

OSAWATOMIE CITY COUNCIL
AGENDA
January 22, 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 22 Agenda
 - B. Approve Minutes of December 18 Council Meeting
 - C. Approve Appropriation Ordinance 2014-12.1
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. Resolution to Rezone Downtown Perimeter to R-2
 - B. Contract for Police Station Sallyport/Garage
 - C. Golf Course Management Contract
 - D. Memorandum of Understanding with USD 367 Regarding Recreation
9. New Business
 - A. Appointments – None
 - B. Budget Appropriation Resolution for 2015
 - C. Resolution for Fee Table
10. Council Reports
11. Mayor’s Report
12. City Manager’s Report
13. Executive Session(s)
14. Other Discussion/Motions
15. Adjournment

WORKSESSION

1. Call to Order
2. Housing Stock Report by Councilwoman Maichel
3. Adjournment

REGULAR MEETING – February 12, 2015
REGULAR MEETING – February 26, 2015

Osawatomie, Kansas. **December 18, 2014.** The Council meeting was held in Memorial Hall. Mayor Govea called the meeting to order at 6:33 p.m. Council members present were Dickinson, Farley, Hunter, LaDuex, Walmann and Wright. Absent were Hampson and Maichel. Also present were City Manager Cawby, City Attorney Wetzler and City Clerk Elmquist. Visitors were Wayne Ova, Blake Madden and Colleen Truelson.

INVOCATION. Pastor Wayne Ova, Faith Baptist Church, delivered the invocation.

CONSENT AGENDA. Approval of December 18 Agenda, approval of the minutes of November 13 and November 20 Council Meetings and approval of Appropriation Ordinance 2014-11. **Motion** made by LaDuex, seconded by Hunter to approve the Consent Agenda as presented. Yeas: All.

Presentations, Comments from the Public:

Pastor Ova said the church opened its doors 60 years ago on Labor Day 1954.

Public Hearings:

2014 BUDGET AMENDMENT HEARING. Mayor Govea opened the hearing at 6:39 p.m.

	<u>Original</u>	<u>Proposed</u>
Water	903,467	1,016,092
Refuse Fund	379,700	396,700
Recreation	783	5,000
Rec Employee Benefits	80	1,000
Sewer	893,881	934,760

There were no comments from the public. The hearing was closed at 6:41 p.m.

Unfinished Business:

APPROVE 2014 BUDGET AMENDMENT. **Motion** made by LaDuex, seconded by Hunter to approve the 2014 Budget Amendment as presented. Yeas: All.

WWTP IMPROVEMENTS PROJECT CHANGE ORDERS NO. 4 AND NO. 5. Order No. 4 increases the contract by \$3,009.28. It includes additional work performed on the piping and valves in the headworks and thickener building to reduce water hammer when the belt press and/or mechanical screen starts and stops operation and adding an exterior garage door opener on the overhead door of the building. Also, a downspout had to be relocated due to a design oversight. BG Consultants will cover the cost. Because of delays associated with processing the HVAC equipment the contractor has requested an additional 35 days. Order No. 5 increases the contract \$3,604.86. It adds a new data logger in the office building and transducer at the head of the plant. **Motion** made by Hunter, seconded by Maichel to approve Change Orders No. 4 and No. 5. Yeas: All.

WWTP IMPROVEMENTS PROJECT PAY APP 6. **Motion** made by Hunter, seconded by LaDuex to approve Pay App 6. Yeas: All.

RAILS TO TRAILS – INTERIM CONTRACT WITH KANZA RAIL-TRAILS CONSERVANCY. The interim agreement with the KRTC gives them time for their organization to agree on whether they would like a 99-year lease or an out-right purchase agreement. **Motion** made by Hunter, seconded by Dickinson to authorize the Mayor to sign the agreement with the KRTC. Yeas: All.

New Business:

APPOINTMENTS: none

APPROVE 2015 CEREAL MALT BEVERAGE LICENSES. The following renewals were considered:

Casey's Retail Store – East Main Pizza Hut

Casey's Retail Store – 6th & Parker Tailgators
Gasmart LLC (Quick Stop) Whistle Stop Café
Hayden & Hayden, LLC (Oz Mart) Willard's, Inc. (Moon's Hometown Market)
Osawatomie Golf Course (Bogey's)

Motion made by Hampson, seconded by Maichel to approve the CMB licenses. Yeas: All

ANNUAL FEES RESOLUTION – UTILITY RATES. City Manager Cawby recommended an increase to sewer averaging 8% per customer and an increase to water averaging 10% per customer. The changes would become effective January 1, 2014. **Motion** made by LaDuex, seconded by Hunter to approve the utility rates with the exception of the late fees. Yeas: All. **Motion** made by Hunter, seconded by LaDuex to adopt the Annual Fees Resolution. Yeas: All. The Resolution was assigned No. 695.

SRO CONTRACT WITH USD 367. The City was awarded a COPS grant which provides a school resource officer for USD #367. The school will pay the match portion of the officer's salary and the City will provide the equipment. 'The City and the school district have proposed an agreement to govern the coordination issues between the two parties. Motion made by Maichel, seconded by Walmann to approve the agreement subject to technical changes by the City Attorney. Yeas: Dickinson, Hunter, LaDuex, Walmann and Wright. Nay: Farley.

RESOLUTION – NEW PERSONNEL POLICIES. A final draft of the personnel regulations was presented. **Motion** made by Hunter, seconded by LaDuex to adopt the policy as presented, subject to any technical or non-substantive changes. Yeas: All.

2015 PAY INCREASES. **Motion** made by LaDuex, seconded by Farley to approve a .5% COLA, an increase of \$.10 per hour, along with a \$500 bonus. Yeas: All.

SKID LOADER & TRAILER. KC Bobcat's Municipal Rollout Program offers a one-year lease with a new replacement machine provided each year for \$7,000 per year. A trailer would need to be purchased to haul the loader. **Motion** made by LaDuex, seconded by Wright to approve the leasing of a T750 skid loader. Yeas: All.

CLOSE CITY OFFICES ON DECEMBER 26. **Motion** made by LaDuex, seconded by Hunter to approve December 26 as the floater holiday. Yeas: All.

Council Reports:

LaDuex: Attended annual Northland Committee meeting.

Hunter: B & B Aircraft Supplies has moved their business to Osawatomie. They also export airplane parts.

Maichel: The employees breakfast is tomorrow. Very excited about the housing stock report.

Mayor's Report:

Would like those employees celebrating special years of service to attend the breakfast.

Attended the inauguration of Governor Sam Brownback.

City Manager's Report:

Projects:

Sports Complex. Staff has completed most of the drainage work. Continues working on contract with John Wendt. An agreement should be ready for the January 8 Council meeting. Will work with Wendt to get some of the basic project started as soon as possible.

Police State Garage. Headway has been made on building the sally port. The concrete has been poured.

Lake Shelter House. Last week the top parts of the chimneys were removed for the installation of the roof.

Issues:

RFP for Recodification. Received three bids to do the City's recodification process. Will be meeting with them over the next few weeks.

Golf Course Contract. Has been working with Maxim Golf about their contract operation of the Golf Course. The company would act as the General Manager of the facility and would operate the the facility.

Resignation of Parks & Recreation Director. Ryan Crowley has resigned as Parks & Recreation Director. His last day will be January 2.

Court Changes. Court Clerk operations have been assigned to a full time position. The part-time clerk position will be eliminated. Carol Gatlin's last day is January 2.

EXECUTIVE SESSION – none

OTHER DISCUSSION/MOTIONS: none

At 9:14 p.m. **motion** was made by Hunter, seconded by Hampson to adjourn. Yeas: All.

Ann Elmquist, City Clerk

Record of Ordinances

ORDINANCE NO. 2014-12.1

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	SPA Hydro Electricity	1556	2,596.02
KMEA	WAPA Electricity	1557	9,421.00
KMEA	Nearman Electricity	1558	35,476.48
City of Osawatomie	Petty Cash Reimbursement	1559	5,017.06
KMEA	SPA Hydro Electricity	1560	2,672.35
AT&T	RTU'S	45026	221.96
Brewer's Automotive Repair	Tires, Alignment, Battery, Switch	45027	1,989.57
Don Cawby	Mileage	45028	145.60
City of Osawatomie	Utilities	45029	11,599.32
Family Center	Couplings, Elbows, Hammers	45030	709.96
Galls	Commando Sweater	45031	21.49
GDS Associates	Spec Books	45032	161.54
Hanes Florist & Greenhouse	Flowers	45033	25.00
Inland Truck Parts & Service	2 Speed Assembly	45034	397.00
Kansas City Wilbert	Grave Openings	45035	3,302.60
Kansas One Call System	Locates	45036	30.00
L&K Services	Refuse, Yard Waste	45037	32,559.41
Louisburg Ford Sales, Inc.	Seat Handle	45038	15.52
Lybarger Oil	Fuel	45039	4,180.83
Macek's Auto Body	Repair Headlights, Roof Panel	45040	1,001.00
Miami County Sheriff's Office	Prisoner Care	45041	1,680.00
Miami Lumber, Inc.	Ceiling Tile, Lumber	45042	898.20
Midland Contractors	WWTP Imp - Application #7	45043	63,707.88
Moon's IGA	Cleaning Supplies, Batteries, Coffee	45044	376.44
New Century Dodge	Wheel Nut	45045	78.00
NPG Newspapers	Vespers Service, Visitor's Guide	45046	472.50
Oil Patch Pump & Supply, Inc.	PVC Cap	45047	2.74
Paola Do It Best Hardware	Drill Set, Drill Bits	45048	33.68
Quill	Markers, Ink, Name Plates, Clips	45049	257.53
Reeves-Wiedeman Company	Zurn Back Outlet Bowl Gasket	45050	10.55
Rejis Commission	LEWeb Subscription Service	45051	63.00
Royal Metal Industries, Inc.	Square Tube	45052	102.20
Rural Water District #1	Services	45053	224.99
Smitty's Lawn & Garden Equipment	Bolts	45054	7.68
Wade Quarries	Gravel	45055	2,979.88
Brad Waggoner	Proshop	45056	0.75
Winterscheid Auto Parts	Filters, Hex Keys, Battery, Plugs	45057	-
Winterscheid Auto Parts	Filters, Hex Keys, Battery, Plugs	45058	1,529.25
Design Mechanical, Inc.	Insall Fittings	45059	1,524.50
Visa	DVD'S, Craft Supplies, Books	45060	770.45



STAFF AGENDA MEMORANDUM

DATE OF MEETING: January 22, 2015

TO: City Council

AGENDA ITEM: **Planning Commission Recommendation for Rezoning Downtown Perimeter**

PRESENTED BY: Don Cawby, City Manager

ISSUE SUMMARY: The initial cause for consideration of this re-zoning occurred when Doug Jenkins requested to rezone his property at 412 Brown from R-1 (Single Family) to R-2 (Two-Family and Higher Density Single Family) to allow his current 3,200 sq. ft. home to become a duplex.

Rezoning of 412 Brown. The Osawatomie Planning Commission held a public hearing February 27 to consider the above request. Mr. Jenkins argued that the property was not viable as a rental for a single family home at that location. He also argued that the property had sat vacant for several years and nothing had been done with it, and that the property next to his is a 3 unit – apartment. The hearing was attended by a couple that owned and lived on the 400 block. They asked what impact the rezoning would have on their property values.

The staff recommendation was to review several issues, but primarily staff did recommend that it was feasible to look at a “buffer zone” or ring around the entire downtown area that would plan for residential or garden apartments where it might create a better zoning plan for those that want to walk or be closer to essential services. Based upon this discussion, the hearing was tabled to notify neighbors in the area of this “buffer zone” discussion and to study options for a “buffer zone.”

On, June 11 the hearing was continued. Mr. Jenkins was the only one present for the hearing. After a lengthy discussion the Planning Commission voted to send a recommendation of denial of the request to the City Council. The reason for the denial was to not allow spot zoning as it

would essentially nullify any future denial of spot zoning and render the City's zoning map useless. The denial was passed by a vote of 4-0.

Rezoning of North Side of 400 Block of Brown. Immediately following the denial of the previous motion on June 11, the Planning Commission recommended that a hearing be set to consider a proposal, by the Commission, to rezone the entire north side of the 400 block of Brown Avenue from R-1 (Single Family) to R-2 (Two-Family and Higher Density Single Family). This was recommended to accommodate the ability of some of the larger homes being turned into duplexes in this block.

The Osawatomie Planning Commission held the public hearing on August 20, 2014 on the Planning Commission's request to rezone the 400 block of Brown Avenue. Those impacted by the zoning were notified in compliance with the City's zoning regulations. Mr. Jenkins and Mayor Govea appeared at the hearing. There was one letter received from a neighbor within 200 feet of the block stating he did not wish to see the re-zoning for various reasons.

After reviewing, it was decided that many of the claims in the letter were not factual, but the response was noted. Mayor Govea was also present at the meeting and asked the Commission to consider the big picture when it comes to re-zoning. All Commission members indicated that the City's zoning map needed to be redrawn. Staff indicated that work has already begun on starting a planning process for updating the Comprehensive Plan, which would include evaluating and changing the map. Staff indicated that redrawing the map without a plan would be counter-productive.

The Commissioners made separate motions to approve and reject, with all ending in a 2-2 tie. If the Planning Commission fails to pass a recommendation on a rezoning request, the Planning Commission shall be deemed to have made a recommendation of denial. By application of these rules, by the Commission not passing a motion to approve, the recommendation was deemed to be considered a denial.

The recommendation of denial was sent to the City Council on September 11, 2014. The motion to reject the rezoning was unanimously approved and returned to the Planning Commission. The Council asked the Planning Commission to evaluate a proposal that would rezone the 400 and 500 block areas of Brown and the 400 and 500 blocks of Parker.

After receiving the input from the City Council, the Planning Commission reviewed the matter and again set a hearing for December 17, 2014 to take comments on a proposal for a downtown perimeter zoning of R-2. The attached map shows the proposed area of change.

The hearing was attended by one home owner and by Mr. Jenkins. After taking testimony the Planning Commission unanimously approved a recommendation to the City Council to rezone the downtown perimeter (as shown in the attached map) from R-1 Low Density Residential District to R-2 Medium Density Residential District.

COUNCIL ACTION NEEDED: When the Planning Commission submits a recommendation of approval or disapproval of such amendment and the reasons therefore, the Governing Body may: (1) adopt the Planning Commission recommendation; (2) override the Planning Commission's recommendation by a 2/3 majority vote of the membership of the Governing Body; or (3) return such recommendation to the Planning Commission with a statement specifying the basis for the Governing Body's failure to approve or disapprove.

STAFF RECOMMENDATION TO COUNCIL: The adoption of the Planning Commission recommendation is an appropriate rezoning and fits well with the other adjacent zoning. Staff would recommend approval with full knowledge that some changes may be made to the area when a Comprehensive Plan and Rezoning is adopted.

City of Osawatomie
PLANNING COMMISSION

DATE: December 17, 2014
TO: Council
FROM: Planning Commission
RE: Re-zoning North Side of 400 Block of Brown

The Osawatomie Planning Commission held a public hearing August 20, 2014 on the Planning Commission's request to rezone the 400 block of Brown Avenue from R-1 to R-2. Only Mr. Jenkins appeared at the hearing. There was one letter received from a neighbor within 200 feet of the block stating he did not wish to see the re-zoning for various reasons.

The Planning Commission held a public hearing December 17, 2014. Mr. Jenkins and Thomas Hall were in attendance representing the public. Mr. Hall voiced concern with traffic issues and poor upkeep. Chairman Anderson motioned to approve as to the legal description, move to recommend to the City Council approval of R-2 Medium Density Residential District for the subject land based on the finds of compatibility with the matters to be considered in the zoning regulations. Motion was seconded by commissioner Mitzner. All approved.

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE REZONING OF CERTAIN PROPERTY IN THE CITY OF OSAWATOMIE, KANSAS FROM R-1 (SINGLE-FAMILY RESIDENTIAL) TO R-2 (MEDIUM DENSITY RESIDENTIAL); AMENDING THE ZONING MAP INCORPORATED BY REFERENCE IN ORDINANCE NO. 3715, AND AMENDMENTS THERETO.

WHEREAS: after due and lawful notice, the Osawatomie Planning Commission on December 17, 2014 held a public hearing, and recommended approval of the request to rezone from R-1 (Single Family Residential) to R-2 (Two-Family Residential).

WHEREAS: the Governing Body may (1) approve such Planning Commission recommendation, (2) override the Planning Commission's recommendation by a 2/3 majority vote of the membership of the Governing Body; or (3) may return the same to the Planning Commission for further consideration, together with a statement specifying the basis for the Governing Body's failure to approve or disapprove.

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

SECTION ONE: That the zoning district classification for the following described property, situated in Miami County, Kansas, to-wit:

The North side of the 400 Block of Brown, Osawatomie, KS; Lots 11- 20, block 31 in the Original Town of Osawatomie, Ks, South side of 400 Block of Parker; Lots 1 thru 6, Block 24 in the Original Town of Osawatomie, KS the North side of the 400 Block of Parker; Lots 11-20, Block 18 in the Original Town of Osawatomie, the North side of the 500 Block of Parker; Lots 11-18, Block A of Church Square, the South side of the 500 Block of Brown; Lots 6-10, Block 76 in the Ellensville Addition and the North side of the 500 Block of Pacific; Lots 11-15, Block 76 in the Ellensville Addition.

Commonly known as the downtown perimeter area, is hereby changed from R-1 (Single-Family Residential) to R-2 (Medium Density Residential).

SECTION TWO: That the Zoning Map adopted by Ordinance No. 3715 is hereby amended to reflect the rezoning, as set forth in Section One.

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

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas, a majority being in favor thereof, this 22nd day of January, 2015.

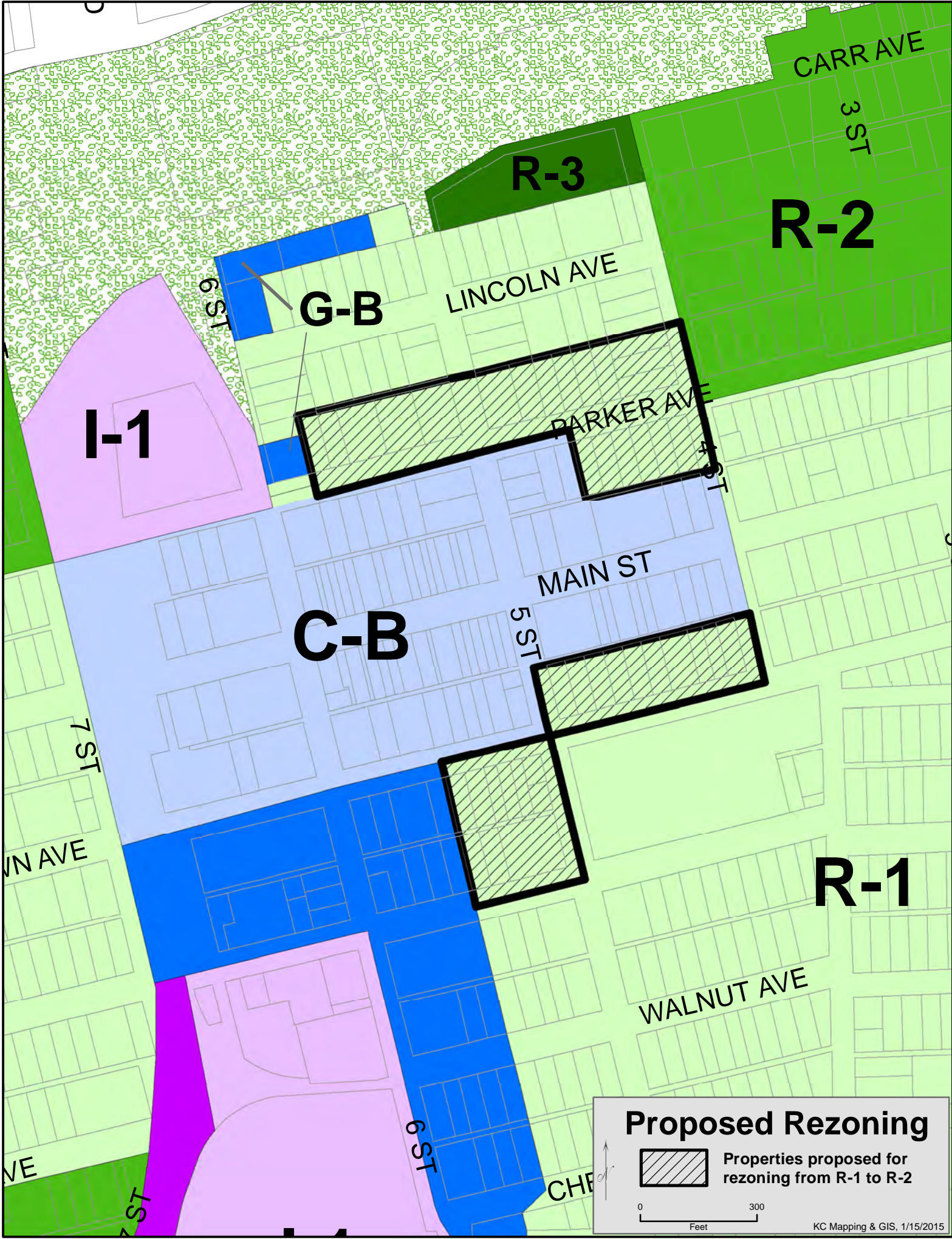
APPROVED and signed by the Mayor.

L. Mark Govea
Mayor

(SEAL)

ATTEST:

Ann Elmquist
City Clerk



CARR AVE

3 ST

R-3

R-2

LINCOLN AVE

G-B

I-1

PARKER AVE

MAIN ST

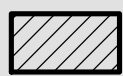
C-B

5 ST

R-1

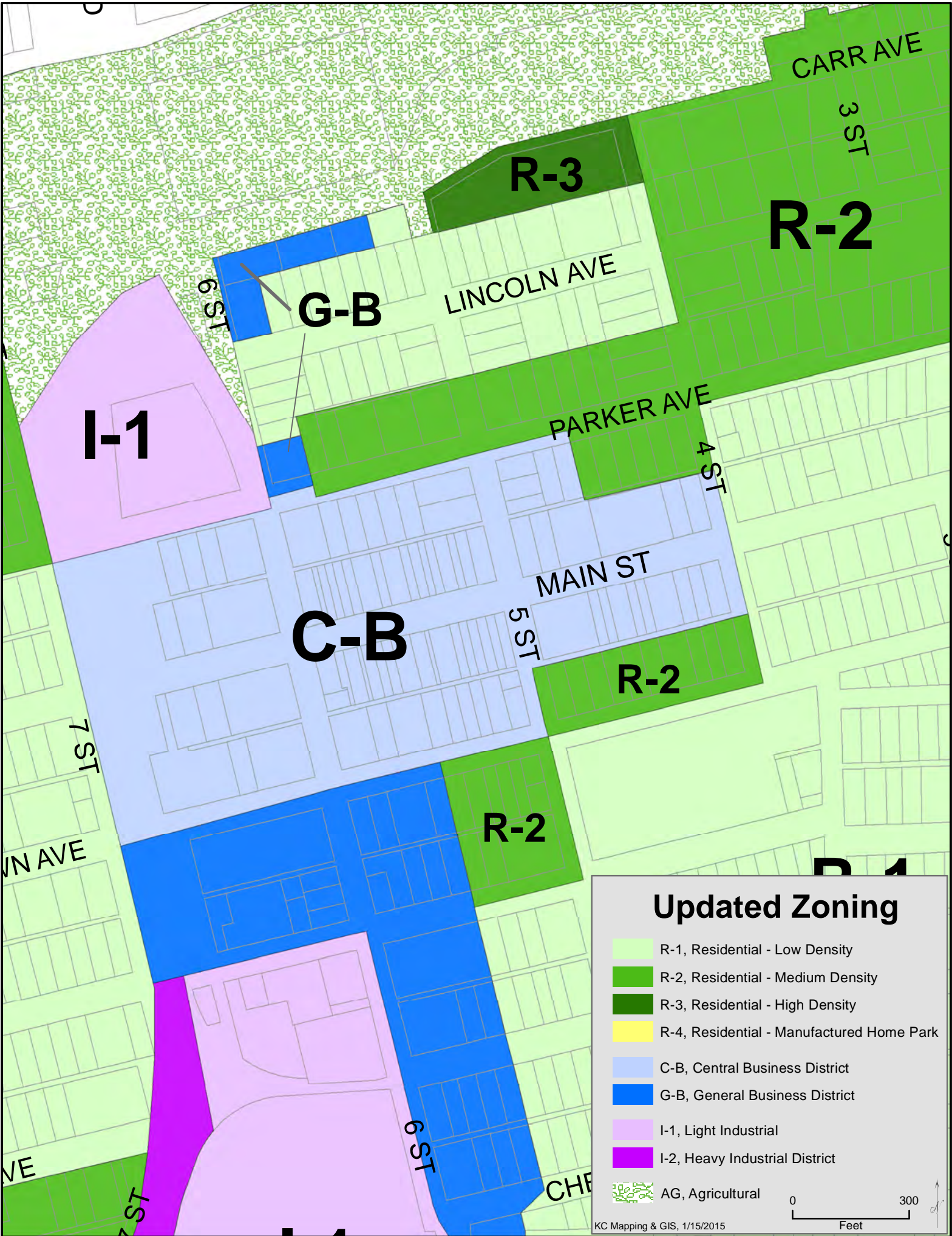
WALNUT AVE

Proposed Rezoning



Properties proposed for rezoning from R-1 to R-2







STAFF AGENDA MEMORANDUM

DATE OF MEETING: January 22, 2015

AGENDA ITEM: Police Garage / Sally Port

PRESENTER: Don Cawby, City Manager

ISSUE SUMMARY: In order to construct a sally port/garage for the new Police Station, we have solicited metal building bids once, and bid the project through an RFP twice. At each turn we have either had bids that were well above our budget or had problems with reaching agreements with contractors. This summer I asked the Council if we could seek alternative arrangements to find a builder, and after several months of trying that also did not work.

Finally, during the past month, we have been able to find an arrangement that works with a contractor that was involved in the original American Buildings, Inc. A bid of \$76,679 From Ironwood Construction with an American Building would include all site prep, pouring the slab and driveway, erecting the building and building a breezeway between the two buildings. We upgraded the corner posts to make sure the building is very sturdy, and we allowed for a brick ledge to be able to add a 4-foot wainscoting to the building in the future. The City will still do some rough in of the water and sewer services, but the garage portion of the building will be complete and ready for us to add the holding area in the building.

This bid is at or below the previous bids once the grading and concrete work are completely figured in, and the upgrades for the frame and the building are included.

American Buildings, Inc. will provide engineered stamped plans for the slab and building, and will meet all snow load and wind load regulations for public safety buildings under the International Building Code.

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

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



6922 Martindale Rd.
Shawnee, KS 66218

www.americanbuildingsinc.com
jamie@americanbuildingsinc.com

Cell (913) 915-5408
Office (913) 894-6033
Fax (913) 422-6655

January 8, 2015

New Osawatomie Police Station Garage-**Changes/adds in bold**

Attn: Mike Stiles

From: Jamie Jerome

Thank you for your interest in American Buildings, Inc. Please review the following and call with any questions 913-915-5408. I look forward to meeting with you soon and helping with all of your building needs. Thank you.

- One 40' x 40' x **10'** (**Bryan went down & measured existing building w/laser**) all steel, clear-span, metal building, I beam construction
- **4:12** roof pitch, bypass girts, extra girt at **approx. 7'6" on all sides**
- IBC2006 building code, 20# snow/90 mph wind/exposure C/3# collateral load
- 26 gauge colored PBR roof panels; 26 gauge colored PBR sidewall panels
- **Sidewall bays, 28', 12'**

Accessories:

- 2 - 3070 walk doors, steel-insulated, lever locksets keyed alike, one fire rated
- ****- 1 - 5' x **12'** framed opening (for breezeway attachment by others)
- 2 - 3' x 3' framed openings
- **2 - fan w/louver & motorized damper included, CO2 activation**
- 2 - 10' x 8' 25 gauge steel-insulated overhead doors; full cover trim included
- Gutters & downspouts included
- 4" insulation, complete building, white vinyl reinforced w/nylon
- Liner panel, 26 gauge colored, to 1st girt, **approx. 7'6" on all sides; includes low girt**
- **4' wainscot included w/transition trim on all sides (for ease of future brick wainscot by others on all sides)**
- Formed base trim & channel included
- Includes KS stamped-engineered drawings of building
- **Includes KS stamped-engineered foundation plan**
- Includes anchor bolt layout plan

Total materials & freight:	\$30,992.00
Tax Exempt	
Erection, unloading, & overhead door installation:	\$10,577.00
6" floor, piers, & continuous concrete foundation:	\$26,882.00
(Includes 40' x 20' "apron" on east side)	
Breezeway materials, labor, & concrete:	\$3,998.00

Optional, ½ load mainframe on both endwalls, (4 columns) add \$3,780.00 materials, \$600.00 for larger concrete pier pads to concrete costs.

Optional, high lift tracks on both overhead doors, add \$450.00.

Materials payment terms: \$7,500.00 deposit to order, materials balance due upon delivery via Cashier's Check

Since Ironwood Construction, LLC (Bryan Hunter) is providing everything except materials, (including insurance) we will probably run the project through Ironwood.

Delivery time, approximately 6 weeks

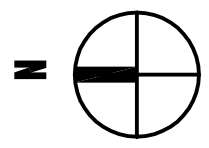
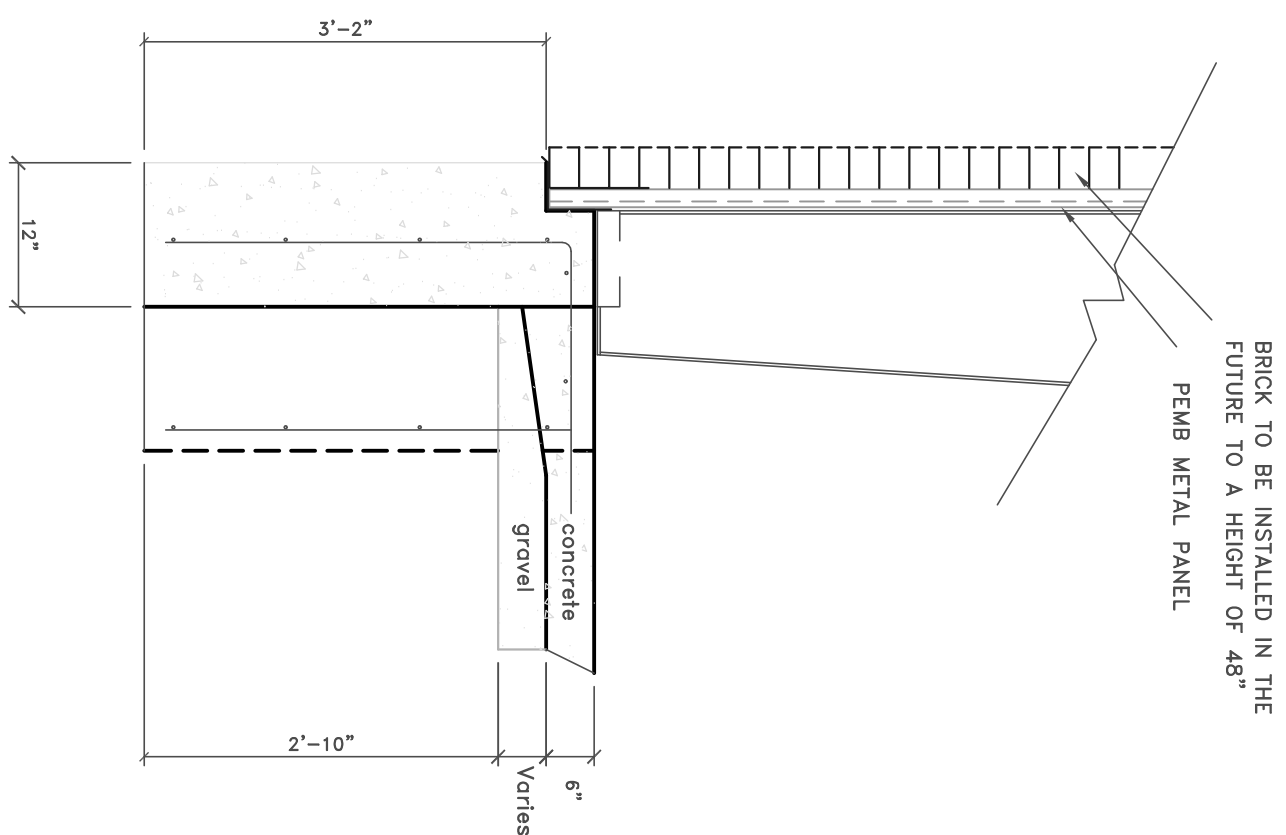
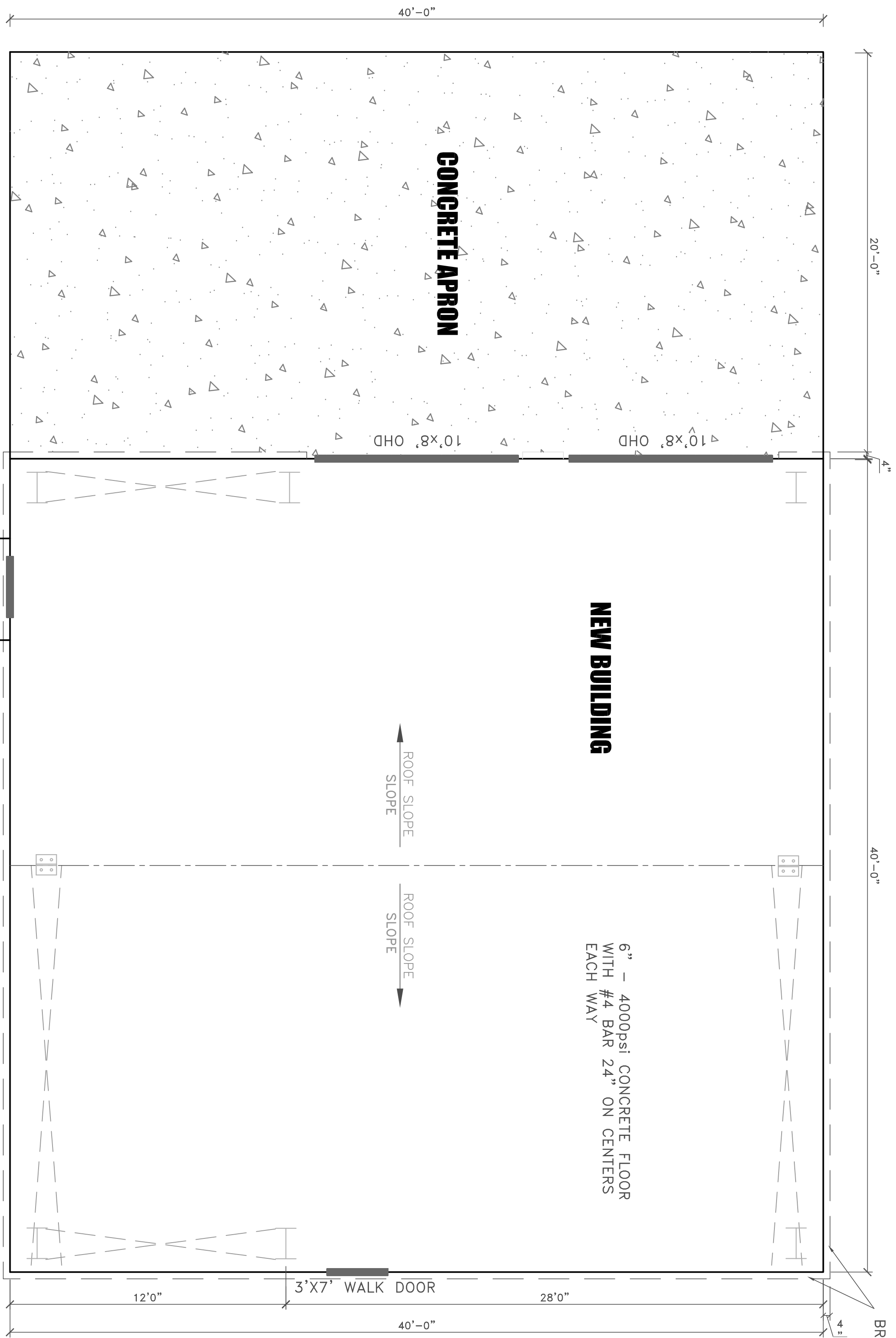
Our buildings come standard with the following:

- Premium PBR roof and wall system, every sheet includes an extra lap
- Tape caulking on every lap of each roof sheet
- Complete trim package to cover your base, corners, gables, eaves & all openings
- 14/16 gauge 8" steel girts & purlins, red iron oxide coated to prevent rust
- Solid steel Ibeam main frame columns and rafters
- Closures for your eaves, gables and ridge caps to seal weather tight
- Color coded self-drilling fasteners with neoprene washers to seal tight
- Step by step erection and safety manual
- Designed and engineered to meet all city/county codes

Sincerely,

Jamie Jerome
Vice President

"Serving the Midwest for over 20 years with the best quality, service, & pricing"



CONSTRUCTION CONTRACT

FOR

GARAGE & SALLYPORT AT NEW OSAWATOMIE POLICE DEPARTMENT

BETWEEN

THE CITY OF OSAWATOMIE

AND

IRONWOOD CONSTRUCTION LLC

THIS AGREEMENT, is made and entered into this 22nd day of January, 2015, by and between the City of Osawatomie, Kansas, hereinafter termed the "City", and Ironwood Construction, LLC, hereinafter termed in this agreement, "Contractor", for the construction and completion of Project, designated, described and required by the attached Bid proposal dated January 8, 2015, 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 **SEVENTY-SIX THOUSAND SIX HUNDRED SEVENTY-NINE DOLLARS (\$76,679)** 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, 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 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.
- 3.7 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.
- 3.8 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.
- 3.9 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 Contract Documents 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 Contract Documents by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Contract Documents. 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 Contract Documents.

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 affect 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 Contract Documents describing construction materials, labor, equipment and transportation necessary for, and in connection with, the construction of a public improvement;; and*

***WHEREAS**, the Contractor, has submitted to the City a Bid in accordance with the terms of this Agreement; and*

***WHEREAS**, the City has awarded to 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 Contract Documents; 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 three (3) counterparts of this Contract in the prescribed form and manner, the day and year first above written.*

CITY OF OSAWATOMIE

By: _____
(signed)

Mark Govea, Mayor _____

(date of execution)

City of Osawatomie _____

439 Main Street _____

Osawatomie, Kansas 66064 _____

IRONWOOD CONSTRUCTION, LLC

By: _____

(signed)

(date of execution)

Bryan Hunter, Owner

Ironwood Construction, LLC

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 Bid Documents 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 15, 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



STAFF AGENDA MEMORANDUM

DATE OF MEETING: January 22, 2015

AGENDA ITEM: Golf Course Operations

PRESENTER: Don Cawby, City Manager

ISSUE SUMMARY: Over the past 6 months, the Golf Course Advisory Committee has reviewed various options for improving the financial and operational performance 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, the City sought proposals from Golf Course operations for either leasing or contract managing the OGC. As we suspected, we did not receive a proposal that led us to believe leasing was a viable option for a small, rural course. 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 the owner 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.

The attached contract is the result of our negotiations and what I believe is a fair contract to both parties. As Bryan Minnis, CEO of Maxim Golf, LLC presented at the last council meeting, the City would pay Maxim Golf \$2,500 a month to serve as the General Manager of the property. Maxim's duties include:

- A. Oversight of all golf operations including golf shop operations, grounds maintenance, sales and marketing, staffing, purchasing, IT, reporting, tracking, and all other day to day functions.
- B. Development of a business plan, service manual, annual comprehensive operating budget and 5-year Capital Improvement Plans.

- C. Attendance at Advisory Board and Council meetings.
- D. Representation at Osawatomie community functions.
- E. Collaboration for the purpose of creating reciprocal agreements and revenue growth.
- F. On-sight weekly to bi-weekly presence of Maxim Golf personnel for control and training.
- G. Monthly Performance Reports.
- H. Other General Manager Services as required by the City Manager.

All employees would be City employees and derive City benefits, but would be supervised by Maxim. The City and Maxim would work together to recruit and hire employees and also in any personnel action, just as we would with any other department head. Maxim, acting as the General Manager, will be responsible for following all City ordinances and policies as well as all applicable state and federal laws.

The City has the option to terminate the contract after one year, with a 90 day notice. Otherwise, the contract will continue for a total of two years.

COUNCIL ACTION NEEDED: Review and discuss. Approval of the contract will be needed for Maxim Golf to begin operations on February 1.

STAFF RECOMMENDATION TO COUNCIL: Approve the contract as presented. Staff and the Golf Course Advisory Committee believe this arrangement will improve the golf course experience for all players and provide additional opportunities for involvement in the sport and play at the course to grow.



Contract for Services Agreement

This agreement is made effective as of February 1st, 2015, by and between Maxim Golf Solutions LLC, [hereinafter "Maxim Golf"] and the City of Osawatomie, a municipal corporation organized an existing under the laws of the State of Kansas [hereinafter "Osawatomie"].

In this agreement, the party who is contracting to receive services shall be referred to as "Osawatomie", and the party who will be providing the services shall be referred to as "Maxim Golf".

Maxim Golf has a background in golf course management and consulting and is willing to provide services to Osawatomie based on this background.

Osawatomie desires to have General Manager services provided by Maxim Golf.

1. DESCRIPTION OF SERVICES. Beginning on February 1st, 2015, Maxim Golf will provide the following General Manager services (collectively, the "Services"):

- A. Oversight of all golf operations including but not restricted to: Golf shop operations, grounds maintenance, sales and marketing, staffing, purchasing, IT, reporting, tracking, and all other day to day functions.
- B. Development of a business plan, service manual, annual comprehensive operating budget and 5-year Capital Improvement Plans.
- C. Attendance at all Osawatomie Golf Course Advisory Committee meetings and City Council meetings as required by the City Council or City Manager.
- D. Representation at Osawatomie community functions pertinent to the advancement of golf course performance.
- E. Collaboration of Maxim Golf relationships and products for the purpose of creating reciprocal agreements and other productive means of rounds and revenue growth.
- F. On-sight weekly to bi-weekly presence of Maxim Golf personnel for control, training, and daily performance of golf operation needs and functions.
- G. Monthly Performance Reports to be submitted to the City Manager by the 15th of the following month.
- H. Other General Manager Services as required by the City Manager.

2. PERFORMANCE OF SERVICES. The manner in which the Services are to be performed and the specific hours to be worked by Maxim Golf shall be determined by Maxim Golf in collaboration with Osawatomie. It is understood that Maxim Golf partners will spend on

average one to two days on site every week for the first six weeks and at least one to two days on site every two weeks thereafter for the life of the contract. It is also understood that Osawatomie will rely on Maxim Golf partners to work as many hours as are reasonably necessary to fulfill Maxim Golf's obligations under this agreement.

3. PAYMENT. Osawatomie will pay a fee to Maxim Golf for the Services in the amount of \$2,500.00 (two thousand five hundred dollars) per month. This payment shall be made to Maxim Golf on the first day of each month for services provided for the upcoming month.

Maxim Golf shall also receive an incentive of 25% of increased golf operation net income over the previous fiscal year. This incentive revenue for Maxim Golf shall be shared with employees of Osawatomie Golf Course at a rate of 65% for employees and 35% for Maxim. The bonus will be distributed among employees based upon a formula to be agreed to by both Osawatomie and Maxim Golf. The bonus shall be paid in February for the prior fiscal year.

4. EXPENSE REIMBURSEMENT. Osawatomie shall reimburse Maxim Golf for all approved expenses incurred by Maxim Golf for supplies, materials, and other goods and services provided to Osawatomie by Maxim Golf. Osawatomie City Manager shall determine what expenses are approved.

5. TERM/TERMINATION. This agreement shall be for an initial term of 12 (twelve) months. Either party shall have the right to terminate at the end of the initial term by providing written notice of termination not less than ninety days prior to expiration of the initial term. After the first 12 (twelve) months either party may terminate by providing notice of termination not less than ninety days prior to termination. Unless terminated earlier by either party, this agreement shall terminate automatically after 24 (twenty-four) months upon completion by Maxim Golf of services provided by this Agreement, unless the parties shall mutually agree to extend the agreement for an additional term.

6. RELATIONSHIP OF PARTIES. It is understood by the parties that Maxim Golf is an independent contractor with respect to Osawatomie, and not an employee of Osawatomie. Osawatomie will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of Maxim Golf.

7. DISCLOSURE. Maxim Golf is required to disclose any outside activities or interests, including ownership or participation in the development of any prior or future golf course operations that conflict or may conflict with the best interests of Osawatomie. Prompt disclosure is required under this paragraph if the activity or interest is related, directly or indirectly, to: The day to day operations or long-term success and viability of the Osawatomie golf course.

8. EMPLOYEES/PARTNERS OF MAXIM GOLF. Employees and Partners of Maxim Golf who perform services for Osawatomie under this Agreement shall also be bound by the provisions of this Agreement. At the request of Osawatomie, Maxim Golf shall provide adequate evidence that such persons are Maxim Golf's Employees or Partners.

9. EMPLOYEES OF OSAWATOMIE. Maxim Golf will be responsible for the supervision of all employees of the Osawatomie Golf Course in accordance with all applicable federal and state laws, as well as the ordinances, and personnel policies and regulations of the City of

Osawatomie, Kansas. The final authority for hiring and firing of employees resides with the City Manager of Osawatomie; however, Maxim Golf will be responsible for making recommendations to the City Manager for any personnel actions.

10. CITY POLICIES AND REGULATIONS. Maxim Golf shall be responsible for following all applicable federal and state laws, as well as the ordinances, operating and all policies and regulations, of the City of Osawatomie, Kansas. All financial transactions shall be made in accordance with the City's financial policies unless otherwise specified by this Agreement or amendments thereto.

11. INJURIES. Osawatomie acknowledges their obligation to obtain and maintain appropriate insurance coverage for the benefit of Osawatomie and Osawatomie's employees, if any. Osawatomie waives the right to recovery from Maxim Golf for any injuries or damages that Osawatomie or Osawatomie's employees may sustain or cause while performing services under this Agreement and that are a result of the negligence of Osawatomie or Osawatomie's employees.

12. INDEMNIFICATION.

Maxim Golf agrees to indemnify and hold harmless Osawatomie from all claims, losses, expenses, fees including attorney fees, costs, or judgments that may be asserted against Maxim Golf that result from the acts or omissions of Maxim Golf, Maxim Golf's employees, if any, and Maxim Golf's agents.

Osawatomie agrees to indemnify and hold harmless Maxim Golf from all claims, losses, expenses, fees including attorney fees, costs, or judgments that may be asserted against Osawatomie that result from the acts or omissions of Osawatomie, Osawatomie's employees, if any, and Osawatomie's agents.

13. ASSIGNMENT. Osawatomie's obligations under this Agreement may not be assigned or transferred to any other person, firm, or corporation without prior written consent of Maxim Golf.

14. OWNERSHIP OF SOCIAL MEDIA CONTACTS. Any social media contacts, including "followers" or "friends" that are acquired through accounts (including, but not limited to email addresses, blogs, Twitter, Facebook, YouTube, or other social median networks) used or created on behalf of Osawatomie are the property of Osawatomie.

15. CONFIDENTIALITY. Osawatomie recognizes that Maxim Golf has and will have the following information:

Osawatomie golf course financials, employment records, vendor account records, A/R and A/P records, lease agreement records, customer records, and all other proprietary records necessary for the operation of Osawatomie golf course (collectively, "Information") which are valuable, special and unique assets of Osawatomie and need to be protected from improper disclosure. In consideration for the disclosure of the information, Maxim Golf agrees that Maxim Golf will not at any time or in any manner, either directly or indirectly, use any Information for Maxim Golf's own benefit, or divulge, disclose, or communicate in any manner any Information to a third party without prior written consent of Osawatomie. Maxim Golf will

protect the Information and treat it as strictly confidential. A violation of this paragraph shall be a material violation of this Agreement.

16. CONFIDENTIALITY AFTER TERMINATION. The confidentiality provisions of this Agreement shall remain in full force and effect after the termination of this Agreement.

17. NON-COMPETE AGREEMENT. Maxim Golf agrees and covenants that for the term of this Agreement and for a period of 24 (twenty-four) months following the termination of this Agreement, whether such termination is voluntary or involuntary, Maxim Golf will not directly or indirectly engage in any business competitive with Osawatomie without prior written consent by Osawatomie. This covenant shall apply to the geographical area of 25 (twenty-five) miles from Osawatomie. Directly or indirectly engaging in any competitive business includes, but is not limited to, (i) engaging in a business as owner, partner, or agent, (ii) becoming an employee of any third party that is engaged in such a business, or (iii) becoming interested directly or indirectly in any such business, or (iv) soliciting any customer of Osawatomie for the benefit of a third party that is engaged in such business.

18. RETURN OF RECORDS. Upon termination of this Agreement, Maxim Golf shall deliver all records, notes, data, memoranda, models, and equipment of any nature that are in Maxim Golf's possession or under Maxim Golf's control and that are Osawatomie's property or relate to Osawatomie's business.

19. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreements whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

20. AMENDMENT. This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

21. SEVERABILITY. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

22. WAIVER OF CONTRACTUAL RIGHT. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of the party's right to subsequently enforce and compel strict compliance with every provision of this agreement.

23. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of Kansas.

24. INTERRUPTION OF SERVICE. Either party shall be excused from any delay or failure in performance required hereunder if caused by reason of any occurrence or contingency beyond its reasonable control, including but not limited to, acts of God, acts of war, fire, insurrection, laws proclamations, edicts, ordinances or regulations, strikes, lock-outs or other serious labor disputes, riots, earthquakes, floods, explosions or other acts of nature. The obligations and rights of the party so excused shall be extended on a day-to-day basis for the time period equal to the period of such excusable interruption. When such events have abated, the parties' respective obligations hereunder shall resume.



City of Osawatomie

www.osawatomieks.or

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

8 STAFF AGENDA MEMORANDUM

DATE OF MEETING: January 22, 2015

AGENDA ITEM: Recreation MOU

PRESENTER: Don Cawby, City Manager

ISSUE SUMMARY: Based upon the direction of the City Council at the January 8, 2015 meeting, I have drafted a Memorandum of Understanding (MOU) for the City and School District to hopefully set the ground work for how the transition to a School-based Recreation Commission would occur. I have provide this document to Supt. Gary French for him to get feedback from his Commission and to let us know of any other issues that need to be included. The MOU coming from the City also serves as a formal notice to the School Board that we are open to this partnership.

This MOU publicly establishes how this partnership and transition would work, but would not be the final document we would need to implement the changes. That would need to occur through an interlocal agreement between the two parties to provide additional details on the transition and ongoing facilities issues. The MOU would serve as the ground work for the interlocal agreement and expect much of this document will be included in that agreement.

COUNCIL ACTION NEEDED: Review the MOU and discuss.

STAFF RECOMMENDATION TO COUNCIL: Approve the MOU for presentation to the School District. Should the School Board have subsequent changes, we could revise and readopt the MOU at a future meeting.

MEMORANDUM OF UNDERSTANDING

THIS Memorandum of Understanding (MOU) is entered into by and between the CITY OF OSAWATOMIE, KANSAS, hereinafter referred to as "City"; and OSAWATOMIE SCHOOLS, USD 367, hereinafter referred to as "USD".

WHEREAS, the City of Osawatomie has provided recreation services through a Recreation Commission or through its Park and Recreation Department since 1985; and

WHEREAS, the City, USD 367, and the community as a whole, believe that youth and adult recreation programs are an important facet of quality of life services for our, and any, community; and

WHEREAS, USD 367 operates the O-Zone fitness and recreation facility that provides health and fitness programs and state of the art facilities to members of the community and county; and

WHEREAS, the City currently finds itself without a Recreation Director to operate its current programs; and

WHEREAS, the parties believe that the through a cooperative arrangement of City and USD facilities that recreation programs can be more easily administered and offered through a new Recreation Commission that is attached to USD 367; and

WHEREAS, it is the mutual desire of the parties to put in writing an understanding of the specific cooperation necessary to bring about such transfer of programs and finances from the City to a Recreation Commission attached to USD 367;

NOW, THEREFORE, it is understood as follows:

1. CITY MILL LEVY: For the last 2 years, the City spent approximately \$51,000 in salaries, \$12,000 in benefits, \$11,000 in utility costs, and about \$38,000 in operating costs (excluding concessions) for the recreation program and the operational maintenance of the Cole Sports Complex. This totals a budget of approximately \$112,000 in operating costs. These costs are offset by revenues of approximately \$37,000 from registrations and donations and another \$5,800 from the USD to assist with utilities. This leaves approximately \$70,000 in revenue that is subsidized by the City.

Based on the Mill Levy for 2015, the City in the 2016 budget will make a reduction in its mill levy to account for the approximately 3.5 mills needed to fund the programs that would be moved to the USD. Should a Recreation Commission be formed, the City would not budget those funds for 2016. The City would also agree to transfer each fiscal year, the balance of any delinquent taxes collected in the Recreation Fund or the Recreation Employee Benefits Fund until two years of no such activity in such funds.

2. 2015 FUNDING FOR RECREATION: For its fiscal year 2015, the City would provide to the USD, upon written request from the USD, \$70,000 for the operation of programs through calendar year 2015, upon the formation of a Recreation Commission and budgeting of the Recreation Commission by the USD. This amount is based upon the USD's operation of the indoor soccer

MEMORANDUM OF UNDERSTANDING - Continued

program and all preparatory work for baseball and softball programs. Should other changes be made, this amount may be amended by mutual agreement.

The City shall also provide within 30 days of the formation of the Recreation Commission, upon written request of the USD, \$25,000 from the Special Parks & Recreation Fund for a cash-flow balance.

3. **LEASE AND USE OF FACILITIES:** Upon the formation of a Recreation Commission, the City will execute a long-term lease or interlocal agreement with the Recreation Commission for the operation and maintenance of the Cole Sports Complex. The lease will also address how capital improvements will be made to the Sports Complex. The City must approve any permanent capital improvements to the facility, but will assist the USD in such modifications and improvements if the City has the proper equipment and expertise to make such changes. The City will allow the Recreation Commission to use the City Auditorium and any other park facilities, at no charge, subject to scheduling with the City for such programs. Recreation programs will be given priority with sufficient notice.
4. **EQUIPMENT:** The City will provide to the USD any and all sports equipment related to the operation of recreation programs. The City will also provide specific field preparation equipment to the USD for maintenance and preparation of the sports complex fields for softball, baseball and soccer programs. The specific list of equipment will be negotiated by both parties in a future interlocal agreement..
5. **UTILITIES:** The City will charge the Recreation Commission the same rates for water and electricity as paid by the City for its utilities. These charges will apply to the Sports Complex and Ozone. Any other facilities used for recreation purposes may be determined in the future interlocal agreement or amendments thereto as negotiated by both parties.
6. **RESPONSIBILITIES OF THE USD:** Upon approval of a ballot question, the USD will create and appoint members to a Recreation Commission which will provide recreation programs to the residents of the USD. The USD and Recreation Commission will establish such financial procedures to meet audit standards and to provide accountability and transparency of recreation funds.
7. **LICENSING:** The USD will be responsible for maintaining a state food service license for the concession stand at the Cole Sports Complex. The City will construct a facility that meets current licensing standards. Should standards and requirements change which require modifications to the concessions building or fixed equipment, the City and USD will determine how and when such modifications will occur.
8. **ACCESS TO PROPERTY:** The USD will be provided limited keys to the City Auditorium, and shall not make additional keys unless authorized by the City.

MEMORANDUM OF UNDERSTANDING - Continued

9. EXECUTION AND APPROVAL OF MOU; FUTURE INTERLOCAL AGREEMENT: This MOU shall be in effect only upon the approval both the Governing Bodies of the USD and City, and the dates of such approval shall be commemorated by the signing and dating of this document by the designated or elected leaders of each Governing Body. Upon approval of this MOU and the creation of the Recreation Commission by the USD, the parties will create an interlocal agreement to formalize this memorandum and to address other issues listed in this memorandum and those not yet anticipated.

IN WITNESS WHEREOF, the parties hereto have set their hands to this MOU on the date and year first written above.

CITY OF OSAWATOMIE, KANSAS

L. Mark Govea
Mayor

Date of Approval

USD 367

Dr. Jeffrey Dorsett
President of USD 367 BOE

Date of Approval



STAFF AGENDA MEMORANDUM

DATE OF MEETING: January 22, 2015

AGENDA ITEM: 2015 Appropriations Resolution

PRESENTER: Don Cawby, City Manager

ISSUE SUMMARY: For the second year, I am asking for your consideration of the attached annual resolution which will explicitly say that the City Council is appropriating the money that was budgeted for expenditure in 2015 and that the City Manager can pay payroll and claims based upon that budget. We have been following this practice of processing payments weekly and then providing you a list of those items paid in the "Appropriation Ordinance". This approach, which has been in operation for almost two years, has proven to reduce wait time for local vendors, made payment processing less confusing, and also reduced our payments out of petty cash. I think these are major improvements in our business processing.

This is standard practice for modern municipal organizations. Manger operated cities base their ability to do so on KSA 12-1011 which says the administration of the city's business shall be in the hands of the manager. Our City Code reads essentially the same in 1-308 where makes the City Manager responsible for administration of all affairs of the City. This authority is only regulated by our financial policies which state that the "City Council must approve all expenses above \$10,000 and all purchases requiring transfers of budget between funds or from contingency funds." It should be noted, that there is a statute (KSA 12-105b) which states that all claims must be presented to the governing body with some conflicting provisions on the requirement to be "approved" by the governing body.

Therefore, I am recommending your consideration of the attached annual resolution which will explicitly say that the City Council is appropriating the money that was budgeted for expenditure in 2014 and that the City Manager can pay payroll and regular large claims based upon that budget. This resolution may not be necessary, but I believe it is a good practice to pass one each year just for commemoration's sake, if nothing else.

As we have for the last two years, we will continue to provide you with a list of the appropriation ordinance for each month, so you can continue to track payments and provide transparency of our expenditures. Also, based on our finance policies, I will still bring you any purchases over \$10,000 (except for commodities related to utility production and large reoccurring expenses like utility bills.)

COUNCIL ACTION NEEDED: Review and discuss.

STAFF RECOMMENDATION TO COUNCIL: Approve the resolution as presented.

RESOLUTION NO. ____

A RESOLUTION PROVIDING FOR THE APPROPRIATION, BY FUND, OF THE BUDGET OF THE CITY OF OSAWATOMIE FOR THE YEAR BEGINNING JANUARY 1, 2015; AND APPROPRIATING MONEY FROM THE VARIOUS FUNDS TO PAY PAYROLLS AND CLAIMS AGAINST THE CITY OF OSAWATOMIE FOR THE CALENDAR YEAR 2015.

WHEREAS, on August 28, 2014, the City of Osawatomie, Kansas approved the annual budget as shown on official State of Kansas budget forms and subject to notice of hearing and public hearing was approved, adopted and appropriated, by fund as the maximum amounts to be expended for the year starting January 1, 2015; and

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the City of Osawatomie, Kansas:

SECTION ONE. That the 2015 budget of the City of Osawatomie, as adopted, shall constitute an appropriation of the money so budgeted, and the City Manager shall be authorized to adjust all salaries, including exempt positions, to pay payrolls and claims as provided in said budget of the City of Osawatomie; provided that all such payments made shall be deducted from the accounts so appropriated and that the total of payment made shall not exceed the amount appropriated.

SECTION TWO. That the City Manager shall establish regulations as to the manner of payment of the periodic dates on which payrolls and claims shall be paid, provided, that all employees of the City of Osawatomie shall be paid biweekly and no payroll or claim shall be paid until it has been approved by the City Manager and the City Clerk.

SECTION THREE. That the payment of payrolls and claims shall be by warrant checks as provided by law and such warrant checks shall be signed by two of the following; the City Manager, the City Clerk, or the City's accountant. All such warrant checks issued in payment of payrolls and claims shall be delivered to the officers, employees, agents, vendors and other claimants of the City by the City Clerk and that it shall be his/her duty to maintain a record of all warrant checks so delivered.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas this 22nd day of January, 2015, a majority being in favor thereof.

APPROVED AND SIGNED by the Mayor.

L. Mark Govea, Mayor

(SEAL)

ATTEST:

Ann Elmquist, City Clerk

RESOLUTION NO. _____

**A RESOLUTION REVISING THE ANNUAL
FEE RESOLUTION NO. 695.**

WHEREAS, a “comprehensive fee listing” promotes efficiency and expediency regarding City fees and charges; and

WHEREAS, the Governing Body shall at least annually review prior to the next fiscal year’s budget all fees and charges.

BE IT RESOLVED BY THE CITY OF OSAWATOMIE, KANSAS, that the fees and charges in “Exhibit A” attached be established.

SECTION ONE: Resolution No. 695 and all fees that are in conflict with this Resolution regarding fees and charges are hereby repealed.

SECTION TWO: This Resolution shall take effect the 22nd day of January, 2015.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas this 22nd day of January, 2015, a majority being in favor thereof.

APPROVED AND SIGNED by the Mayor.

L. Mark Govea
Mayor

(SEAL)

ATTEST:

Ann Elmquist
City Clerk

OSAWATOMIE FEE SCHEDULE
Adopted 1/22/2015; Resolution No. ---
Changes Effective - January 22, 2015

CODE REF.	ORD. #	DESCRIPTION	PREVIOUS FEE(S)	LAST CHANGED	CURRENT FEE	
ADMINISTRATIVE:						
ALCOHOL & CEREAL MALT BEVERAGE						
3-101	Code 1977	Alcoholic Consumption on Public Property	\$100.00 deposit	28-Jul-05	\$100.00 deposit	
		Cereal Malt Beverage				
		general retailer/consumption	\$100.00*	13-Dec-07	\$50.00 per calendar year *	
		limited retailer/retail sales	\$50.00*	13-Dec-07	\$50.00 per calendar year *	
	change location application fee		13-Dec-07	\$25.00		
	* plus any state assessed costs/taxes					
	Occupational Tax – Retail Liquor sales off premises consumption	\$300.00		\$300.00 per year		
	Private Club License - Class A Club			\$250.00 per year		
	Private Entertainment Event			\$100.00		
Ord 3254	Drinking Establishment License - Class B Club	\$100.00		\$250.00 per year		
Special Event Cereal Malt Beverage Permit			12-Jan-12	\$50 + \$25 State Fee		
Temporary Liquor License - by the drink			28-Jul-05	\$50.00 per day + state license		
BUILDING RENTALS						
	Governing Body Nov-05	Auditorium				
		per day	\$125.00	17-Dec-09	\$150.00	
		deposit			\$100.00	
			microphone deposit			\$25.00
		Memorial Hall				
		Monday - Friday	7:00 a.m. - 3:00 p.m.	\$35.00	13-Dec-07	\$40.00
			4:00 p.m. - midnight	\$45.00	13-Dec-07	\$50.00
			all day	\$55.00	13-Dec-07	\$60.00
		Saturday, Sunday, Holidays	7:00 a.m. - 3:00 p.m.	\$40.00	13-Dec-07	\$50.00
			4:00 p.m. - midnight	\$50.00	13-Dec-07	\$60.00
			all day	\$60.00	13-Dec-07	\$70.00
		Grandfathered organizations		\$25.00 per year		\$35.00 per year
		deposit		\$100.00		\$100.00
		Old Stone Church		\$50 deposit only	16-Dec-10	\$50 rent + \$50 deposit
		Golf Course Clubhouse			13-Dec-07	
	winter rental		\$125.00 + salary		\$250.00 + salary	
	Rental Waivers					
	USD #367 & Chamber of Commerce		no rent/no deposit	14-Dec-06	no rent/no deposit	
	Osawatomie Alumni Association				no rental charge	
	Benefit for someone with severe illness				no rental charge	

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CODE REF.	ORD. #	DESCRIPTION	PREVIOUS FEE(S)	LAST CHANGED	CURRENT FEE
CEMETERY					
	Ord 3395	Opening & closing grave, reopening or disinterment	contractor's cost		contractor's cost
		Single grave space			
		City Limits	\$100.00	9-Jan-14	\$150.00
		Osawatomie Zip Code	\$0.00	9-Jan-14	\$250.00
		All Other	\$200.00	9-Jan-14	\$400.00
		Permit for setting monument			
		single/double/corner markers	\$30.00	14-Dec-06	\$40.00
		reset	\$0.00	9-Jan-14	no charge
		repair			no charge
		Burial Permit			
		during business hours	\$25.00	14-Dec-06	\$30.00
		after business hours	\$75.00	14-Dec-06	\$80.00
		Permit for disinterment	\$10 + cost + 10%	14-Dec-06	\$80.00
		Stone Setting Bond	\$300.00	14-Dec-06	\$300 w/liability ins of \$1M
FIREWORKS					
	Ord 3582	Permit for sale of fireworks	\$750.00	11-Dec-08	\$1,000.00
		Permit for public display	none		none
MISCELLANEOUS/OTHER					
		Insufficient check charge for checks returned unpaid by a bank (KSA 21-3707(b)(1))			\$30.00
MUNICIPAL COURT					
	Ord 3627	Court Cost - plus any state assessed costs	\$40.00	14-Jun-07	\$55.50 + State costs
	Ord 3706	Other Court Fees not to exceed \$500		13-Dec-12	As assessed by the Judge
		Court Fines			fine schedule determined by Judge
OPEN RECORDS FEES					
		Copies	\$0.20	28-Jul-05	\$.60 per page
		Research fee per employee	\$13/hr.		\$20.00 hr. w/ \$20.00 min.
		Utility Histories	150% of cost	9-Jan-14	\$.60 per page or \$10 per mutli-family housing complex
		Letters of Credit	150% of cost	9-Jan-14	\$.60 per page
		Maps, postage, manuals, misc.	manuals - \$10		150% of City cost including labor
SOLICITORS, CANVASSERS, PEDDLERS (ETC. City Code 5-201)					
	5-207	License fee per person	\$10/day/person	14-Dec-06	\$30.00 per day per person
		License fee for Ice Cream Street Vendors		12-Jul-12	\$50.00 per year per vehicle

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BUILDING, ZONING & NUISANCES:					
BUILDING PERMITS					
	Ord 3577	Residential Structures New, Additions, Remodel, or Accessory Structures over 120 ft ² , including unfinished basements & garages	\$.27/sq ft (annual increase of \$.03/yr)+ UTILITIES as required	12-Jan-12	\$.30 per sq. ft., minimum \$40 + UTILITIES as required
		Non-Residential & Public Projects (Other than City) New, Alterations or Additions with a Construction Value less than \$300,000 New, Alterations or Additions with a Construction Value of \$300,000 or greater	\$.22 per sq. ft., \$100 minimum + UTILITIES as required	12-Jan-12	\$.25 per sq. ft., \$100 minimum + UTILITIES as required Adopted Building Code Rates
		Accessory Structures Residential/Commercial 120 sf and greater Agricultural All square footage	\$.27/sq ft (\$40 min) \$25.00	12-Jan-12 13-Dec-07	\$.30 per sq. ft. - min of \$40 \$30.00
		Re-roof/New Roof/fences over 6' in height	\$25.00	13-Dec-07	\$30.00
		Demolition Free Standing Building with Shared Wall	\$25.00 \$100.00	13-Dec-12	\$30.00 \$100 + engineer review costs
		Electric Wiring replacement (of existing wiring only) new structures (expansion of existing system)	\$25.00 \$40.00	13-Dec-07	\$30.00 \$50.00
		Plumbing replacement (of existing plumbing only) new structures (expansion of existing system)	\$25.00 \$40.00	13-Dec-07	\$30.00 \$50.00
		Mechanical, Heating, Venting & AC replacement (of existing HVAC only) new structures (expansion of existing system)	\$25.00 \$40.00	13-Dec-07	\$30.00 \$50.00
		Earthwork - excavation or fill 18" or more	\$40 + actual cost		\$50 plus actual City cost
		Ord. 3577 Towers, Generating Stations, & Generating Plants			Adopted Building Code Rates
		Temporary Occupancy Permit		17-Dec-09	\$25.00
		Decks	\$25.00		\$30.00
		Signs	\$25.00		\$30.00
		Structure Moving Fee <i>* does not include all cost of required new structure permits</i>	\$40 + cost - \$300 ...	13-Dec-07	\$50 + cost of City labor - \$500 in escrow prior to permit - total cost = actual City cost*
	Street excavation fee per occurrence or street/curb damage fee <i>(permit required for each occurrence)</i>	\$300 escrow ...		\$1,000 escrow held up to 1 year, 48 hr response to trigger escrow	
	Ord 3320 Oil or gas drilling permit fee	\$100.00	13-Dec-07	\$1,000.00	
	Plan Review Fee Non-Residential & Public Housing*				

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		<i>* may include (but not limited to) all plans such as utility site plans, storm water plans, traffic flow plans, outside lighting plans, landscaping plans, building plans, etc.</i>	\$250.00	12-Jan-12	\$250 or adopted building code rates if value is over \$300,000
		Residential Homes and Accessory Structures	\$50/hour w/1 hour min./3 hour max.	12-Jan-12	\$50/hour w/1 hour min./3 hour max. or Adopted Building Code Rate for Buildings valued over \$300,000
		Working without building permit	double permit fee	13-Dec-07	triple permit fee
CONTRACTOR REGISTRATION FEES*					
	Ord 3577	<i>* All must present proof of required insurance</i>			
		General Builder or Limited Building Contractor Engages in general contract work, except house moving	\$30.00	13-Dec-07	\$50.00 per calendar year
		General Electrician or Electrical Contractor Engages in more than one kind of electrical construction work	\$30.00	13-Dec-07	\$50.00 per calendar year
		General Plumber or Plumbing Contractor Engages in more than one kind of plumbing work	\$30.00	13-Dec-07	\$50.00 per calendar year
		Mechanical Contractor Engages in more than one kind of mechanical work	\$30.00	13-Dec-07	\$50.00 per calendar year
		Tree Trimmers	\$30.00	13-Dec-07	\$50.00 per calendar year
		House Movers	\$30.00	13-Dec-07	\$50.00 per calendar year
		Sign Hangers and Panel Posters	\$30.00	13-Dec-07	\$50.00 per calendar year
		Operating without being registered		14-Dec-06	maximum \$500.00
MOWING ASSESSMENT					
		Mowing of Nuisance Lots - each occurrence	\$150/hour	17-Dec-09	\$200.00/hr, 1 hr minimum (round up to next hour)
ZONING*					
	Ord 3577	<i>* All zoning requests will be fees plus actual City costs for publication, notifications, legal costs</i>		28-Jul-05	
		Rezoning – All districts 0 - 5 acres 5.1 - 50 acres 50.1 and up	\$150.00 + \$5.00 per owner		\$250.00 \$300.00 \$400.00
		Special Use Permit – Initial Application 0 - 5 acres 5.1 - 50 acres 50.1 and up	\$100.00 + \$5.00 per owner		\$200.00 \$300.00 \$400.00
		Land use permit			\$400.00
		Board of Zoning Appeals Variances Appeals	\$300.00 \$150.00	9-Feb-06	\$150.00 \$300.00

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CODE REF.	ORD. #	DESCRIPTION	PREVIOUS FEE(S)	LAST CHANGED	CURRENT FEE
		Subdivision Application			
		Per lot, 10 or less	\$75 + \$5/lot	14-Dec-06	\$200.00 + \$5.00 per lot
		Per lot, 11 or more	\$75 + \$3.50/lot		\$200.00 + \$3.50 per lot
		Preliminary Plat	\$600.00		\$300.00
		Final Plat - not combined with preliminary plat			\$300.00
		Lot Splits	\$75.00		\$150.00

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CODE REF.	ORD. #	DESCRIPTION	PREVIOUS FEE(S)	LAST CHANGED	CURRENT FEE
PUBLIC SAFETY:					
ADMINISTRATIVE					
		Fee for Police Responses to Party* * Fees including but not limited to: Officer salaries, pro rate cost of equipment, cost of repairing City equipment or property, officer medical treatment, reasonable attorney fees, etc.		28-Jul-05	Actual Cost*
	Ord 3482	Adult entertainment licenses Business license Manager's license Entertainer's license Server's license * plus investigation costs	\$500.00 per year* \$100.00 per year* \$250.00 per year* \$50.00 per year* \$50.00 per year*	13-Dec-07 13-Dec-07 " " "	\$1,000.00 per year* \$250.00 per year* \$1,000.00 per year* \$50.00 per year* \$50.00 per year*
		Access/ Copy Fees* Copies Mail Charge Fax Charge Search Charge Computer Time Video Reproduction *No charge for law enforcement agencies or victims of crimes	\$4.00 per report \$20.00 per copy	18-Dec-14 " " " " "	\$5.00 per report \$2.00 per report \$1.00 per report \$20.00 per hour \$40.00 per hour \$20.00 per hour
ANIMALS					
Ch. 2	Ord 3709	Dog or Cat License sexually altered unaltered updated micro-chip discount (must provide proof) duplicate tag	\$7.00 per animal per year \$10.00 <i>not available</i> \$2.00	13-Jun-13 13-Dec-07 13-Jun-13 13-Dec-07	\$5.00 per animal per year \$10.00 per animal per year Free, one tag \$2.50
		Pickup Fee per licensed non-aggressive animal (in lieu of citation) 1st Pickup per animal 2nd Pickup (within 12 months of 1st) 3rd Pickup (within 12 months of 1st) 4th Pickup (within 12 months of 1st)	<i>not available</i> <i>not available</i> <i>not available</i> <i>not available</i>	13-Jun-13 " " "	\$0 (Warning) \$10.00 \$25.00 Pickup + at large citation
		Unlicensed Animal Pickup Fee (in lieu of citation) 1st Pickup per owner 2nd Pickup (within 24 months of 1st) 3rd Pickup (within 24 months of 1st) 4th Pickup (within 24 months of 1st)	<i>not available</i> <i>not available</i> <i>not available</i> <i>not available</i>	13-Jun-13 " " "	\$25 + license \$50 + license \$100 + license Pickup + license + at large citation

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CODE REF.	ORD. #	DESCRIPTION	PREVIOUS FEE(S)	LAST CHANGED	CURRENT FEE
		General Pickup fee	\$25.00	13-Jun-13	\$25.00 with at large citation
		Boarding fee (paid if animal is checked into pound)	\$20.00 per day	13-Jun-13	\$7.00 per day
		Euthanization Fee	\$20.00	13-Dec-07	\$50.00
		Vaccination fee	\$10.00	13-Dec-07	\$15.00 per animal
		Vaccination deposit		13-Jun-13	\$10.00
		Dead Animal Removal			
		Small animal from private property (commercial operation)	\$30.00 per animal	13-Jun-13	<i>Not Available</i>
		Small animal from private property		14-Dec-06	\$25.00
		Large animal from private property (over 50 lbs.)	Actual cost of removal	13-Jun-13	\$50.00 or Actual Cost if higher
		Animal Adoption, dog or cat			
		License Fee	Same as above		Same as above
		Adoption fee	\$20.00 per animal	14-Dec-06	\$25.00 per animal
		Spay/neuter fee		14-Dec-06	\$100.00
		Vaccination fee	Same as above		Same as above

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CODE REF.	ORD. #	DESCRIPTION	PREVIOUS FEE(S)	LAST CHANGED	CURRENT FEE	
RECREATION:						
CAMPING FEES						
	Ord. 3277	Individuals				
		no hook-up	\$7.00	13-Dec-07	\$10.00 per day with 7-day limit combined with all City parks	
		electric	--			
		air conditioning or heat	--			
	Organizations					
		no hook-up	\$7.00	13-Dec-07	\$10.00 per day with 7-day	
		electric	--			
		air conditioning or heat	--			
GOLF COURSE FEES						
	Ord 3552	Memberships				
		<i>Memberships all include \$30 membership to Osawatomie Golf Association and 1 USGA handicap rating</i>	No Discount		All Rates To Be Established by the Operator Subject to City Manager Approval	
		Single	\$550.00	22-Jan-15		
		Single with cart privileges ¹	\$985.00	"		
		Senior (62+) Single		"		
		Senior (62+) Single with cart privileges ¹		"		
		Couple	\$725.00	"		
		Couple with cart privileges ¹	\$1,265.00	"		
		Senior (62+) Couple		"		
		Senior (62+) Couple with cart privileges ¹		"		
		Add Children of Member Under Age 18		"		
		Family	\$920.00	"		
		Family with cart privileges ¹	\$1,665.00	"		
		Students (Valid Student I.D. & age 25 or under, no discount)	\$50.00 (no cart)	"		
		Youth (High School Student or under age 18, no discount)	25.00 (no cart)	"		
			¹ cart portion taxes included			
		Greens Fees - All Players (<i>Junior under 18, Seniors 62+, Military Active/Retired with ID</i>)				
		Monday through Friday - 9 holes	\$9.00	22-Jan-15		All Rates To Be Established by the Operator Subject to City Manager Approval
		<i>Junior, Senior, Military</i>		"		
		Monday through Friday - 18 holes	\$13.00	"		
	<i>Junior, Senior, Military</i>		"			
	Saturday through Sunday & Holidays - 9 holes	\$9.00	"			
	<i>Junior, Senior, Military</i>		"			
	Saturday through Sunday & Holidays - 18 holes	\$13.00	"			
	<i>Junior, Senior, Military</i>		"			

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CODE REF.	ORD. #	DESCRIPTION	PREVIOUS FEE(S)	LAST CHANGED	CURRENT FEE
		Greens Fees - All Persons Twilight Rate - walking (after 4) \$9.00 Twilight Rate with cart (after 4) ¹ \$20.00 Winter Rate - walking \$9.00 Winter Rate with cart ¹ \$20.00 Senior Rate - Over age 62 (M-Th, Fri-Sun after noon) ² \$25.00 ¹ cart portion taxes included ² with cart, subtract \$16 for no cart		22-Jan-15 " " " "	All Rates To Be Established by the Operator Subject to City Manager Approval
		Golf Carts Cart Storage Rentals in the City Building ³ \$130.00 annual Electricity Charge ¹ \$180.00 annual Private Cart Trail Fee ¹ \$142.00 annual Hauled Private Cart Trail Fee Annually \$190.00 annual Hauled Private Cart Trail Fee per Round \$16 per time Rental - 9 holes per player ¹ \$9.00 per player Rental - 18 holes per player ¹ \$16.00 per player ¹ taxes included		22-Jan-15 " " " " " "	All Rates To Be Established by the Operator Subject to City Manager Approval
		Group Membership Rates (per player) - minimum of 10 without cart privileges \$505.00 with cart privileges ¹ \$940.00 ¹ cart portion taxes included		22-Jan-15 "	All Rates To Be Established by the Operator Subject to City Manager Approval
		Tournament Rates (includes cart) ¹ Weekdays (Monday - Thursday) Under 20 Players \$23 per player 21 - 40 Players ³ \$22 per player 41 - 60 Players ³ \$21 per player 61 + Players ³ \$21 per player Weekend (Friday - Sunday) Under 20 Players \$25 per player 21 - 40 Players ³ \$24 per player 41 - 60 Players ³ \$23 per player 61 + Players ³ \$23 per player ¹ cart portion taxes included ³ for extra carts rented from 3rd party, actual cost charged. Subtract \$13 from each fee over OGC cart capacity.		22-Jan-15 " " " " 22-Jan-15 " " "	Tournament Rates to be Negotiated by the Operator

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CODE REF.	ORD. #	DESCRIPTION	PREVIOUS FEE(S)	LAST CHANGED	CURRENT FEE
UTILITIES:					
ADMINISTRATIVE					
		Customer utility service fee (connections & transfers)	\$15.00	13-Dec-07	\$20.00 + tax
		Utility Desposits		13-Dec-07	
		Residential	\$100.00		\$200.00
		Commercial - average of previous 12 mos or similar business	\$150.00 min		\$300.00
		Rental Units - residential	\$100.00		\$200.00
		Senior citizen housing	\$50.00		\$75.00
		Tavern	\$250.00		\$300.00
		Restaurant	\$1,000.00		\$1,000.00
		Late charge for delinquent utility bills	3%	11-Dec-08	7% of amount billed
		Reconnection charge for services disconnected for non-payment during business hours	\$20 + tax		\$25.00 + tax
		after business hours	\$40 + tax		NO AFTER HOURS RECONNECT
ELECTRIC SERVICE RATES					
	Ord 3422	Residential*			
		Meter Charge	\$10.00	13-Dec-12	\$9.00
		First 100 kwh per month	\$0.156	25-Sep-08	0.150/kwh
		Next 400 kwh per month	\$0.100	"	\$0.096/kwh
		Next 1,000 kwh per month	\$0.079	"	\$0.076/kwh
		All over 1,500 kwh per month	\$0.077	"	\$0.074/kwh
		Small General*			
		Meter Charge	\$15.00	13-Dec-12	\$14.00
		First 100 kwh per month	\$0.137	25-Sep-08	\$0.126/kwh
		Next 400 kwh per month	\$0.121	"	\$0.111/kwh
		Next 1,500 kwh per month	\$0.103	"	\$0.095/kwh
		Next 3,000 kwh per month	\$0.100	"	\$0.092/kwh
		Next 5,000 kwh per month	\$0.088	"	\$0.081/kwh
		All over 10,000 kwh per month	\$0.082	"	\$0.075/kwh
		Large General*			
		Demand	\$5.81	25-Sep-08	\$5.35
		First 150 kwh per month	\$0.068		\$0.063/kwh
		Next 150 kwh per month	\$0.062		\$0.057/kwh
		All additional kwh	\$0.053		\$0.049/kwh
		Customer Charge	\$75.00		\$75.00/mo
		Minimum bill	demand + cc		demand + customer chg

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CODE REF.	ORD. #	DESCRIPTION	PREVIOUS FEE(S)	LAST CHANGED	CURRENT FEE
		City Use*			
		First 100 kwh per month	\$0.115	12-Oct-95	\$0.115 per kwh
		All over 100 kwh per month	\$0.083		\$0.083 per kwh
		Outside City Limits		14-Dec-06	50% over rates listed above
		Energy Cost Adjustment (ECA) Charge			
		weighted average of 3 most recent months		28-Jul-05	Add 0.1 mill/kwh for each 0.1 mill over 50.0 mills or subtract for under 50.0 mills
		* ECA applied to all electric rates			
		Service Connection			
		Regular meter - res. & small commercial - 200 amps & less			\$500.00
		Demand meter - 400 amps & more			\$750.00
		Padmount transformer			cost + labor + 10%
		Temporary Electric Hookup			
		rate	as applicable		as applicable
		installation			\$100.00
		deposit	as applicable		\$100.00
		Security/Yard Lights			
		Monthly Rate		14-Dec-06	\$9.50 per month
		175 watt	\$7.50		
		400 watt		14-Dec-06	\$20.00 per month
		Installation	\$60.00		\$100 per light
		Pole	\$60.00		\$100 per pole
		30'			\$150 per pole
		35'		13-Dec-12	
		After Hours Repair			\$125/hr equipment charge + \$75/hour per employee

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CODE REF.	ORD. #	DESCRIPTION	PREVIOUS FEE(S)	LAST CHANGED	CURRENT FEE
REFUSE SERVICE RATES					
	Ord 3533	Residential*	\$16.87 per family unit	18-Dec-14	\$17.20 per family unit
		Business*			
		Class 1	2x \$16.77	18-Dec-14	\$17.10
			5x \$39.04	"	\$39.81
		Class 2	2x \$30.80	"	\$31.41
			5x \$74.98	"	\$76.47
		Class 3	2x \$42.11	"	\$42.94
			5x \$103.24	"	\$105.29
		Class 4	2x \$60.66	"	\$61.86
			4x \$96.22	"	\$98.13
			5x \$119.94	"	\$122.33
			6x \$143.66	"	\$146.52
		Class 5	2x \$96.22	"	\$98.13
			4x \$191.07	"	\$194.88
			5x \$238.50	"	\$243.26
			6x \$285.94	"	\$291.65
		Class 6	2x \$143.66	"	\$146.52
			4x \$285.94	"	\$291.65
			5x \$355.96	"	\$363.07
			6x \$428.20	"	\$436.75
		Class 7	2x \$191.07	"	\$194.88
			4x \$380.79	"	\$388.40
			5x \$475.63	"	\$485.13
			6x \$570.48	"	\$581.88
		Fuel Surcharge		1-Jan-14	3% for each \$0.20 increase in fuel over \$3
		Adjusts every 6 months per contract * Fuel Surcharge applied to all electric rates			
		Billing Charge - Administraton fee included in rates			\$0.50
		Bulky Item Pickup Fee - included in rate	\$1.22		\$1.28
		Collection outside City limits	no additional chg		50% over rates listed above

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CODE REF.	ORD. #	DESCRIPTION	PREVIOUS FEE(S)	LAST CHANGED	CURRENT FEE
SEWER SERVICE CHARGES					
Ord 3481		Inside City Limits			
		<i>Volume charge based on metered water used during preceding December & January</i>		12-Nov-99	
		Monthly user charge	\$4.33	18-Dec-14	\$5.00
		Monthly net capital charge	\$21.75	"	\$23.25
		Minimum monthly charge (user charge + net capital charge)	\$26.08 per housing unit	"	\$28 per housing unit
		Volume charge per 100 gallons of metered water	\$0.25 per 100 gallons	"	\$0.27 per 100 gallons
		Outside City limits		14-Dec-06	50% over rates listed above
		Service to the State Hospital			
		Monthly user charge	\$2.33	18-Dec-14	\$5.00
		Monthly net capital charge	\$5,953.37	"	\$9,545.93
		Minimum monthly charge (user charge + net capital charge)		"	\$9,550.93
		Volume charge per 100 gallons of metered water	\$1.79 per month	"	\$.27 per 100 gallons
		Extra Strength Sewage Surcharge	S=Vs x 0.00624 [\$.2364 (BOD-300) + \$.1734 (SS-350)]	18-Dec-14	S=Vs x 0.00624 [\$.2647 (BOD-300) + \$.1942 (SS-350)]
		BOD	\$0.2364 per pound	"	\$0.2647 per pound
		Suspended Solids	\$0.1734 per pound	"	\$0.1942 per pound
Ord 3496		Service Connection		13-Dec-07	
		connection within existing districts	\$250.00		\$350.00
		reconnection	\$50.00		\$50.00
Ord 3457		Amortization Assessment fee - outside the bounds of an assessed improvement district	\$1,000.00	14-May-98	\$1,000.00
		Private system inspection & permit fee - does not include regular plumbing permit fee		28-Jul-05	\$50.00

OSAWATOMIE FEE SCHEDULE
Adopted 1/22/2015; Resolution No. ---
Changes Effective - January 22, 2015

CODE REF.	ORD. #	DESCRIPTION	PREVIOUS FEE(S)	LAST CHANGED	CURRENT FEE
WATER SERVICE RATES					
	Res 557	Residential First 1,500 gallons per month Next 2,200 gallons per month Next 3,700 gallons per month Over 7,400 gallons per month	\$13.00 min. per housing unit \$.40 per 100 gal over 1,500 \$.34 per 100 gal over 15,000	18-Dec-14 " "	\$9.50 meter fee \$.42 per 100 gallons
		Commercial First 1,500 gallons per month Next 2,200 gallons per month Next 3,700 gallons per month Next 67,400 gallons per month Over 74,800 gallons per month	\$18.25 minimum \$.40 per 100 gal over 1,500 \$.34 per 100 gal over 15,000 \$.30 per 100 gal over 65,000	18-Dec-14 " " "	\$9.50 meter fee \$.42 per 100 gal up to 75k gal \$.32 per 100 gal over 75,000 gal top tier increases \$0.02 per 100 gal each year until tier is eliminated
		Outside City Limits		14-Dec-06	50% over rates listed above
		State Hospital and Rural Water Districts First 7,500 Gallons, Minimum Excess	\$35.00 \$2.69 per thousand	18-Dec-14 "	\$25.00 \$2.90 per thousand
		Bulk Water Sales Per Thousand Gallons Per 100 Gallons Hydrant Meter Fee	\$4.90 \$0.49	18-Dec-14 " 17-Dec-09	\$5.50 \$0.55 \$25.00
		State Water Protection Fee - State mandated	\$0.032		\$0.032 per thousand gallons
		New Service Connection - tap, service line & meter 3/4 inch meter or 5/8 inch meter meter larger than 3/4 inch			\$750.00 time & material + \$750.00
		Temporary Water Service rate installation deposit fire hydrant water meter deposit			bulk water rate \$25 + installation cost \$500 meter deposit \$1,200.00



2015 Annual Membership Rate Packages

Membership Amenities:

- *Preferred pricing for guest rates, food and beverage, and merchandise
- *Complimentary membership to Osawatomie Golf Association (OGA) for one family member
- *Complimentary USGA Handicap for one family member
- *Two complimentary guest passes valid for the 2015 golf year
- *Full schedule of member only golf events

	<u>Annual</u>	<u>Monthly</u>
Single	\$590	\$55
Single w/cart	\$1,000	\$90
Senior (62+) Single	\$550	\$50
Senior (62+) Single w/cart	\$950	\$85
Couple	\$790	\$75
Couple w/cart	\$1,300	\$120
Senior (62+) Couple	\$725	\$65
Senior (62+) Couple w/cart	\$1,250	\$115
<i>Add children under age 18</i>	\$150	\$15

All memberships with cart packages are plus applicable sales tax on the cart portion of the membership fee. Cart packages allow member to use of a shared cart. All members must agree that cart package privileges do not guarantee the sole use of a cart by the member. Monthly membership packages must be guaranteed by credit card, and are not cancelable within the one year membership commitment.



2015 Green Fee Rates

<u>18-Hole Fees</u>	<u>Walking</u>	<u>w/Cart</u>
Monday – Friday	\$15	\$28
<i>Junior, Senior, Military</i>	\$13	\$25
Sat – Sunday & Holidays	\$19	\$32
<i>Junior, Senior, Military</i>	\$15	\$28
Twilight after 3pm		\$20
Replay	\$10	\$20

<u>9-Hole Fees</u>	<u>Walking</u>	<u>w/Cart</u>
Monday – Friday	\$10	\$18
Junior, Senior, Military	\$9	\$16
Sat – Sunday & Holidays	\$12	\$20
Junior, Senior, Military	\$10	\$18

Juniors (under 18 years of age)

Seniors (62 +)

Military (active/retired military with valid ID)

**Rates are subject to change without notice*

Osawatomie Golf Club Rules:

**No outside food or beverages are permitted on golf course property.*

**No more than 5 players are permitted in a group.*

**Soft Spikes or Tennis Shoes required*

**Cart fees, cart packages, and cart usage are based upon half cart (shared).*

Members on cart package are expected to share usage of a cart with other players in their group. This helps maintain the golf course as well as the carts themselves.

We appreciate your cooperation and understanding with this rule.