to try to find the best possible solution and minimize the impact on City property.

Also, in the letter, the owner has asked for assistance with building the fire line for the sprinkler system, and to waive all contraction related fees.

**COUNCIL ACTION NEEDED:** Review the proposed intrusion and discuss the assistance requests.

**STAFF RECOMMENDATION TO COUNCIL:** Staff will discuss possible assistance scenarios at the Council Meeting.



January 5, 2015

City of Osawatomie, Kansas  
439 Main Street  
Osawatomie, KS 66064

Dear City Council:

I am writing to you today as a business owner within the City of Osawatomie. Over the past decade, Spears, LLC has been the principal owner of the building located at 425 Sixth Street which has been primarily utilized as a wedding event facility commonly known as The Grand Loft.

As you are probably aware, the previous lessees of the building and operators of Grand Loft, Inc. and Grand Loft Events, LLC have each respectively ceased operation and today are no longer associated with the building or operations related to the wedding venue. During their tenure working with the property, recommendations, plans and codes were ignored by the lessees that have jeopardized the ongoing operations of the facility for its intended purpose.

Due to this, our group decided to hire Zingre & Associates to address the current deficiencies of the facility and develop a plan to bring the building up to code according to local, state and federal requirements.

We are happy to announce that the proposed plan has been accepted by the Office of the State of Kansas Fire Marshall. We are also happy to announce our decision to proceed with the proposed renovation plan and to develop the facility into a premiere event space not only for weddings but for various types of community events that will be organized under the facilities new name, Loft on Sixth.

We are excited about this new venture for our group and look forward to being a vital part of the community. We believe this type of event space is exactly what is needed in the greater Kansas City area for various functions and will serve as a cornerstone piece to the ongoing tourism efforts of the City of Osawatomie. I am happy to announce that Angee Chase, a local resident of Osawatomie, will serve as the facilities manager.

Attached is the proposed plan modernizations for the facility which will include an active fire safety system, a larger entryway, new bathroom facilities that are handicap-compliant, updated warming kitchens and new fire escapes located in the northeast and southwest corners of the building.



These proposed renovations will come with considerable expense to our group and will need the following City approval/participation to proceed:

- In order to accommodate the proposed southwest fire escape and larger main entryway, a newly extended sidewalk will need to be installed on the west side of the building. Attached is the proposed sidewalk demolition and new construction plan for your review. We need the City's approval for this plan and the elimination of 5 current parking spaces along that side of the building.
- In order to accommodate the proposed sprinkler system in the active fire safety system, we are requesting that the city participate by supplying the water line for the system to the building (also, please see attached plan).
- We would request that all applicable fees related to permits, utilities, etc. be waived by the City.

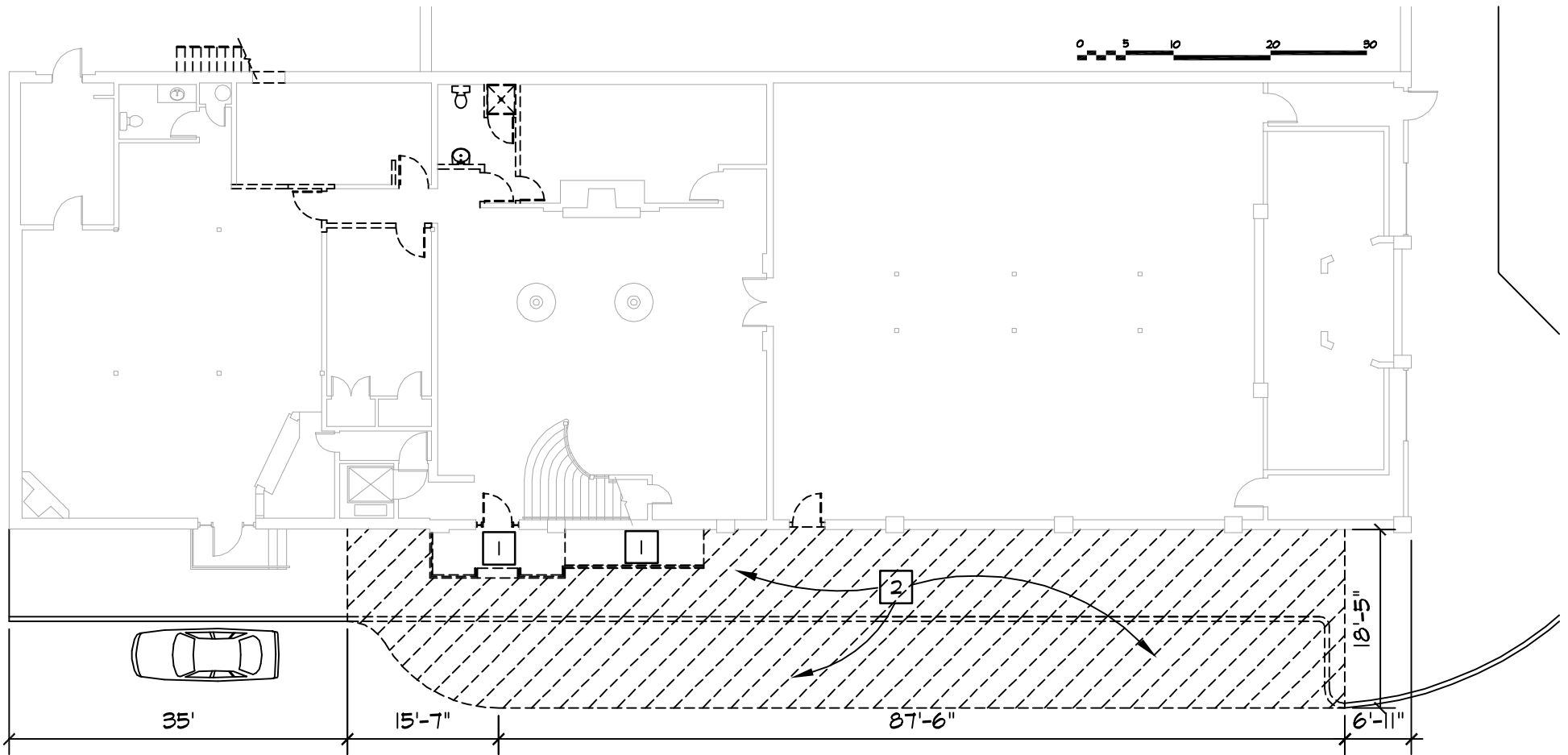
Again we are excited about the opportunity to be a vital part of this community and hope the City understands the significance of the proposed renovations to this wonderful building. It is our hope that these requests will be considered and approved accordingly at the upcoming City Council meeting slated for January 8, 2015. We look forward to a mutually beneficial and successful venture with the City of Osawatomie in the new year and beyond.

With Warmest Regards,

Dean E. Spears  
President  
Spears, LLC dba Loft on Sixth







### Sidewalk/Parking Demo Plan Notes:

- 1 REMOVE CONCRETE PORCH, RAILING, RAMP AND STEP AS INDICATED
- 2 REMOVE CONCRETE CURB, SIDEWALK AND CONCRETE PARKING AS NEEDED FOR NEW SIDEWALK CONFIGURATION.

### Sidewalk Demolition Plan

1/16" = 1'-0"

1  
A1





## STAFF AGENDA MEMORANDUM

**DATE OF MEETING:** January 8, 2015

**AGENDA ITEM:** Recreation Programs

**PRESENTER:** Don Cawby, City Manager

**ISSUE SUMMARY:** With the resignation of Ryan Crowley, I took some time to think about the recreation programs in our community and to look for opportunities to improve the programs and offerings in Osawatomie. In my review, I tried to envision what a “perfect” program would offer. A list of those items were:

- A variety of adult & youth programs focused on recreation and health
- Ease of access to administration and program information
- A central staffed location with integrated facilities that provide for easier oversight
- Adequate accountability of finances and management
- Good governance with strong community involvement

After considering these items, I really began to consider that the best solution might be to integrate our community’s recreation facility (the O-Zone) with our recreation programs. While this was something that was not politically or financially feasible when we had a third party operating the facility (the YMCA), I believed that now might be a time to at least have that conversation with the school district. After having an introductory conversation with Superintendent Gary French, it seemed that the school has had similar thoughts and was interested in having the discussion as well.

Since that initial discussion, we have had numerous conversations looking at the possibilities of making this transition and have come up with a general idea of how it might work. Generally, I believe that both Mr. French and I agree on the following:

1. Good recreation programs are important to our community, especially those for kids.

2. The mission of the O-Zone and our school district are more closely aligned with operating programs for youth and adults. The vast majority of recreation's customers are the same as the school's customers – kids and parents.
3. There is room for growth in our programs.
4. The O-Zone offers better access for parents and children to connect, because they have expanded operating hours.
5. In other communities, the combination of a recreation center and recreation programs is a successful match.
6. The City and School District want to partner together to make a potential transition seamless.
7. Both parties want to make sure that the funding that was once levied directly for recreation by the City would move to the School District, so that the move is revenue neutral to Osawatomie citizens.
8. Both parties need to work together to continue to create and improve recreation facilities available to Osawatomie citizens, such as an outdoor pool, walking trails, finishing improvements at the sports complex, and new parks.

If this is a concept that the Council supports, I believe it would be helpful to provide a letter to the School District that is supportive of this possible move and that we would work with them to make the transition work for both parties. Furthermore, I would like the Council to give me the authority to negotiate a transition plan, along with finances, with Superintendent French, so that we can come back to the Council and School District in the next few weeks with a full detailed plan on a proposed transition implementation.

**COUNCIL ACTION NEEDED:** Review the issue.

**STAFF RECOMMENDATION TO COUNCIL:** Authorize the City Manager to continue negotiations and come back to the Council with a detailed plan on how to implement the transition.