

OSAWATOMIE CITY COUNCIL
AGENDA

February 11, 2021
6:30pm | 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. February 11th Agenda
 - B. Meeting Minutes – January 28th, 2021
 - C. Pay Application – KSFiberNet – \$82,154.00
 - John Brown Museum - \$12,300 - Public Works – \$69,854
 - D. BG Consultants – Wastewater - \$9,711.00
 - E. Zingre and Associates – Trail - \$490.00
 - F. Dondlinger Construction – Trail Bridge - \$42,993.34
6. Comments from the Public
 - Citizen participation will be limited to 5 minutes. Stand & be recognized by the Mayor.*
7. Presentations, Proclamations, and Appointments
8. Unfinished Business
 - A. Ordinance 3791 – The Permitting of Certain Fowl Within City Limits – Ed Beaudry
 - B. Resolution 825 – Resale of City-Owned Property
9. New Business
 - A. Resolution 843 – Finalizing an Agreement with Priority Power Management LLC (PPM) for Municipal Electric Consulting Services for 2021 – Mike Scanlon
 - B. Resolution 844 – Accepting the 2021 State of the City Water Facilities Report as Submitted by the City Manager
 - C. Resolution 845 – Accepting the Proposed Calendar of Work for the Repair of the Wastewater Treatment Facility
 - D. Resolution 846 – Directing City Manager to Enter into a Final Agreement with Always & Furever Midwest Animal Sanctuary Regarding the Operation of the Osawatomie Municipal Animal Pound
 - E. Resolution 847 – Directing City Manager to Enter into Contract with Paychex Payroll Solutions
 - F. Resolution 848 - A Resolution of the City of Osawatomie, Kansas Directing the City Manager to Identify Additional Funds to Renovate the City Fire Station – Ed Beaudry
10. Council Report
11. Mayor’s Report
12. City Manager & Staff Report
 - A. CDBG and General Grant/Funding Updates
13. Executive Session
14. Other Discussion/Motions
15. Adjourn

NEXT REGULAR MEETING – March 11, 2021

Osawatomie, Kansas. **January 28, 2021.** The Council Meeting was held at Memorial Hall. Mayor Pro Tem Karen LaDuex called the meeting to order at 6:30 p.m. Council members present were Caldwell, Dickinson, Diehm, Macek, Hampson, Wright and Walmann. Mayor Govea was absent. City Staff present at the meeting were: City Manager Mike Scanlon, Assistant to the City Manager Sam Moon, City Clerk Tammy Seamands, Building Official Ed Beaudry, and City Attorney Richard Wetzler. Members of the public were: Donna Koontz, Dale Koontz, Kari Bradley and Dale Samuels.

INVOCATION. Dale Samuels, Faith Community Church

CONSENT AGENDA. Approval of January 28th Agenda; January 14th Council Minutes 2020-12 Council Report, 2020-12.1 Council Report, Pay Application – Zingre and Associates - \$1,067.50 – Trail, Cancellation of February 25th Council Meeting **Motion** made by Dickinson, seconded by Macek to Approve the Consent Agenda as presented. Yeas: All.

COMMENTS FROM THE PUBLIC.

Dale Samuels – Faith Community Church is 1 ½ years old and is currently meeting in the Presbyterian Church basement. They are looking for a home for the church.

Kari Bradley – wants to give kudos to the Osawatomie Police Department. Monday evening Bradley locked her keys in her car. Officer Abercrombie arrived within 15 minutes and was very polite.

PRESENTATIONS & PROCLAMATIONS. – None.

PUBLIC HEARINGS. – None.

UNFINISHED BUSINESS.

ORDINANCE 3791 - PERMITTING OF CERTAIN FOWL WITHIN CITY LIMITS – This was removed from the agenda because at the last meeting the public was informed that it would be brought back on the first agenda in February.

RESOLUTION 839 – ACCEPTING THE CITY OF OSAWATOMIE’S 2021 WORK PLAN – **Motion** made by Dickinson, seconded by Macek to approve Resolution 839 – Accepting the City of Osawatomie’s 2021 Work Plan. Yeas: All.

NEW BUSINESS.

RESOLUTION 840 -AMENDING THE MUNICIPAL RECYCLING AND WASTE AGREEMENT BETWEEN WASTE MANAGEMENT OF KANSAS, INC. AND THE CITY OF OSAWATOMIE –**Motion** made by Macek, seconded by Dickinson to approve Resolution 840 – Amending the municipal recycling and waste agreement between Waste Management of Kansas, Inc. and The City of Osawatomie. Yeas: All.

RESOLUTION 841 – AUTHORIZING A FOOD TRUCK PROGRAM – **Motion** made by Caldwell, seconded by Hampson to approve Resolution 841 – Authorizing a Food Truck Program. Yeas: All.

CHARTER ORDINANCE 19 – EXEMPTING THE CITY OF OSAWATOMIE, KANSAS FROM THE PROVISIONS OF K.S.A. 12-617 ET SEQ. AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT RELATING TO SEWER IMPROVEMENTS AND THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING FOR SAID IMPROVEMENTS – **Motion** made by Dickinson, seconded by Diehm to approve Charter Ordinance 19 – Exempting the City of Osawatomie, Kansas from the provisions of K.S.A. 12-617 et seq and providing substitute and additional provisions on the same subject relating to sewer improvements and the issuance of bonds for the purpose of paying for said improvements. Yeas: All.

RESOLUTION 842 – DIRECTING THE CITY MANAGER TO WORK WITH THE OSAWATOMIE SCHOOL DISTRICT (USD 367) ON A LICENSING AGREEMENT FOR THE FLINT HILLS TRAIL CROSSOVER AND HIKE/BIKE HUT AREA TO BE LOCATED ON SCHOOL DISTRICT PROPERTY – **Motion** made by Caldwell, seconded by Hampson to approve Resolution 842 – Directing the City Manager to work with the Osawatomie School District (USD 367) on a licensing agreement for the Flint Hills Trail Crossover and Hike/Bike Hut area to be located on school district property. Yeas: All.

COUNCIL REPORTS.

Jeff Walmann ~ Mike Scanlon, Doug Walker and Alan Hire and myself met and staked out the site for the kiosk and bathrooms and they have selected tentative colors. The abutments for the bridge have been done and the bridge should be completed by May.

Karen LaDuex ~ The Oz Commons Committee has narrowed down the proposals for planning the Oz Commons project to four. Each of those companies will be interviewed next week.

MAYOR’S REPORT – None

CITY MANAGER & STAFF REPORTS. – In 7 -14 days, we should have announcements for CDBG Grants, Transportation Alternative Grants and Kansas Wildlife Parks & Recreation Grants. We also received a grant from Hillsdale Water Conservancy Grant. Scanlon and Beaudry convinced them that they can do a stormwater project. It will be located in the channel between the Karl E. Cole Fields and the parking lot of the Flint Hills Trail. They will revegetate the channel and go into the neighborhoods and show how to use prairie grasses to clean water.

The Oz Commons Committee will interview firms on Thursday and Friday for the Oz Commons project and do a tour of the Osawatomie State Hospital mountain bike course.

Miami County will be holding a Comprehensive Plan public open house on February 28th in the Osawatomie auditorium.

EXECUTIVE SESSION. - None

OTHER DISCUSSION/MOTIONS.

Motion made by Hampson, seconded by Lawrence to adjourn. Yeas: All. Mayor declared the meeting adjourned at 7:06 p.m.

/s/ Tammy Seamands
Tammy Seamands, City Clerk



Kansas Fiber Network, LLC
 8201 E. 34th Street N. /Building 1501
 Wichita, KS 67226

KsFiberNet Order

Customer:	City of Osawatomie	Location A	John Brown Museum
Contact:	Bill Justesen		1000 Main Street
Title:	Director of Information Technology		Osawatomie, KS
Address:	439 Main Street	LCON Info:	
City:	Osawatomie	Name:	Ed Beaudry
State, Zip:	KS 66064	Phone:	
Email:	bjustesen@osawatomieks.org	Email:	ebeaudry@osawatomieks.org
Notes		Location Z	KFN Fiber Osawatomie, KS

Project Description	Non-Recurring Fee
Extend fiber to John Brown Museum	\$ 12,300.00

Target Install Date: 12/30/2020

Special Terms and Conditions:
\$6,150.00 to be paid at the start of construction the remainder to be paid upon completion.

Customer approves and accepts the service order upon signature.

Signature:
 Printed Name: Bill Justesen
 Title: Director of Information Technology
 Email: bjustesen@osawatomieks.org
 Date: 11/18/2020

Kansas Fiber Network, LLC (KsFiberNet)

Signature: _____
 Printed Name: _____
 Title: _____
 Email: _____
 Date: _____

Confidential and Proprietary



Kansas Fiber Network, LLC
 8201 E. 34th Street N. /Building 1501
 Wichita, KS 67226

KsFiberNet Construction Order

Customer:	City of Osawatomie	Location A	Public Works & Maintenance Buildings
Contact:	Bill Justesen		820 Lincoln Ave
Title:	Director of Information Technology		Osawatomie, KS
Address:	439 Main Street	LCON Info:	
City:	Osawatomie	Name:	Ed Beaudry
State, Zip:	KS 66064	Phone:	
Email:	bjustesen@osawatomieks.org	Email:	ebeaudry@osawatomieks.org
Notes	Bill Roseberry Director, Public Works 913-755-4525 broseberry@osawatomieks.org	Location Z	KFN Fiber Osawatomie, KS

Project Description	Non-Recurring Fee
Extend fiber to Public works and Maintenance Buildings	\$ 69,854.00

Target Install Date: 12/30/2020

Special Terms and Conditions:
\$34,927.00 to be billed at the start of construction the remainder to be paid upon completion.

Customer approves and accepts the service order upon signature.

Signature:
 Printed Name: Bill Justesen
 Title: Director of Information Technology
 Email: bjustesen@osawatomieks.org
 Date: 11/18/2020

Kansas Fiber Network, LLC (KsFiberNet)

Signature: _____
 Printed Name: _____
 Title: _____
 Email: _____
 Date: _____

Confidential and Proprietary

February 2, 2021

Mike Scanlon, City Manager
 City of Osawatomie, Kansas
 439 Main Street
 Osawatomie, KS 66064

Re: 20-1414L - Osawatomie WWTP Improvements

-----Invoice for Consulting Services-----

This invoice is for services which were performed during the month of January as follows:

Engineering Services:

<u>Task</u>	<u>Lump Sum Amount</u>	<u>Completion Progress</u>	<u>Total</u>
1. Preliminary Design Phase	\$117,000.00	15.0%	\$17,550.00
2. Final Design Phase	\$77,000.00	0.0%	\$0.00
3. Bidding and Negotiating Phase	\$20,000.00	0.0%	\$0.00
4. Approvals and Permitting	\$15,000.00	0.0%	\$0.00
5. Construction Substantial Completion	\$5,000.00	0.0%	\$0.00
Subtotal Amount Due:			\$9,711.00
Total Completed to date:			\$17,550.00
Prior Billings to Date:			\$7,839.00

Resident Project Observation

Contract Amount	\$ 234,000.00	
Work Completed to Date	\$ -	0%
Work Previously Billed	\$ -	
Subtotal	\$0.00	

Additional Services

Contract Amount	\$ 234,000.00	
Work Completed to Date	\$ -	0%
Work Previously Billed	\$ -	
Subtotal	\$0.00	

Total Amount Due: \$9,711.00

Sincerely,

BG CONSULTANTS, INC.



Paul Owings, P.E.
 Project Engineer

APPLICATION AND CERTIFICATE FOR PAYMENT

Invoice #: 320013-01

To Owner: CITY OF OSAWATOMIE, KS
509 5TH STREET, P.O. BOX 37

Project: 320013- City of Osawatomie-Flint Hills
Nature Trail Pedestrian Brg.

Application No. : 1

Distribution to :
 Owner
 Architect
 Contractor

OSAWATOMIE, KS 66064

Period To: 1/27/2021

From Contractor: DONDLINGER & SONS CONST via Architect:
P.O. BOX 398
WICHITA, KS 67201

Project Nos: 2020-12

Contract For:

Contract Date: 12/1/2021

CONTRACTOR'S APPLICATION FOR PAYMENT

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

1. Original Contract Sum	\$86,247.50
2. Net Change By Change Order	\$2,008.65
3. Contract Sum To Date	\$88,256.15
4. Total Completed and Stored To Date	\$42,993.34
5. Retainage :	
a. 5.00% of Completed Work	\$2,149.67
b. 0.00% of Stored Material	\$0.00
Total Retainage	\$2,149.67
6. Total Earned Less Retainage	\$40,843.67
7. Less Previous Certificates For Payments	\$0.00
8. Current Payment Due	\$40,843.67
9. Balance To Finish, Plus Retainage	\$47,412.48

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

CONTRACTOR: DONDLINGER & SONS CONST CO INC

By: _____ Date: _____

State of: _____ County of: _____
 Subscribed and sworn to before me this _____ day of _____
 Notary Public:
 My Commission expires:

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor

AMOUNT CERTIFIED \$40,843.67

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:  Date: 1-29-2021

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	Additions	Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$2,008.65	\$0.00
TOTALS	\$2,008.65	\$0.00
Net Changes By Change Order	\$2,008.65	

CONTINUATION SHEET

Application and Certification for Payment, containing Contractor's signed certification is attached.

Application No. : 1

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

Application Date : 1/27/2021

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

To: 1/27/2021

Architect's Project No.:

Invoice # : 320013-01

Contract : 320013- City of Osawatomie-Flint Hills Nature Trail Pedestrian Brg.

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not in D or E)	G Total Completed and Stored To Date (D+E+F)	% (G / C)	H Balance To Finish (C-G)	I Retainage	
			From Previous Application (D+E)	This Period In Place						
001	Mobilization	8,500.00 0.00	0.00	0.00	4,250.00	0.00	4,250.00	50.00%	4,250.00 0.00	
002	Contractor Construction Staking	1,200.00 0.00	0.00	0.00	1,200.00	0.00	1,200.00	100.00%	0.00 0.00	
003	Clearing & Grubbing	1,600.00 0.00	0.00	0.00	1,600.00	0.00	1,600.00	100.00%	0.00 0.00	
004	Erosion Control	1,800.00 0.00	0.00	0.00	900.00	0.00	900.00	50.00%	900.00 0.00	
005	Permanent Seeding	2,400.00 0.00	0.00	0.00	0.00	0.00	0.00	0.00%	2,400.00 0.00	
006	Aggregate Base (AB-3)(4")	1,072.50 66.00	0.00	0.00	0.00	0.00	0.00	0.00%	1,072.50 66.00	
007	Structural Steel Truss (Design & Manufacture)	36,358.65 0.00	0.00	0.00	12,118.34	0.00	12,118.34	33.33%	24,240.31 0.00	
008	Structural Steel Truss (Delivery)	2,500.00 0.00	0.00	0.00	0.00	0.00	0.00	0.00%	2,500.00 0.00	
009	Structural Steel Truss (Installation)	9,900.00 0.00	0.00	0.00	0.00	0.00	0.00	0.00%	9,900.00 0.00	
010	Abutments	16,100.00 2.00	0.00	0.00	16,100.00	0.00	16,100.00	100.00%	0.00 0.00	
011	Class III Excavation	3,325.00 35.00	0.00	0.00	3,325.00	0.00	3,325.00	100.00%	0.00 0.00	
012	Slope Protection (12")(D-50)	3,500.00 70.00	0.00	0.00	3,500.00	0.00	3,500.00	100.00%	0.00 0.00	
Grand Totals		88,256.15	0.00	0	42,993.34	0.00	42,993.34	48.71%	45,262.81	2,149.67

Kansas Fiber Network LLC



Invoice

Invoice No.	Invoice Date	Cust ID
AR-180	01/29/2021	OSA001
Terms		Total Due
30		82,154.00

Bill To:
 City of Osawatome
 439 Main Street
 Osawatome, KS 66064

Ship To:
 City of Osawatome
 439 Main Street
 Osawatome, KS 66064

Cust ID	Invoice No.	Invoice Date	Terms	Total Due	Company Phone #	Page
OSA001	AR-180	01/29/2021	30	82,154.00	(316) 712-6030	1

<u>Description</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Amount</u>
Fiber to Public Works and Maintenance	1	69,854.00	69,854.00
Fiber to John Brown Museum	1	12,300.00	12,300.00
		SUBTOTAL	82,154.00
		TOTAL AMOUNT DUE	82,154.00

Invoice Comments:
 Extend Fiber to Public Works & Maintenance Building & John Brown Museum

Customer Address:	Remit To:
City of Osawatome 439 Main Street Osawatome, KS 66064	Kansas Fiber Network LLC 10875 Benson Drive, Suite 250 Overland Park, KS 66210


Zingre and Associates, P.A

1015 Scott Avenue
Fort Scott, Kansas 66701

Invoice

DATE	INVOICE NO.
1/31/2021	3725

BILL TO
City of Osawatomie Mike Scanlon 439 Main Street Osawatomie, KS 66064

TERMS	PROJECT		PROJECT NUMBER	NOTE	
Due on receipt	0513.06 Trail Way Station		0513.06		
ITEM	DATE	DESCRIPTION	HOURS/QTY	RATE	AMOUNT
Phase 4	1/7/2021	review proposal from Triangle and coord with Owner and Alan	0.25	70.00	17.50
Phase 4	1/8/2021	review proposal from Triangle and coord with Owner and Alan	1.25	70.00	87.50
Phase 5	1/15/2021	prepare notice of award, change order and agreement forms	2.25	70.00	157.50
Phase 5	1/18/2021	coord with GC and Owner	0.75	70.00	52.50
Phase 5	1/19/2021	coord with GC and Owner	0.75	70.00	52.50
Phase 5	1/21/2021	review truss submittals	1	70.00	70.00
Phase 5	1/22/2021	coord with GC and Owner	0.75	70.00	52.50
					
Thank you for your business.			Total		\$490.00



City of Osawatomie

ACTION ITEM SUMMARY	Item Number:	8.B
	Date:	February 11, 2021
Building Official / Director of Community Development	From:	Ed Beaudry

RE: Ordinance No. 3791 – Ordinance amending Chapter 2 of the City Code of the City of Osawatomie, Kansas amending existing Section 2-101 and adding a new section 2-105 to permit the keeping of certain fowl in the City of Osawatomie, Kansas.

RECOMMENDATION: That City Council vote regarding the proposed Ordinance amendment permitting the keeping of certain fowl in the City of Osawatomie, KS.

DETAILS: At the November 12, 2020 City Council meeting there was a request by a resident to revisit allowing chickens to be raised within the city limits and City Staff prepared an Ordinance, presented at the December 10th, 2020, meeting, for City Council to review and discuss. It was requested the Council take time to review the proposed Ordinance and think about how it would work within their own neighborhoods, and make suggestions on how it could be improved or altered to better fit the needs of our community.

Council hosted discussions and gave suggestions at the December 10th meeting and at the January 14th meeting before requesting that a final version of the proposed Ordinance amendment be presented for final vote at the February 11th meeting. This is that final version.

Related Statute / City Ordinances	
Line Item Code/Description	N/A
Available Budget:	N/A

ORDINANCE NO. 3791

AN ORDINANCE AMENDING CHAPTER 2 OF THE CITY CODE OF THE CITY OF OSWATOMIE, KANSAS AMENDING EXISTING SECTION 2-101 AND ADDING A NEW SECTION 2-105 TO PERMIT THE KEEPING OF CERTAIN FOWL IN THE CITY OF OSAWATOMIE, KANSAS

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

SECTION ONE: Section 2-101 of the City Code of the City of Osawatomie, Kansas is hereby amended to read as follows:

2-101. Definitions.

(l) "Fowl" means those animals in the zoological class aves, which can be generally defined as domestic birds commonly kept for the production of meat, eggs or feathers, which shall include, but not be limited to, chickens, ducks, geese, swans, turkeys, pigeons, pea fowl, guinea fowl, ostriches, emus, pheasant, quail, partridges, and grouse.

SECTION TWO: Article 1 of Chapter 2 of the City Code of the City of Osawatomie, Kansas is hereby amended by adding a new Section 2-105, to read as follows:

2-105 Exception; Fowl

The provisions of this article are not applicable to owners, keepers, or harborers of permitted fowl which may be maintained within the city limits, subject to the requirements of this section:

(a) Definitions.

(1) Permittee means a person to whom a permit has been issued by the city under this section.

(2) Chicken means an individual animal of the species gallus domesticus,

(3) Hen means the female.

(4) Rooster means a male.

(5) Drake means a male duck.

(6) "Fowl" means those animals in the zoological class aves, which can be generally defined as domestic birds commonly kept for the production of meat, eggs or feathers, which shall include, but not limited to, chickens, and ducks.

(b) Annual permit required. No person shall own, keep, or harbor a chicken within the

city limits without a permit issued pursuant to this section.

(c) **Locations permitted.** Only persons residing in zoning districts allowing for residential uses shall be eligible for a permit under this section. **Anyone wanting to raise chickens in the city limits shall: First have a signed letter of approval from the property owner; Second, they shall have a signed approval letter from ALL properties with a common physical border. These approval letters can be acquired from the Codes Department located at City Hall. These approval letters will be valid for the calendar year and SHALL BE RENEWED ANNUALLY.**

(1) Vacant lots shall not be utilized for accessory structures, to included coop's and or cages.

(d) **Number allowed.** A permittee shall not own, keep, or harbor more than five (5) hens, unless the permittee's dwelling is situated upon more than one (1) acre, in which case the permittee shall be allowed to own, keep, and harbor an additional five (5) hens for each full additional one (1) acre of property that is under the permittee's control and possession up to two (2) acres. No permittee shall be allowed to own, keep, or harbor more than fifteen (15) hens on any one parcel.

< 1 Acre	5 Chickens
1 - 2 Acres	10 Chickens
2+ Acres	15 Chickens

(e) **Roosters prohibited.** It shall be unlawful to own, keep, or harbor a rooster within the city limits. Ducks, geese, swans, turkeys, pigeons, pea fowl, guinea fowl, ostriches, emus and peacocks SHALL NOT BE PERMITTED. Per city code 2-116

(f) **Setbacks.** Coops and cages housing hens shall not be located within:

(1) Twenty-five (25) feet from the door or window of any dwelling or occupied structure other than the permittee's dwelling;

(2) Five (5) feet of a side or rear yard lot line;

(3) In a front yard; or

(4) Ten (10) feet of the permittee's principal dwelling.

(g) **Enclosures.** Per Osawatomie City Code 2-120, The coop shall be constructed in a similar style and building materials as the principal structure, and no part of such structure shall be located in the front yard setback. (NO GALVANIZED METAL ROOFING MATERIAL WILL BE ALLOWED). The coop shall be built to withstand all weather elements for the region. Hens shall

be provided with a covered, predator-proof coop or cage that is well ventilated and designed to be easily accessed for cleaning. The coop or cage shall allow at least two (2) square feet of space per hen. Any coop or cage exceeding 100 square feet in size shall be considered an accessory structure as defined in the Zoning Regulations and must meet all standards outlined therein. Hens shall have access to an outdoor enclosure (yard) that is adequately fenced to contain the birds on the permittee's property and to prevent predators from accessing the birds. All fowl must be kept in a fenced and secured area no larger than 625 square feet. **ALL coop design plans shall be approved by the Chief Building Official before any construction may begin.**

(h) **Sanitation.** The coop or cage, and the outdoor enclosure, must be kept in a sanitary condition and free from offensive odors. The coop or cage, and the outdoor enclosure, shall be cleaned at least once each week to prevent the accumulation of waste. If waste accumulates and a nuisance complaint is filed, the homeowner will get One warning to remedy the situation. One warning will be given per calendar year, if a Second complaint is received the permit will be nullified and the homeowner shall be required to rehome the fowl.

(i) **Sale of Consumables (eggs and/or meat).** ALL poultry/meat products must be processed in a USDA or KDA inspected facility and labeled as such. Per KDA regulations if you have 50 or fewer hens and all sales are direct to consumers, you are exempt from all requirements for selling eggs.

(1) **Slaughtering.** No person shall engage in the outdoor slaughtering of chickens. The remnants from slaughtering shall be properly disposed of, in accordance with applicable laws.

(j) **Animals at large.** No fowl will be allowed to run free. All fowl shall have clipped wings as to not allow for flight.

Any person found guilty of animal at large as defined herein shall be fined as follows: \$30.00 for the first offense within a twelve (12) month period; \$40.00 for the second offense within a twelve (12) month period; \$60.00 for the third offense within a twelve (12) month period; and \$100.00 for the fourth and subsequent offense(s) within a twelve (12) month period. The Municipal Judge shall have no authority to suspend the fine or any portion thereof of fine established by this Section. The fine shall be in addition to any applicable court costs or impoundment fees. The animal control officer, other City employee, or employees or custodians of an impoundment facility where such impounded is held shall not release an animal to an owner if the owner has failed to pay a fine or has failed to appear in municipal court for the adjudication of a violation of this section. Per city code 2-305 (e)

(k) Permit applications.

(1) Each applicant seeking to obtain a permit under this section shall apply for a permit in writing on such form as the Code Official may prescribe, and shall pay a non-refundable fee to the City according to our Fee Schedule. The initial permit fee shall be \$250.00. The annual renewal fee shall be \$25.00

(2) Each application for a permit shall be signed by the applicant, who shall be at least eighteen (18) years old, and who shall be in actual control or possession of the dwelling on the subject property. The application shall include or be accompanied by the following information:

(A) The name, address, telephone number, and date of birth of the applicant.

(B) A description of the location and size of the subject property.

(C) The number of hens the applicant proposes to keep on the subject property.

(D) A description and precise dimensions of the coop(s) or cage(s) and outdoor enclosure(s) to be maintained on the subject property, along with a description or depiction of the precise location(s) of these enclosures in relation to the property lines and adjacent properties.

(E) If the applicant proposes to keep hens in the yard of a multi-family dwelling, the applicant must include a signed statement from the owner(s) and all tenants of the multi-family dwelling, indicating their consent to the applicant's proposal for keeping hens on the premises.

(F) Such other information as is required by this chapter or reasonably required by the city to determine the applicant's eligibility and qualifications for a permit in accordance with the criteria, standards, and qualifications set forth in this section.

(l) Issuance or denial of permit.

(1) The City Clerk shall process each valid and administratively complete application for a permit within ten (10) business days.

(2) No permit shall be approved for any person ineligible pursuant to the provisions of this section.

(3) No permit shall be approved for any person who has been convicted, or who resides with any person in the subject property who has been convicted, of a crime related to maltreatment, mistreatment, neglect, or cruelty to any animal.

(m) Duration of initial permit; renewal.

(1) Any permit issued pursuant to this article shall be for a term of the remainder of the calendar year in which the permit is issued. A permit may be renewed by making a timely payment of an annual renewal fee located in the Fee Schedule, to the city on or

before December 31st of each calendar year. If the annual renewal fee is not made during the time provided herein, the permit shall expire on December 31st and a new application shall be required.

(2) A permit issued under this section may be revoked or temporarily suspended by the City Manager or his/her designee for any of the following reasons:

(A) Violation of or failure to comply with any provision of this section, or any other provision in this code or applicable city ordinances; or

(B) Fraud, misrepresentation, or false statement contained in the application for the permit.

(n) **Appeal.** Any person aggrieved by the Codes Official's denial of an initial permit application, or a decision of the City Manager or his/her designee to suspend or revoke a permit, shall have the right to appeal such decision to the City Council within ten (10) days after the notice of the action or decision has been mailed to the applicant or the permittee, as applicable. An appeal to the City Council shall be taken by filing with the City Clerk a written statement setting forth the grounds for the appeal. An appeal shall be considered by the City Council at the next regular meeting. The City Council may affirm, overrule, or modify the decision. Any person aggrieved by the City Council's decision on appeal may seek judicial review in a manner provided by law.

(o) **Inspection.** As a condition of the permit, the permittee agrees to the entry and inspection of any premises, building, enclosure, or other premises where the hens are kept or allowed to inhabit. Such inspection shall be conducted at reasonable times, with or without notice, by such city representatives designated by the city manager as being responsible for administration of this section.

(p) **Transferability.** A permit issued under this section shall not be assignable or transferable under any circumstances from one person to another person.

(q) **Penalty.** A violation of this section shall constitute a class C violation. Any person who shall be convicted in municipal court of violating any provision of this section shall be punished by a fine of not more than \$500.00. Each day that a violation occurs shall constitute a separate offense and shall be punishable hereunder as a separate violation.

SECTION THREE: This ordinance shall take effect and be in force from and after its passage, approval, and 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 28th day of January 2021,

APPROVED AND SIGNED by the Mayor

L. Mark Govea
Mayor

(SEAL)

ATTEST:

Tammy Seamands
City Clerk



CITY OF OSAWATOMIE

FORM OF SUMMARY FOR PUBLICATION OF ORDINANCE

Ordinance No. 3791: AN ORDINANCE AMENDING CHAPTER 2 OF THE CITY CODE OF THE CITY OF OSWATOMIE, KANSAS AMENDING EXISTING SECTION 2-101 AND ADDING A NEW SECTION 2-105 TO PERMIT THE KEEPING OF CERTAIN FOWL IN THE CITY OF OSAWATOMIE, KANSAS

Pursuant to the general laws of the State, a general summary of the subject matter contained in this ordinance shall be published in the official City newspaper in substantially the following form:

(Published in the Miami County Republic, February 17, 2020)

Summary of Ordinance No. 3791

February 11, 2021 the City of Osawatomie, adopted Ordinance No. 3791, an Ordinance amending Chapter 2 of the City Code of the City of Osawatomie, Kansas Amending existing section 2-101 and adding a new section 2-105 to permit the keeping of certain fowl in the City of Osawatomie, Kansas. A complete copy of this ordinance is available at www.osawatomieks.org or at City Hall, 439 Main St., Osawatomie, Kansas. This summary certified by Richard Wetzler, City Attorney

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: December 10, 2020

Richard W. Wetzler
Richard S. Wetzler, City Attorney



City of Osawatomie

ACTION ITEM SUMMARY	Item Number:	
	Date:	February 11, 2021
Building Official	From:	Ed Beaudry

RE: Purchase of City-Owned Real Property.

RECOMMENDATION: Osawatomie City Council approve the sale of City-owned real property.

DETAILS: It’s important for the City to have new dwellings built. Resolution 825, passed in December of 2020, authorizes City Staff to Develop a Process for the Sale and Redevelopment of Vacated City Owned Residential Lots. Subsequently, City Staff released an RFP for the sale of City owned real property on January 5, 2021. The requirements for all properties being sold are as follows:

1. A single-family or multi-family residence shall be built to the 2006 International Residential Code standards within 12 months (with an additional three [3] month administrative extension possible) of conveyance of the property to Buyer or the land will revert back to the City of Osawatomie.
2. Prior to conveyance of the described property, Buyer shall demonstrate to the reasonable satisfaction of the City Manager or his/her designees, that he/she has adequate financial means in place or committed to ensure that the construction of the residence on the property can be commenced and completed according to the time line established by this resolution.
3. All utilities shall be installed (electric, water, wastewater, and gas as applicable).
4. Should Buyer fail to comply with the terms of the agreement, Buyer agrees to give the Seller a Quit Claim Deed reverting the property back to the Seller, Buyer releases any further claim or interest in property including any partial construction.
5. No refund of monies will be given if the Buyer fails to comply with any terms of the agreement.

The RFP was posted on the City web site for all to see. City Staff were contacted by three different individuals interested in the purchase of properties. Staff directed those individuals to the web site to complete the response form provided.

One response was received by the City Clerk at the time of opening on February 5, 2021 at 2:00pm. There were two separate bids for the purchase of properties, the responses were submitted by SSGK (aka Wright Way Homes, aka Kirk and Shelagh Wright).

1. 1010 6th Street: \$1,000.00 (General Business)
2. 100 Walnut Avenue: \$1,000.00 (Residential R-1)

COUNCIL ACTION NEEDED: Discuss and Consider and provide city staff with direction.

STAFF RECOMMENDATION: Approve the sale of city owned real property.

REQUEST FOR PROPOSALS RESPONSE FORM

In compliance with this Request for Proposals, the undersigned acknowledges that he/she

has read and understands all of the conditions imposed herein and offers and agrees to perform in accordance with the attached proposal or as mutually agreed upon by subsequent negotiation. The undersigned represents that he/she is authorized to submit the foregoing proposal on behalf of the proposer's company or business entity and to offer the terms and provisions described therein.

Name: Kirk + Shelagh Wright

Address: 920 Brown Ave.

City: Osawatomie State: KS Zip Code: 66064

Telephone: 913 731 0517 Contact Person: Kirk Wright

FOR EACH ITEM LISTED BELOW PROVIDE THE INFORMATION REQUESTED:

1. Address of property:

1010 6th Street

2. Purchase Price for Property:

\$1,000

3. Proposed Use and/or Development of Property:

Build a 30x40 shop similar to attached photo. It would include a front office area, restroom, + kitchenette, but would mainly be used for storage of our building materials. We would privacy fence an area out back, for storage, as well. Gravel parking area.

4. If applicable, Development Schedule:

Build asap + be using it asap, dependent on builder's schedule.

a. Commencement Date: Spring summer / 2021

b. Completion Date: Fall 2021

Attach a list of three references, including the names, addresses and telephone numbers of the appropriate contact persons.

1. Carl Gasper, VP First Sec Bank, 29 W. Wea, Paola. 913-557-3200
2. Mark Fuchs, VP First Option Bank, 603 Main, Osawatomie. 913-755-3811
3. Mike Page, Diversified Builders, 207 W. Woodward, Parker KS. 913-285-0164

Name: Kirk Wright

Date: 1/7/21

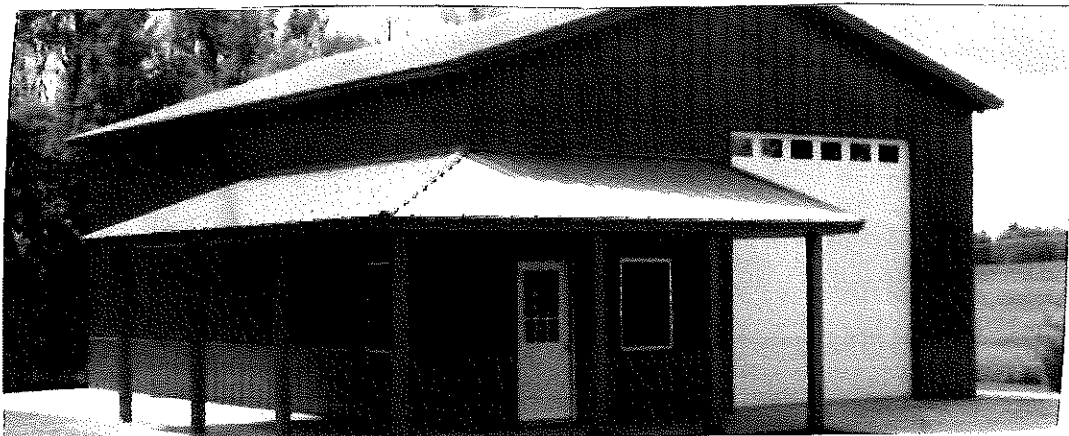
Signature: Kirk Wright

TERMS FOR THE SALE OF REAL PROPERTY

1. A single-family or multi-family residence shall be built to the 2006 International Residential Code standards within 12 months (with an additional three [3] month administrative extension possible) of conveyance of the property to Buyer or the land will revert back to the City of Osawatomie.
2. Prior to conveyance of the described property, Buyer shall demonstrate to the reasonable satisfaction of the City Manager or his/her designees, that he/she has adequate financial means in place or committed to ensure that the construction of the residence on the property can be commenced and completed according to the time line established by this resolution.
3. All utilities shall be installed (electric, water, wastewater, and gas as applicable).
4. Should Buyer fail to comply with the terms of the agreement, Buyer agrees to give the Seller a Quit Claim Deed reverting the property back to the Seller, Buyer releases any further claim or interest in property including any partial construction.
5. No refund of monies will be given if the Buyer fails to comply with any terms of the agreement.

Proposal for 1010 6th Street, Osawatomie

- We need a shop for storage, so we'd propose building a 30x40 structure, similar to the photo. Wood construction, on slab, covered in metal, for low maintenance.
- The front would include a large garage door, then an entry door/windows and porch on one side.
- Front office space would include a small kitchenette, closet storage and a restroom. This area would be climate controlled.
- Back, inside area of the structure would be used to store extra building supplies, tools, trailers, etc. that are related to our business.
- Back area of property would be privacy fenced with a large gate so additional items (i.e. fencing materials, trailers, etc.) could be easily unloaded and stored in that secure area, until needed.
- Driveway and parking would be gravel
- We would install a large sign (Wright way Homes & our phone #) on the front of the building, for advertising, but would mainly use the space for storage.
- We believe our plan and set up of the proposed building would be ideal for our needs and also very marketable to many other industries, should we decide to sell in the future.
- This proposed building would be very neat in appearance and would keep our storage needs contained, offering a nice aesthetic in that area of our community.



REQUEST FOR PROPOSALS RESPONSE FORM

In compliance with this Request for Proposals, the undersigned acknowledges that he/she

has read and understands all of the conditions imposed herein and offers and agrees to perform in accordance with the attached proposal or as mutually agreed upon by subsequent negotiation. The undersigned represents that he/she is authorized to submit the foregoing proposal on behalf of the proposer's company or business entity and to offer the terms and provisions described therein.

Name: Kirk + Shelagh Wright / Wright Way Homes

Address: 920 Brown Ave.

City: Osawatomie State: KS Zip Code: 66064

Telephone: 913 731 0517 Contact Person: Kirk Wright

FOR EACH ITEM LISTED BELOW PROVIDE THE INFORMATION REQUESTED:

1. Address of property:

100 Walnut Ave.

2. Purchase Price for Property:

\$1000

3. Proposed Use and/or Development of Property:

Build a 1300-1600² ft, single family home, for re-sale. See attached plans. We would build one or the other, unless we locate another plan we like better! Home would be at least 3 bed, 2 bath. We would finish it similar finishes as the Retan properties.

4. If applicable, Development Schedule:

dependent on our builder's schedule + weather

a. Commencement Date: spring/summer 2021

b. Completion Date: by Jan 30, 2022

Attach a list of three references, including the names, addresses and telephone numbers of the appropriate contact persons.

1. Carl Gasper, VP First Sec. Bank, 29 West Wca, Paola. 913-557-3200

2. Mark Fuchs, VP First option Bank, 601 Main st., Osawatomie 913-755-3811

3. Mike Page, Diversified, Parker KS ⁹¹³⁻285-0164, 207 W. Woodward st., Parker KS

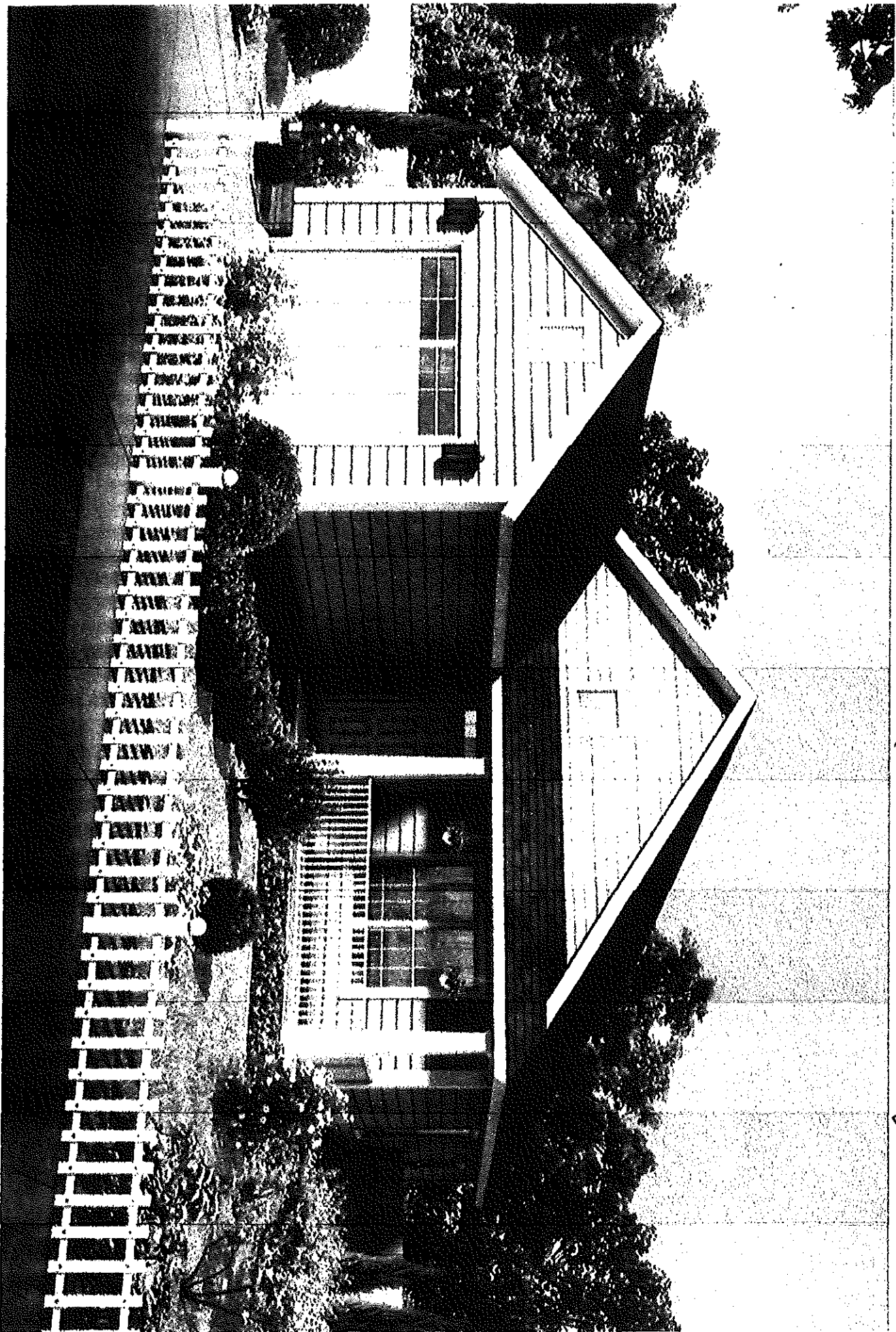
Name: Kirk Wright

Date: 1-7-21

Signature: Kirk Wright

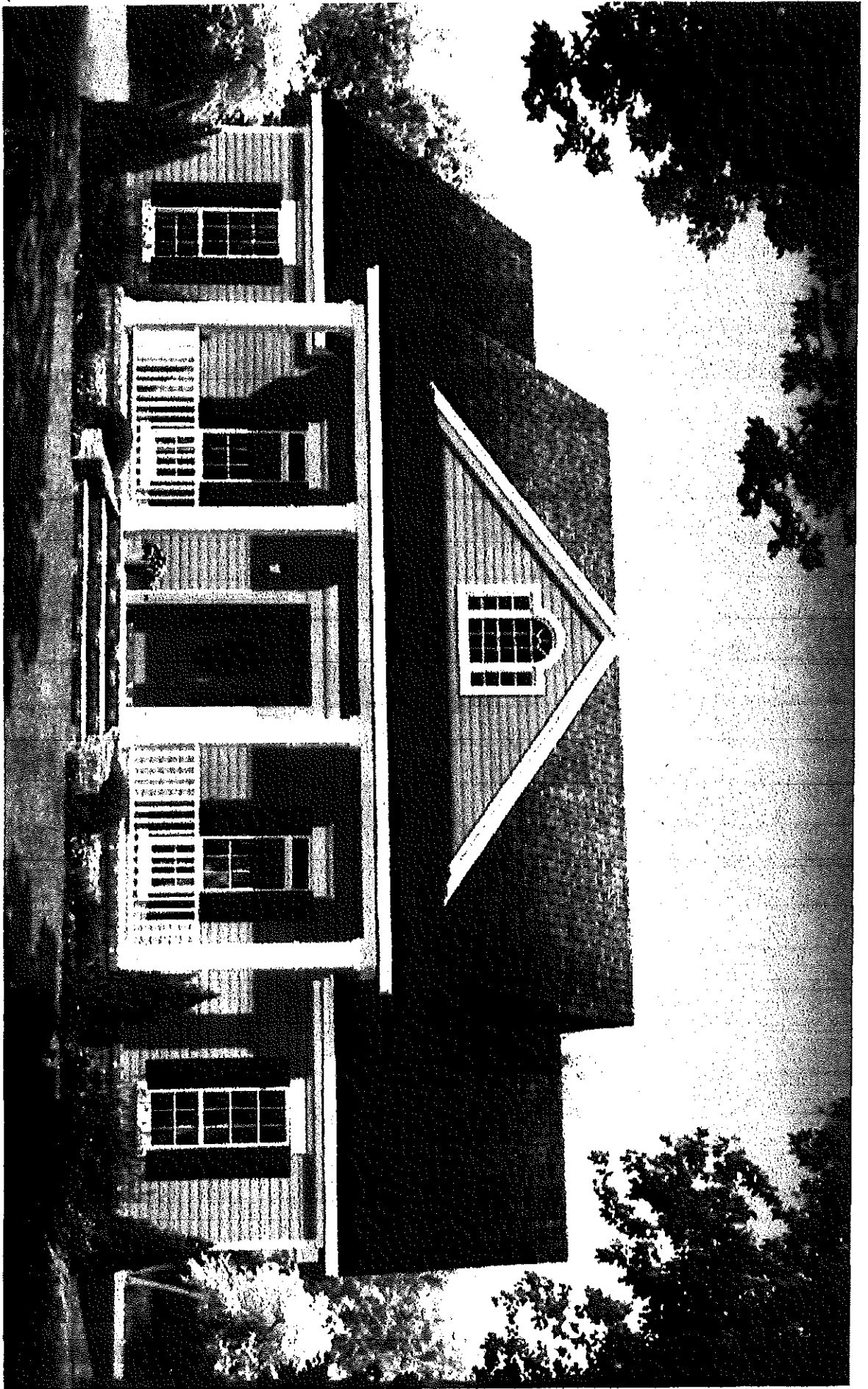
TERMS FOR THE SALE OF REAL PROPERTY

1. A single-family or multi-family residence shall be built to the 2006 International Residential Code standards within 12 months (with an additional three [3] month administrative extension possible) of conveyance of the property to Buyer or the land will revert back to the City of Osawatomie.
2. Prior to conveyance of the described property, Buyer shall demonstrate to the reasonable satisfaction of the City Manager or his/her designees, that he/she has adequate financial means in place or committed to ensure that the construction of the residence on the property can be commenced and completed according to the time line established by this resolution.
3. All utilities shall be installed (electric, water, wastewater, and gas as applicable).
4. Should Buyer fail to comply with the terms of the agreement, Buyer agrees to give the Seller a Quit Claim Deed reverting the property back to the Seller, Buyer releases any further claim or interest in property including any partial construction.
5. No refund of monies will be given if the Buyer fails to comply with any terms of the agreement.



(Same as U06+U08 Retan) 1301244

4 Bed, 2 1/2 Bath. 1870² ft





City of Osawatomie

ACTION ITEM SUMMARY	Item Number:	9.A
	Date:	February 9, 2021
City Manager	From:	Mike Scanlon

RE: RESOLUTION 843 OF THE CITY OF OSAWATOMIE, KANSAS FINALIZING AN AGREEMENT WITH PRIORITY POWER MANAGEMENT LLC (PPM) FOR MUNICIPAL ELECTRIC CONSULTING SERVICES FOR 2021.

RECOMMENDATION: That the City Council approve A RESOLUTION OF THE CITY OF OSAWATOMIE, KANSAS FINALIZING AN AGREEMENT WITH PRIORITY POWER MANAGEMENT LLC (PPM) FOR MUNICIPAL ELECTRIC CONSULTING SERVICES FOR 2021.

DETAILS: Resolution 843 continues the consulting services provided to the City of Osawatomie since 2017 when we started with EMG.

Related Statute / City Ordinances	N/A
Line Item Code/Description	N/A
Available Budget:	N/A

RESOLUTION NO. 843

**A RESOLUTION OF THE CITY OF OSAWATOMIE, KANSAS
FINALIZING AN AGREEMENT WITH PRIORITY POWER
MANAGEMENT LLC FOR MUNICIPAL ELECTRIC
CONSULTING SERVICES FOR 2021.**

WHEREAS, the City of Osawatomie and Priority Power Management LLC (PPM) have worked collaboratively to deliver the lowest rate to Osawatomie electricity customers possible; and

WHEREAS, the City of Osawatomie would like to retain the services of PPM to continue to tap into their expertise and knowledge of the wholesale electric market;

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

SECTION ONE: The City of Osawatomie and PPM agree to the specifics of the Energy Management and Consulting Services Agreement attached to this Resolution and hereby direct the City Manager to sign the Agreement to become effective on March 1, 2021.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas this 11th day of February 2021, a majority being in favor thereof.

APPROVED AND SIGNED by the Mayor.

L. Mark Govea, Mayor

(SEAL)

ATTEST:

Tammy Seamands, City Clerk

Energy Management and Consulting Services Agreement

This Energy Management and Consulting Services Agreement (“Agreement”) is entered into and effective as of the date of March 1, 2021, by and between City of Osawatomie, (hereafter “**Client**”) and Priority Power Management, LLC, a Texas limited liability company (hereafter “**PPM**”), collectively the “**Parties**”.

Recitals

Whereas, PPM has been providing energy management and consulting services to industrial, commercial and other large-volume end-users such as Client since 2002; and

Whereas, Client owns and operates a municipal electric and/or other municipal utility system and purchases electrical power from other utilities under contract and needs PPM to advise the Client on various utility issues, including assisting the Client in evaluating and optimizing their wholesale electric procurement and generation asset options;

Now, **Therefore**, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the Parties hereby agree that PPM shall be an agent to act on Client’s behalf, as follows:

Terms and Conditions

1. **Nature and Scope.** Client hereby retains PPM as a provider of the energy management and consulting services set forth in Attachment A (the “**Services**”) for Client’s properties listed in Attachment B (the “**Facilities**”). PPM agrees to provide the Services set forth in Attachment A. PPM assumes no responsibility for performance either by third party suppliers of goods (including electricity and natural gas) or services (including services involving the supply of electricity and natural gas) to Client (“**Supplier**” or “**Suppliers**”) or by Client under contracts or agreements, formal or informal, between Client and its Suppliers and/or customers. PPM shall not take title to any electricity or natural gas or any other energy-related product or source.
2. **Term.** This Agreement shall be effective as of the date stated above, and shall remain in force and effect for twelve months (“**Initial Term**”). Thereafter, without further action by the Parties, this Agreement shall automatically renew at the end of the Initial Term for one year and thereafter for one-year terms on each anniversary of the renewal date. Either Party may terminate this Agreement by giving the other Party written notice at least 90 days prior to the expiration of the then applicable term of this Agreement.
3. **Compensation.** As compensation for providing the Services, Client agrees to pay to PPM all of the compensation and on all of the terms set forth in Attachment C.
4. **Facilities.** The Client’s Facilities covered under this Agreement are listed on Attachment B.
5. **Authority and Exclusivity of PPM.** Client authorizes PPM to act on its behalf with respect to the matters provided in this Agreement and those matters set forth in Attachment D, as well as issues related to the Services on behalf of Client.
6. **Client Responsibilities.** Client shall have the following responsibilities during the term of this Agreement:
 - A. **Data and Errors.** Client shall (i) provide timely and accurate data and information required for PPM to provide the Services, (ii) review all output produced by PPM as a result of providing the Services, and (iii) notify PPM of any errors in such input data or output. Client shall cooperate with PPM in good faith to address the resolution of errors, omissions or deficiencies, and provide PPM the opportunity to correct the errors, omissions and deficiencies. Upon successful resolution of errors, omissions or deficiencies, Client shall accept the output as completed.
 - B. **Transactions with Suppliers.** Client shall retain all legal or equitable rights and remedies available to it against any Supplier and/or customer. Client agrees to hold PPM harmless and defend PPM from any claims or causes of action asserted by Suppliers arising from Client’s transactions with such Suppliers and/or customers.
 - C. **Fees and Taxes.** Client shall be responsible (and indemnify PPM) for payment of any energy supply and any applicable transportation and distribution fees, and all taxes such as sales and use taxes assessed upon the

energy.

- D. **Management Action.** Upon reasonable request by PPM, Client shall promptly provide management determinations, approvals, and other information and assistance reasonably required by PPM to perform its obligations under this Agreement

7. **Notices.** Except as otherwise expressly provided for herein, all notices, requests or other communications required or permitted hereunder shall be in writing and shall be deemed to have been given or made if delivered personally, by overnight delivery service, or by United States mail, return receipt requested, to a Party at the following address, or at such other address as shall be specified in writing by a Party to the other Party in accordance with the terms and conditions of this paragraph:

If to PPM:

Priority Power Management, LLC
5012 Portico Way
Midland, TX 79707
Attn: John J. Bick, Managing Principal
432-620-9100 office
432-620-9145 fax

If to Client:

Michael Scanlon, City Manager
439 Main St., PO Box 37
Osawatomie, KS 66064

913-755-2146 office
913-755-4164 fax

With a copy (which shall not constitute effective notice) to:

Charles G. Pouls
The Pouls Law Firm, PLLC
777 Main Street, Suite 600
Fort Worth, Texas 76102

8. **INDEMNIFICATION, LIMITATION OF LIABILITY, AND DAMAGES.** IN ANY ACTION ARISING OUT OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, INDIRECT, LOST PROFITS, OR EXEMPLARY DAMAGES. LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES. CLIENT ASSUMES FULL RESPONSIBILITY FOR ALL ENERGY (INCLUDING ELECTRICITY AND NATURAL GAS) FURNISHED TO CLIENT, AND CLIENT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS PPM, ITS OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, AFFILIATES, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS ARISING OUT OF THE ENERGY (INCLUDING ELECTRICITY AND NATURAL GAS) DELIVERED. IN ADDITION, PPM SHALL NOT BE LIABLE FOR AND CLIENT WILL SAVE, HOLD HARMLESS, DEFEND, AND INDEMNIFY PPM AND ITS OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, AFFILIATES, AND EMPLOYEES FROM ANY THIRD PARTY CLAIMS, INCLUDING SUPPLIER CLAIMS, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR TO THE PARTIES' ACTIONS HEREUNDER, WHETHER SAID CLAIM IS ASSERTED AGAINST CLIENT, PPM, OR BOTH. FURTHERMORE, CLIENT UNDERSTANDS AND AGREES THAT THE LIABILITY OF PPM TO CLIENT SHALL BE LIMITED IN AMOUNT AND SHALL NOT EXCEED THE COMPENSATION RECEIVED BY PPM UNDER THIS AGREEMENT FOR THE THREE-MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE ON WHICH THE CLAIM AROSE. CLIENT ACKNOWLEDGES THAT THIS AGREEMENT IS BETWEEN PARTIES OF EQUAL BARGAINING POWER AND THAT THE FOREGOING LIMITATION OF LIABILITY IS SUPPORTED BY LEGITIMATE COMMERCIAL REASONS.

9. **Force Majeure.** The inability of either party to perform under this Agreement shall not be the basis of a claim for damages by either Party, or for breach of contract, when due to causes or contingencies reasonably beyond the control of the non-performing Party; including strike, riot, sabotage, terrorism, civil disorder, labor disputes, accidents, failure or fluctuations of power supply, lack of capacity of the local distribution company or transmission provider and its equipment or power lines, or acts of nature such as flood, earthquake, tornado, storm, or lightning, but excluding extremes of temperature alone. The Party suffering the force majeure shall notify promptly the other Party in writing of the particulars. With the exception of labor disputes, and so far as possible, the force majeure shall be resolved with all reasonable dispatch.

- 10. Assignment.** This Agreement shall not be assigned in whole or in part by PPM without the prior written consent of Client, not to be unreasonably withheld; provided, however, that no consent shall be required for any assignment by PPM to any of its affiliates, including its parent and subsidiary entities. In the event Client should sell, transfer, assign or convey its operating rights to a property covered hereby, this Agreement shall be binding on the successor or assignee.
- 11. Confidentiality.** The Parties shall hold all information, whether oral, written, electronic or otherwise, that each receives from the other (collectively, "Confidential Information") in strict confidence, and use at least the same degree of care as it uses with respect to its own confidential information to prevent the disclosure of such Confidential Information. The Parties shall not disclose the Confidential Information to any person or entity except as necessary to perform obligations described in this Agreement. The Parties shall not provide such Confidential Information to any such person or entity until such person or entity agrees to abide by the terms of this Section. The Parties further acknowledge that any disclosure of Confidential Information required under the Kansas Open Records Act (Kansas Statutes Annotated 45-215 through 45-223 is not prohibited under the terms of this Section and will not be considered a breach of the agreement between the Parties.
- 12. Entire Agreement.** This Agreement and all attachments constitute the entire Agreement between the Parties hereto. Any amendment, addition or deletion to this Agreement must be in writing and executed by the Parties. This Agreement shall supersede any prior oral discussions or terms and conditions contained on any form or document used in connection with the Services hereunder. All implied or express warranties related to the Services are hereby disclaimed to the fullest extent allowed by law. Each Party affirms that it has read this Agreement in its entirety and it agrees to the terms and conditions contained herein and to the wording of this Agreement, and any ambiguities shall not be interpreted to the detriment of either Party merely by the fact that such Party is the author of the Agreement.
- 13. Severability.** If any provision of this Agreement or the application of any such provision to any Party shall be declared judicially to be invalid, unenforceable, or void, such decision shall not have the effect of invalidating or voiding the remainder of this Agreement, it being the intent and agreement of the Parties that this Agreement shall be deemed amended by modifying such provision to the fullest extent necessary to render it valid, legal, and enforceable while preserving its intent or, if such modification is not possible, by substituting therefor another provision that is valid, legal, and enforceable and that achieves the same objective.
- 14. Authorized Representative.** The person executing this Agreement on behalf of each Party hereby represents that he/she is said Party's authorized representative and is fully authorized and empowered to enter into this Agreement and that each Party has full authority to perform the terms and conditions hereof.
- 15. Relationship of Parties.** The relationship between the Parties shall be limited to the performance of Services as set forth in this Agreement and shall not constitute a joint venture, partnership or an employee-employer relationship. PPM is an independent contractor and shall be responsible for the means and methods used in performing Services under this Agreement. Neither Party may obligate the other to any expense or liability outside of this Agreement, except upon written consent of the other.
- 16. Delivery; Counterparts.** Delivery of an executed signature page of this Agreement by facsimile, e-mail, or other customary means of electronic submission (*i.e.*, .pdf file) shall be deemed binding for all purposes hereof, without delivery of an original signature page being thereafter required. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument binding on all Parties, notwithstanding the fact that all Parties are not signatories to the original or the same counterpart.

In Witness Whereof, the Parties by their respective duly authorized representatives have executed this Agreement. This Agreement shall not become effective as to either Party until executed by both Parties.

Priority Power Management, LLC

City of Osawatomie, Kansas

By: _____

By: _____

Name: John J. Bick
Title: Managing Principal

Name: Michael Scanlon
Title: City Manager

ATTACHMENT A
(Services)

PPM will perform the following Services:

1. Data Collection and Analysis
 - a) Gather client facility lists, including supplier information, account numbers, and service addresses;
 - b) Gather historical load data for each site;
 - c) Collect current contracts;
 - d) Determine whether Client has a preferred supplier;
 - e) Analyze and complete any missing or questionable load data, including identification of demand ratchet and power factor penalty charges; if applicable;
 - f) Prepare data for distribution to suppliers.
2. Strategy Assessment and Development
 - a) Assess the short term and long-term goals of Client;
 - b) Assess market conditions and develop strategy consistent with Client goals;
 - c) Determine market liquidity and pricing environment;
 - d) Analyze various pricing structures and product mixes relative to Client goals;
 - e) Gain consensus from Client on hedging strategy if applicable;
 - f) Assist Client with the development of contract terms that provide operational and incremental purchasing flexibility.
3. Procurement
 - a) Present pricing options to Client relative to strategy;
 - b) Prepare electricity Request for Proposals (RFP's) and distribute to qualified suppliers;
 - c) Include Client in group buying pools organized and managed by PPM if applicable;
 - d) Provide consistency in communicating RFP questions and answers to all participating suppliers;
 - e) Provide evaluation and analysis of all supplier bids and present findings to Client;
 - f) Negotiate terms and conditions with appropriate supplier(s).
4. Contract Management
 - a) Monitor and verify accurate and timely switches of accounts to new supplier;
 - b) Review supplier invoices to determine consistency with contract terms;
 - c) Assist Client with supplier issue resolution;
 - d) Provide Client with estimated annual budgets and or ongoing performance metrics as needed.
5. Portfolio Management
 - a) Provide Client with market reports highlighting market events and pricing levels on a periodic basis;
 - b) Provide Client with price discovery by querying market suppliers regarding current market price;
 - c) Maintain a customized hedging position report for Client outlining various purchases and risk positions, if applicable;
 - d) Perform market outlooking and forward price discovery to meet Client-specific trigger levels;
 - e) Analyze "blend & extend" opportunities to meet desired budget goals;
 - f) Adjust strategies as needed to meet changing Client goals and market environment.
 - g) Provide Key Account support to Client
 - h) Evaluate supply side and demand side strategies for Client in order to manage Utility costs
 - i) Provide rate design support and /or assist in the development and implementation of the Client's ECA
 - j) Provide other services such as energy audits, engineering, and load monitoring to assist the Client in managing their power supply.

ATTACHMENT B
(Facilities)

The electric distribution grid of the City of Osawatomie Electric Department located in Miami County, Kansas.

City owned Generation Plant

ATTACHMENT C
(PPM Compensation)

As compensation for providing the Services, Client agrees to pay to PPM all of the following compensation and on all of the following terms:

Base fee for services for PPM will be the sum of \$1,000 a month. For this monthly retainer, PPM will perform all contract analysis, phone conferences with City staff, and provide each month, up to ten hours of work, at the City of Osawatomie or at another site on behalf of the City. If during the course of the month PPM performs more work than described above, then additional compensation will be paid by the City if authorized by the City on an hourly basis of \$120 per hour. In addition, vehicle mileage for travel conducted solely for the benefit of Client business will be billed at the prevailing United States Department of the Treasury Internal Revenue Service Standard Mileage Rate.

ATTACHMENT D
(Authority of PPM)

In addition to those matters provided in the Agreement, Client authorizes PPM to act on its behalf with respect to all of the following matters:

Interaction with Municipal Power pools and Power suppliers on behalf on the Client

Obtain energy supply data from power pools and suppliers

Obtain meter data and billing data from City and suppliers

Represent Client with vendors of energy related products and services to investigate feasibility for client

Represent Client in all municipal energy agency and power pool matters as requested by Client

Represent Client at various meeting on energy related matters or as assigned by Client.



City of Osawatomie

ACTION ITEM SUMMARY	Item Number:	9.B
	Date:	February 9, 2021
City Manager	From:	Mike Scanlon

RE: RESOLUTION 844 OF THE CITY OF OSAWATOMIE, KANSAS ACCEPTING THE 2021 STATE OF THE CITY WATER FACILITIES REPORT THAT HAS BEEN SUBMITTED BY THE CITY MANAGER.

RECOMMENDATION: That the City Council approve A RESOLUTION OF THE CITY OF OSAWATOMIE, KANSAS ACCEPTING THE 2021 STATE OF THE CITY WATER FACILITIES REPORT THAT HAS BEEN SUBMITTED BY THE CITY MANAGER.

DETAILS: Resolution 844 accepts the report prepared by the City Manager and recommends the appointment of a Water Study Committee, which will complete its work and make a recommendation by June 1, 2021. The report is attached to this AIS.

Related Statute / City Ordinances	N/A
Line Item Code/Description	N/A
Available Budget:	N/A



**City of Osawatomie, Kansas
Water Infrastructure Report**
Prepared by Mike Scanlon



February 8, 2021

THE PROBLEM

The purpose of this report is to layout in stark detail the challenges that we are facing with our Water Utility. We have reached the point that we are now just one critical failure away from not being able to produce and deliver water. We are currently addressing the repairs and replacements on the Wastewater side. This report will be confined to our Water System.

A Quick Recap

- In the summer of 2020, we were **down to one intake pump** for taking raw water off the Marais De Cygnes. **In 2016 there were four operational pumps.** Over time they were not replaced – this was done for cost savings. We are now up to three pumps available.
- **As of last week, we are down to one high flow pump (we once had three) that we use to fill our water towers.** We hope to have second pump in place by February 15th – but there are no guarantees. Understand if we lose this pump, we have no way to fill our water towers. These pumps are also necessary to cool the turbines at the power plant.
- In the fall of 2020 for the 6th time in the last 12 quarters we had to report too high a level of Total Trihalomethanes (TTHM) and send out letters. In part this issue is related to an ongoing deterioration in our overall water supply lines and system maintenance.
- We have a host of problems on the distribution (water) side of our pipe networks: everything from broken meters making it difficult for us to monitor the amount of water we have and we are losing, to valves that no longer work or are in disrepair. **About 75% of our existing pipes are cast iron and in need of replacement.**

- Ongoing Supervisory Control And Data Acquisition (SCADA) systems at the Plant are best described as “Sketchy.” This is the system that automates our delivery of chemicals into our water and also handles various pumping operations. We currently have two systems that don’t “talk to each other.”
- We were just notified by KDHE that we will have a Cryptosporidium requirement in 2023 which will cost about \$100,000 annually in improvements and filters.

A preliminary report to the City Manager from BG Consultants, the City’s Engineers states the following,

The existing water treatment plant is located north of John Brown park adjacent to the Marais Des Cygnes River. The facility treats surface water from the Marais Des Cygnes River. The treatment facility primarily consists of the following treatment units:

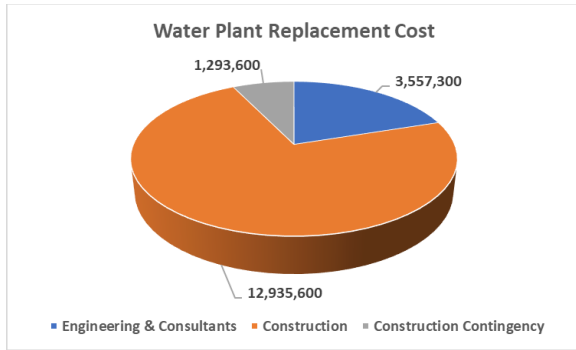
- Raw Water Intake
- Presedimentation Basin
- Conventional Sedimentation Basin
- Gravity Filters
- Polymer Chemical Feed System
- Carbon Chemical Feed System
- Lime Feed System

A site visit was performed to assess the general condition of the facility. **The facility is in poor condition.** Treatment equipment has reached the end of its useful life, electrical gear is corroded and antiquated, piping systems are significantly corroded, standing water is present throughout the facility, and concrete structures have experienced significant degradation. **The facility should be rehabilitated or replaced in the near future.**

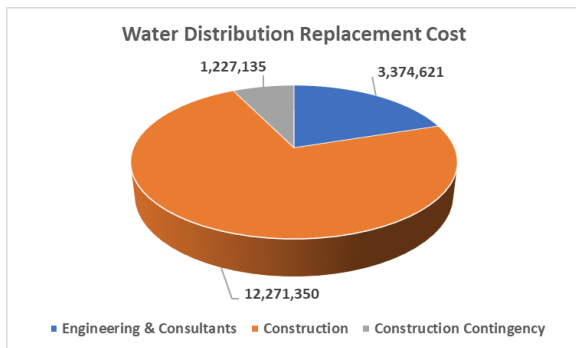
THE COST

As part of their report, we asked BG Consultants to put together both the anticipated cost of replacing the Water Plant and the Water Distribution System. It's important to reiterate we need to be investing in both the replacement of our distribution system and our Water Plant itself. Next, we asked if they could then convert that set of calculations into how they would affect our water rates – trying as best to anticipate what grants would be possible to reduce the cost.

WATER PLANT -- \$17,786,500



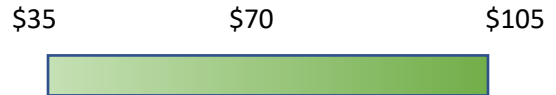
WATER DISTRIBUTION – \$16,873,106



THE FUNDING

There are three primary sources of revenue to pay for these improvements. By far the largest is the utility system customer. The most conservative approach is to use an increase in utility rates and couple it with Community Development Block Grant (CDBG) Dollars over a multi-year phased project. The most liberal approach is to use an increase in utility rates, couple it with Community Development Block Grant (CDBG) dollars and a multi-million dollar USDA Grant that we might be eligible for over a multi-year phased project. Those are the extremes – and likely we end up somewhere in between.

Then, using current interest rates, terms and borrowing capacities, you end up with what we can forecast for monthly utility bills **and that would be a monthly increase in the range of between \$35.00 and \$105.00.**



The potential increase in Monthly Water Charges.

Summary and Recommendation

I always approach problems like this in four parts.

PART 1 - WHAT WE KNOW.

What we know is that our water system (plant and distribution) needs to be replaced and that's been true for the last 10-20 years. So, nothing has changed other than daily it's becoming more critical.

PART 2 – WHAT WE DON'T KNOW.

What we don't know is the date at which we are going to have a catastrophic failure and not be able to produce or distribute water. This is not your typical "water-line busts and we need to fix it" failure. The catastrophic failure is long-term and can create negative life safety issues. This could require us to truck in water, purchase bottled water and spending likely hundreds of thousands of dollars in the interim. **Each day we are getting "closer to" not "further from" a catastrophic failure.**

PART 3 – AVAILABLE SOLUTIONS.

Our available solutions start with repairs. What does it cost to repair the plant? We have that starting number. What does it cost to repair our distribution network? We have that starting number. But are there other options we should consider? That question is a function of how much do you think the rate payer should pay? Is \$105 more a month going to work? Is \$35 more a month going to work? Should we consider becoming a water purchaser? If so, can we retain our water rights? If we buy from someone else – what could we purchase the water for?

PART 4 – WHAT'S NEXT?

I believe "What's Next" is the following.

We need to get some agreement on the ***Water Rate increase*** that we think will work.

- I don't think \$105.00 more a month on water bills will work.
- I'm even suspect of \$35.00 more a month working. Because I'm not sure we will get all the grants possible to get to that low of a number.
- I think we have to plan for \$70.00 more a month and then strategize on how to get this down.

I believe that we need a "Study Committee" made up of some City Councilmembers and some citizens to take this on. It's a complicated topic that we have to get resolution to in the next 90-120 days.

The likelihood of catastrophic failure isn't decreasing and we wouldn't be doing our sworn duty if we turned a "blind-eye" to the issue.

I have already started exploring every possible financing and operational possibility that exists for us hoping that within 30 days I've created enough research and data that help a Study Committee find a resolution.

I'm not going to "sugarcoat" the issue. We have to find money to fix our water system and we need to do that thoughtfully and quickly.

A PERSPECTIVE

From the American Society of Civil Engineers (ASCE)

The Economic Benefits of Investing in Water Infrastructure

How a Failure to Act Would Affect the US Economic Recovery.

“There is a growing need for capital investment in the distribution lines, conveyance systems, treatment plants, and storage tanks that keep US water systems working. Investment in these systems, however, has not kept pace with the need. In 2019, the total capital spending on water infrastructure at the local, state, and federal levels was approximately \$48 billion, while investment needs totaled \$129 billion, **creating an \$81 billion gap**. The United States is drastically underinvesting in critical water infrastructure—only meeting 37 percent of the nation’s total water infrastructure capital needs in 2019. If funding needs and infrastructure investment trends continue, the annual gap will grow to \$136 billion by 2039. **Over 20 years, the cumulative water and wastewater capital investment need will soar to \$3.27 trillion, and the cumulative capital investment gap will total \$2.2 trillion—nearly \$6,000 for every adult and child expected to be living in the United States in 2039.** Operation and maintenance (O&M) costs are also growing and outpacing available funding. Operating and maintaining water infrastructure become costlier as the system components near or exceed their expected lifespans.

The limited amount of federal and state funding assistance utilities receive today is primarily used to help fund capital projects, so local utilities primarily cover O&M costs out of their own revenue streams. These costs will rise as

systems continue to age, placing smaller or less affluent communities at a relative disadvantage. While utilities historically have been able to fund O&M without major concerns, there is a growing gap between O&M needs and available funding. In 2019, 90 percent of the nation’s

\$104 billion O&M funding need was met, leaving an annual O&M funding gap of \$10.5 billion. If trends continue, the country will face a single-year O&M shortfall of \$18 billion in 2039, and the cumulative gap in O&M funding for the 20-year 2019-2039 period will be \$287 billion. Based on current practices, sustainable funding for O&M will become a more pressing issue compounded by age and other factors if it does not address the funding gap.”

Source:

http://www.uswateralliance.org/sites/uswateralliance.org/files/publications/The%20Economic%20Benefits%20of%20Investing%20in%20Water%20Infrastructure_final.pdf

The problem of failing Water Infrastructure is not unique to Osawatomie, in fact it’s common throughout the United States as evidenced by the current “poster child” Flint, Michigan.

Other links to failing water systems and rate increases.

<https://thedailynews.cc/articles/belding-talks-potential-water-rate-hikes-and-wastewater-facility-plant/>

<https://patch.com/illinois/joliet/joliets-water-supply-vote-will-it-be-chicago-or-hammond>

<https://www.baltimoresun.com/politics/bs-md-pol-mosby-water-rate-20210113-msnuhdgrjbd4pc44rajllcbodi-story.html>

<https://www.mansfieldnewsjournal.com/story/news/2020/09/14/what-you-need-know-possible-water-rate-increases-mansfield/5787058002/>

RESOLUTION NO. 844

**A RESOLUTION OF THE CITY OF OSAWATOMIE, KANSAS
ACCEPTING THE 2021 STATE OF THE CITY WATER
FACILITIES REPORT THAT HAS BEEN SUBMITTED BY THE
CITY MANAGER.**

WHEREAS, the City of Osawatomie has operated a municipal water plant for over a century; and

WHEREAS, the City of Osawatomie water plant has reached the end of its useful life; and

WHEREAS, the City of Osawatomie needs to maintain the ability to deliver water to its citizens and water customers;

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

SECTION ONE: The City of Osawatomie City Council accepts the report submitted by the City Manager.

SECTION TWO: The City of Osawatomie City Council appoint a **Water Study Committee** to be chaired by the City Manager and do so at its earliest possible date with a report and recommendation due to the City Council no later than June 1, 2021.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas this 11th day of February 2021, a majority being in favor thereof.

APPROVED AND SIGNED by the Mayor.

L. Mark Govea, Mayor

(SEAL)

ATTEST:

Tammy Seamands, City Clerk



City of Osawatomie

ACTION ITEM SUMMARY	Item Number:	9.C
	Date:	February 9, 2021
City Manager	From:	Mike Scanlon

RE: RESOLUTION 845 OF THE CITY OF OSAWATOMIE, KANSAS ACCEPTING THE PROPOSED CALENDAR OF WORK FOR THE REPAIR OF THE WASTEWATER TREATMENT FACILITY.

RECOMMENDATION: That the City Council accept RESOLUTION 845 – A RESOLUTION OF THE CITY OF OSAWATOMIE, KANSAS ACCEPTING THE PROPOSED CALENDAR OF WORK FOR THE REPAIR OF THE WASTEWATER TREATMENT FACILITY.

DETAILS:

The City was provided a proposed calendar of work for the necessary repairs to the wastewater treatment facility by BG Consultants, who we are contracted with to facilitate these repairs.

Related Statute / City Ordinances	
Line Item Code/Description	
Available Budget:	

Proposed Calendar of Work for the Wastewater Treatment Facility as presented by BG Consultants

<u>PHASE/MILESTONE</u>	<u>GOAL DATE</u>
Preliminary Design	December 2020
Manufacturer RFPs	March 2021
Final Design	June 2021
Permitting	October 2021
Bid Letting	December 2021
Notice of Award to Contractor	January 2022
Begin Construction	March 2022
Final Completion	January 2023

RESOLUTION NO. 845

**A RESOLUTION OF THE CITY OF OSAWATOMIE, KANSAS
ACCEPTING THE PROPOSED CALENDAR OF WORK FOR
THE REPAIR OF THE WASTEWATER TREATMENT
FACILITY.**

WHEREAS, the City of Osawatomie operates a municipal wastewater treatment facility that manages the wastewater for residents of Osawatomie; and

WHEREAS, the City of Osawatomie wastewater treatment facility is in desperate need of critical repairs to ensure regular compliance with EPA and KDHE guidelines; and

WHEREAS, the City of Osawatomie has entered into agreements with BG Consultants to assist in the facilitation of the necessary repairs to the wastewater treatment facility; and

WHEREAS, the City of Osawatomie needs to observe and maintain a structured guide to the progress of repairs being made at the facility to ensure compliance with current sanctions set down by KDHE and other agencies;

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

SECTION ONE: The City of Osawatomie City Council accepts the proposed calendar of work as submitted by BG Consultants and the City Manager.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas this 11th day of February 2021, a majority being in favor thereof.

APPROVED AND SIGNED by the Mayor.

L. Mark Govea, Mayor

(SEAL)

ATTEST:

Tammy Seamands, City Clerk



City of Osawatomie

ACTION ITEM SUMMARY	Item Number:	9.D
	Date:	February 9, 2021
City Manager	From:	Mike Scanlon

RE: RESOLUTION 846 OF THE CITY OF OSAWATOMIE, KANSAS DIRECTING THE CITY MANAGER TO SIGN A FINAL AGREEMENT WITH ALWAYS AND FUREVER MIDWEST ANIMAL SANCTUARY TO OPERATE AS CONTRACTOR OF THE OSAWATOMIE ANIMAL SHELTER.

RECOMMENDATION: That the City Council approve A RESOLUTION OF THE CITY OF OSAWATOMIE, KANSAS DIRECTING THE CITY MANAGER TO SIGN A FINAL AGREEMENT WITH ALWAYS AND FUREVER MIDWEST ANIMAL SANCTUARY TO OPERATE AS CONTRACTOR OF THE OSAWATOMIE ANIMAL SHELTER.

DETAILS: Resolution 826 adopted by the City Council in December directed the City Manager to finalize an Agreement with Always and Furever to be considered at the February 11, 2021 City Council meeting. **A final version of this Agreement will be provided to the City Council Wednesday for their review.** We believe at this time there are no outstanding issues that need to be negotiated and we are ready for the City Council to take final action on this item.

Related Statute / City Ordinances	Resolution 826
Line Item Code/Description	N/A
Available Budget:	N/A



MEMORANDUM

Date: February 11, 2021
To: Mayor and City Council
From: Mike Scanlon, City Manager
Re: Always and Furever Final Agreement

As we wrap up this Agreement I wanted to provide you with a summary of issues that were raised and I believe solved. This is a complicated agreement in part because,

1. We are allowing someone to use our property to deliver a service.
2. We are allowing someone to deliver a service that can impact owners and their animals.
3. We are representing two other entities (City of Paola and Miami County) that will be using the facility and services.
4. We are preserving the rights of these two other entities to handle dangerous animals in a way that is consistent with their laws and requirements.
5. We are ensuring that any liability that arises out of the delivery of these services is appropriately assigned to the contractor.
6. We are ensuring that the contractor has in place all appropriate coverages (liability, workers compensation, etc.) to make sure that any potential monetary liability issues have some level of coverage provided by the contractor.
7. We are doing all of this under the assumption that Always and Furever will be an ongoing concern that the community will support – **and I believe this to be true.**

We then have to weave these seven areas of concern into an agreement. What is attached is that Agreement and contains three Exhibits that address the areas of most concern,

- EXHIBIT “A”: SCOPE OF SERVICES
- EXHIBIT “B”: USE OF CITY PREMISES
- EXHIBIT “C”: CONSULTANT INSURANCE COVERAGES

I’ve spent more than 20 hours on this agreement and I believe it protects our interests and the interests of our Contract Communities (City of Paola and Miami County).

What does this mean to the City?

It means that on an annual basis we will only be responsible for the Utilities and Maintenance of the Building.

What does this mean to the Public?

The public will see no difference in the level of service being provided. It will be the same as they see today.

If this doesn't work how do we get out?

The City Manager may terminate this Agreement or suspend the performance of the Services, in whole or in part, in the event of a material breach of CONSULTANT's obligations to CITY under this Agreement, which breach is not cured by CONSULTANT within (60) days of receipt of written notice from CITY to CONSULTANT detailing the nature of such failure. The City Manager may terminate this Agreement without cause by giving one-year prior written notice thereof to CONSULTANT.

As always, I invite any questions you might have in regards to this Agreement.

AGREEMENT BETWEEN CITY OF OSAWATOMIE, KANSAS AND ALWAYS AND FUREVER MIDWEST ANIMAL SANCTUARY FOR PROFESSIONAL SERVICES

This Professional Services Agreement (“Agreement”) is entered into on this XX day of XXX, 2020 by and between the CITY OF OSAWATOMIE, a Kansas municipal corporation (“CITY” or “City of Osawatomie”), and ALWAYS AND FUREVER MIDWEST ANIMAL SANCTUARY, a Kansas non for profit corporation, located at 23595 W 223rd Street, Spring Hill, KS 66083 (“CONSULTANT” or “Always and Furever”).

RECITALS

The following recitals are a substantive portion of this Agreement and are hereby incorporated herein by this reference.

A. CITY intends to provide animal sheltering and veterinary care, as more fully described in Exhibit “A” (Scope of Services), attached to and made a part of this Agreement, for the City of Osawatomie, and for the City of Paola and Miami County (the “Contract Communities”), at the Osawatomie, ADDRESS Osawatomie, KS 66061 (the “Osawatomie Animal Shelter” or the “Premises”).

B. CITY and CONSULTANT desire for CONSULTANT to perform the Services in this Agreement.

C. CITY acknowledges that CONSULTANT is entering into this Agreement in furtherance of its no-kill mission, and that, to the extent permitted by law, CONSULTANT will operate the Osawatomie Animal Shelter as a no-kill shelter.

D. CITY and CONSULTANT are entering into this Agreement with the intention of establishing a long-term partnership to offer exceptional shelter services for Osawatomie and its partner communities.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, in this Agreement, the parties agree:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the services described at Exhibit “A” (“Services”) in accordance with the terms and conditions contained in this Agreement.

SECTION 2. TERM.

The term of this Agreement shall be from the date of its full execution (the "Effective Date") through December 31, 2026 unless terminated earlier pursuant to Section 12 of this Agreement. The term of this Agreement may be (as defined below) at the Osawatomie Animal Shelter pursuant to the terms and conditions set forth renewed or extended upon the mutual written agreement of the parties. One year prior to the expiration of the term (or other such timeline as may be mutually agreed upon by the parties), either party may request the parties to begin negotiating in good faith a renewal or extension of this Agreement.

SECTION 3. USE OF PREMISES. CONSULTANT's use of the premises shall be subject to the additional terms set forth on Exhibit "B" (Use of Premises) attached hereto.

SECTION 4. QUALIFICATIONS/STANDARD OF CARE. All of the Services shall be performed by CONSULTANT or under CONSULTANT's supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform or supervise, as applicable, the Services required by this Agreement and that its personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, and its employees have and shall maintain (and that it shall require its subcontractors, if any, to have and maintain) during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

Notwithstanding anything to the contrary in this Agreement, the representations and warranties in this Section 4 are exclusive and are in lieu of all other warranties of any kind, whether express or implied (including, without limitation, the implied warranties of merchantability, fitness for a particular purpose and noninfringement, and all warranties that may arise from course of dealing, course of performance or usage of trade), all of which are hereby expressly disclaimed.

SECTION 5. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that are applicable to the performance of the Services or those engaged to perform Services under this Agreement. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

SECTION 6. INDEPENDENT CONTRACTOR. It is understood and agreed that in performing the Services under this Agreement CONSULTANT, and any person employed by or contracted with CONSULTANT (a subcontractor) to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of CITY.

SECTION 7. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT's obligations without the prior written consent of the City Manager. The City Manager shall have sixty (60) days from receipt of Consultant's notice of proposed assignment to accept or decline the proposed assignment in writing. If the City Manager declines the proposed assignment, he or she shall state the basis for the decision in the written notice to CONSULTANT. Consent to one assignment shall not be deemed to be consent to any subsequent assignment. Any assignment not expressly contemplated under this Agreement, or made without the approval of the City Manager shall be void.

SECTION 8. SUBCONTRACTING. Notwithstanding Section 7 above, CITY agrees that subcontractors may be used to complete the Services. CONSULTANT shall be responsible for directing the work of any subcontractors and for any compensation due to subcontractors. CITY assumes no responsibility whatsoever concerning subcontractor compensation.

SECTION 9. INDEMNITY; LIMITATION OF LIABILITY.

9.1. To the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each a "CITY Indemnified Party") from and against any and all third party demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including reasonable attorneys' fees, experts fees, court costs and disbursements ("Claims") to the extent resulting from, or arising out of (i) any act or omission of CONSULTANT that is outside the scope of CONSULTANT's authority under this Agreement and/or (ii) the negligence or willful misconduct of CONSULTANT or its officers, employees, agents or subcontractors in the performance of this Agreement. To the fullest extent permitted by law, CITY shall indemnify, defend and hold harmless CONSULTANT, its directors, officers, employees and agents (each a "CONSULTANT Indemnified Party") from and against any and all third party Claims to the extent resulting from or arising out of (i) the negligence or willful misconduct of CITY or its officers, employees, agents or subcontractors in the performance of this Agreement , (ii) any condition in or about the Premises, except to the extent caused by the negligence or willful misconduct of CONSULTANT or a CONSULTANT Indemnified Party. or (iii) CITY's decision to transition to a consultant-provided service delivery model and City's decision, based on the information it had at the time, to contract with CONSULTANT to provide the Services.

9.2. In the event of concurrent negligence of more than one party, its Council members (or directors), officers, employees, agents or subcontractors, the liability for any and all Claims shall

be apportioned under the *Kansas theory of comparative negligence* as presently established or as may hereafter be modified. Nothing in this Agreement shall constitute a waiver or limitation of any rights that a party may have under applicable law in the event of concurrent negligence of persons or entities other than the parties to this Agreement.

9.3. The parties agree to cooperate with each other in the investigation and disposition of third-party Claims hereunder. It is the intention of the parties to reasonably cooperate in the disposition of all such Claims. Such cooperation may include joint investigation, defense and disposition of claims of third parties hereunder. The parties agree to promptly inform one another whenever an incident report, claim or complaint is filed or when an investigation is initiated concerning this Agreement. Notwithstanding the foregoing, in the event of a conflict in interest, each party may conduct its own investigation and engage its own counsel.

9.4. Each party agrees to mitigate any loss or damage which it may suffer in consequence of any breach by the other party of the terms of this Agreement. or any fact, matter, event or circumstance giving rise to a Claim.

9.5. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR ELSEWHERE, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH POTENTIAL CLAIM, LOSS OR DAMAGE.

SECTION 10. WAIVERS. The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, shall not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law. No waiver of a condition or nonperformance of an obligation hereunder is effective unless it is in writing signed by the authorized representatives of the parties hereto and, as applicable, approved as required under the Osawatomie Municipal Code.

SECTION 11. INSURANCE.

11.1. CONSULTANT, at its sole cost and expense, shall obtain, as soon as practicable following the date of this Agreement, and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "C". CONSULTANT shall be responsible for ensuring that its subcontractors retained to perform Services under this Agreement, if any, shall obtain and maintain in full force and effect during the term of the subcontractor's engagement, the insurance coverage described in Exhibit "C," as well as a policy endorsement naming CITY as an additional insured under any policies required in this Section 11.

11.2. All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A-VII or higher which are licensed or authorized to transact insurance business in the State of Kansas.

11.3. CONSULTANT shall file with CITY certificates evidencing such insurance as soon as practicable following the date of execution of this Agreement but in no event any later than 7 days prior to the first day of the term of this Agreement. The certificates shall be subject to the approval of CITY's City Manager and CITY's Insurance Consultant and shall contain an endorsement stating that the insurance is primary coverage and shall not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification. If the insurer cancels or modifies the insurance and provides less than thirty (30) days' notice to CONSULTANT, CONSULTANT shall provide the City Manager written notice of the cancellation or modification within five (5) business days of the CONSULTANT's receipt of such notice. CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's City Manager during the entire term of this Agreement.

11.4. The procuring of such required policy or policies of insurance will not be construed to limit either party's liability hereunder nor to fulfill the indemnification provisions of this Agreement.

SECTION 12. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

12.1. The City Manager may terminate this Agreement or suspend the performance of the Services, in whole or in part, in the event of a material breach of CONSULTANT's obligations to CITY under this Agreement, which breach is not cured by CONSULTANT within (60) days of receipt of written notice from CITY to CONSULTANT detailing the nature of such failure. The City Manager may terminate this Agreement without cause by giving one-year prior written notice thereof to CONSULTANT.

12.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services, in whole or in part, in the event of a material breach of CITY's obligations to CONSULTANT under this Agreement, which breach is not cured by CITY within sixty (60) days of receipt of written notice from CONSULTANT to CITY detailing the nature of such breach. CONSULTANT may terminate this Agreement without cause by giving one-year prior written notice thereof to CITY.

SECTION 13. NOTICES.

Any notice provided for in this Agreement shall be in writing and shall be either (i) personally delivered, (ii) received by certified mail, return receipt requested, or (iii) sent by reputable overnight courier service (charges prepaid) to the recipient at the address indicated below.

To CITY: City of Osawatomie, City Manager's Office 439 Main St., PO Box 37, Osawatomie, KS 66061

To CONSULTANT: Always and Furever Midwest Animal Sanctuary, President, 23595 W 223rd Street, Spring Hill, KS 66083

Notices will be deemed to have been given hereunder (i) when delivered personally to the recipient, (ii) one (1) business day after being sent to the recipient by reputable overnight courier service (charges prepaid) or (iii) five (5) business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid.

SECTION 14. MISCELLANEOUS PROVISIONS.

14.1. This Agreement shall be governed by the laws of the State of Kansas without regard to its conflict of laws provisions.

14.2. In the event that an action is brought, the parties agree that trial of such action shall be vested exclusively in the state courts of Kansas in the County of Miami, State of Kansas.

14.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

14.4. This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

14.5. The covenants, terms, conditions and provisions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assignees, and consultants of the parties.

14.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto shall remain in full force and effect.

14.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and shall be deemed to be a part of this Agreement.

14.8. In the event of a conflict between the terms of this Agreement and the exhibits hereto or CONSULTANT's proposal (if any), this Agreement shall control. In the case of any conflict between the exhibits hereto and CONSULTANT's proposal, the exhibits shall control.

14.9. If, pursuant to this contract with CONSULTANT, CITY shares with CONSULTANT personal information, CONSULTANT shall maintain reasonable and appropriate security procedures to protect that Personal Information, and shall inform CITY as soon as practicable, but no later than 24 hours after learning that there has been a breach in the security of the system or in the security of the Personal Information. CONSULTANT shall not use Personal Information for direct marketing purposes without CITY's express written consent.

14.10. All unchecked boxes do not apply to this Agreement.

14.11. The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

14.12. This Agreement may be signed in multiple counterparts, which, when executed and delivered by the parties hereto, shall together constitute a single binding agreement. This Agreement may be signed using the City's Docusign platform.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF OSAWATOMIE

_____ City Manager

APPROVED AS TO FORM:

_____ City Attorney

ALWAYS AND FUREVER MIDWEST ANIMAL SANCTUARY

By: _____ President

Attachments:

EXHIBIT "A": SCOPE OF SERVICES

EXHIBIT "B": USE OF CITY PREMISES

EXHIBIT "C": CONSULTANT INSURANCE COVERAGES

EXHIBIT “A” SCOPE OF SERVICES

ALWAYS AND FUREVER MIDWEST ANIMAL SANCTUARY (“CONSULTANT”) agrees to provide Animal Shelter Services as described in Section II below at the Osawatomie Animal Shelter, ADDRESS, for the City of Osawatomie (“CITY”) and the Contract Communities. CITY agrees to perform the obligations as described in Section III below.

SECTION I. DEFINITIONS The following terms as used in this Exhibit “A” Scope of Services shall have the meaning provided below:

- “Diseased and crippled animal” means those animals which are known or believed to be infected with any dangerous or communicable disease, or which have an incurable, crippled condition or which are afflicted with any painful disease which is believed to be incurable.
- "Dangerous animal" means any dog or other animal which demonstrates a propensity to assault, bite, scratch or harass people or other animals without provocation. There shall be a rebuttable presumption that any animal that bites a person is a dangerous animal.

SECTION II. ALWAYS AND FUREVER MIDWEST ANIMAL SANCTUARY RESPONSIBILITIES:

1. Animal Shelter Services. CONSULTANT shall perform the following sheltering services and shall provide shelter supplies, animal attendants, supervisors and administrative personnel, and any other personnel, supplies and equipment, reasonably required to perform the following services (“Shelter Services”):

a) Shelter of abandoned, surrendered, impounded, lost or stray domestic animals brought to the shelter by CITY or its Contract Cities, its residents, or personnel.

b) CONSULTANT may shelter and provide services to animals outside the scope of paragraph (a) above (“non-City animals”) including moving animals between the Osawatomie Animal Shelter and Always and Furever Midwest Animal Sanctuary’s Spring Hill facility on a space-available basis and at CONSULTANT’s sole expense for all costs, including labor, equipment, supplies, food, and medication. At no time shall

animals within the scope of paragraph (a) above be denied services due to services provided to non-City animals.

c) For the avoidance of doubt, to the maximum extent permissible by law, CONSULTANT shall have exclusive discretion over how long an animal is sheltered, including exclusive discretion to shelter an animal for a longer period than the statutory minimum number of days. This section shall not be interpreted to authorize funds in addition to those specified in this Agreement, and CONSULTANT shall be responsible for managing the length of animal sheltering within the funds and resources authorized by this Agreement.

d) Quarantine of biting animals.

e) Rabies testing of suspect animals.

f) Provision for reclaim of abandoned, lost or stray domestic animals during established business hours.

g) Shelter staff shall make every effort to identify lost animals (through ID tags and microchips) and to contact owners.

h) Be CITY's and Contract Communities' main point of contact (by phone, in-person, and electronic means) regarding animal shelter services, including inquiries regarding missing pets.

i) Provide medical evaluation and treatment, if necessary, to all incoming animals.

j) Euthanasia and disposal of abandoned, lost, impounded, or stray domestic animals that are unclaimed by their owners and found to be diseased and crippled and/or dangerous as defined by Osawatomie Municipal Code, Paola Municipal Code, and Kansas State Law.

k) For purposes of clarity, owner-requested euthanasia is not a service required under this Agreement, and CITY acknowledges that CONSULTANT has elected not to provide or subcontract this service.

l) CONSULTANT shall maintain a public website, separate from the CITY's website, with information including without limitation: shelter hours, volunteer opportunities, adoption information, medical services offered and information about those services and contact information.

m) Consultant shall allow CITY Police Officers access to the shelter at all times for purposes of dropping off animals and provide reasonable accommodation for Police Officers to begin and end their shifts, and complete administrative work in the shelter.

n) CONSULTANT shall maintain, repair and replace all equipment, cages, hoses, and other equipment at the facility.

o) CONSULTANT shall comply with all federal, state, and local laws in effect applicable to the Services upon commencement of the provision of the Services, and shall be subject to inspection by the CITY and other duly authorized federal, state, and local authorities to insure such compliance. For the avoidance of doubt, this provision shall not be construed to expand the scope of the Services as expressly set forth in this Exhibit "A".

p) CONSULTANT shall use commercially reasonable efforts to offer comprehensive volunteer and educational programs which may include, without limitation: animal fostering programs, dog walker programs, and animal care trainings.

q) When appropriate, in CONSULTANT'S sole discretion, CONSULTANT may partner and/or coordinate with adoption programs, rescue groups, and other no-kill shelters to maximize the shelter's adoption rate and/or place animals in suitable foster care. CONSULTANT shall seek CITY's approval for partnerships in which CONSULTANT pays or receives money or other financial consideration, solely to the extent that such partnership relates to CONSULTANT's performance of the Services. CITY shall approve or deny in writing any such request within thirty (30) days after receipt of such request.

2. Operating Schedules

a) CONSULTANT shall provide Shelter Services for the animals twenty-four (24) hours a day, seven (7) days a week.

b) CONSULTANT shall provide emergency veterinary services.

c) CONSULTANT shall have shelter staff on site for care of shelter animals seven (7) days per week, 365 days per year.

d) CONSULTANT may elect to have business offices and public access areas of shelter to be open to the public on a schedule designed to benefit the public and facilitate the services established in this Agreement. If elected, CONSULTANT shall post the public hours on its website, and inform CITY and Contract Cities in writing of any change in hours.

e) It is understood by both parties that Consultant will require 10 Business Days to be fully staffed and operational.

f) If Applicable: CONSULTANT shall observe the following holiday closures for public hours:

January 1 (New Year's Day)
Martin Luther King's birthday
Memorial Day
July 4th (Independence Day)
Labor Day
Thanksgiving Day
Day after Thanksgiving
Christmas Eve Day
Christmas Day

3. Dead Animal Services

a) CONSULTANT shall provide storage facilities, disposal mechanisms, administrative personnel, and any other personnel, supplies and equipment reasonably required to perform the following services ("Dead Animal Services"):

i. Identification of and notification to the owner of the dead animal, whenever possible; and

ii. Disposal of the body of the dead animal. CONSULTANT shall offer animal owners the option to pay for cremation services, in which case, CONSULTANT shall arrange for cremation with the appropriate subcontractor.

b) CONSULTANT may subcontract with one or more subcontractors for the maintenance of a dead animal storage facility as well as collection of dead animals and maintenance of the facility and equipment.

4. Records Management

a) CONSULTANT shall maintain a database that tracks the animals that are delivered to the shelter.

b) Monthly Report

i. CONSULTANT shall deliver to CITY and Contract Communities during the term of this AGREEMENT, and within thirty (30) days of the end of each month, a monthly Animal Shelter and Impound Report summarizing monthly and year-to-date services provided by CONSULTANT for CITY. This report shall include, but not be limited to, the following information:

(1) Licensing statistics

(2) Medical statistics including spay and neuter, microchips, and vaccinations

(3) Volume of animals in and out of facility by type of animal and type of outcome.

(4) For each animal, which city in which it was picked up (if known).

5. Licensing and other fee collection

a) CONSULTANT shall charge fees for services according to the CITY's municipal fee schedule or according to state or local laws. Fees for any services not covered by CITY's municipal fee schedule or state or local laws shall be set by CONSULTANT. CONSULTANT shall take CITY's comments into consideration when setting such fees. CITY shall take CONSULTANT's comments into consideration when setting its municipal fee schedule.

a.

c) CONSULTANT shall process citation fees, and shall remit 100% of these fees to the CITY on a quarterly basis. PETS IN NEED shall process and retain all other fees and revenues, including without limitation adoption fees, spay, neuter, impoundment, permit, license, and other fees as listed in the municipal fee schedule.

SECTION III. CITY RESPONSIBILITIES.

CITY shall:

1. Provide an adequate and safe facility for CONSULTANT to perform the Services.

2. With regard to the shelter facility, provide and/or pay for utilities, taxes, electricity, water, gas, waste water, recycling, waste (not animal disposal), Internet. .
3. Develop and maintain proactive and consistent communication and rapport with CONSULTANT
 - a) Respond in a timely manner to emails and phone calls
 - b) Communicate and resolve issues and concerns immediately
 - c) Provide excellent customer service to CONSULTANT staff and customers
4. Develop, in cooperation with CONSULTANT, a disaster preparedness plan.
5. Administer the agreements between the CITY and the Contract Communities regarding animal shelter services.

EXHIBIT B USE OF CITY PREMISES

SECTION 1. USE OF PREMISES.

1.1 Use of Premises. Consultant and its employees, agents and subcontractors shall have the right to enter and use the Premises during the term of this Agreement for the sole purposes of performing the Services and fulfilling Consultant's obligations under the Agreement, as detailed in this Section 3 ("Use of Premises") of this Exhibit B.

1.2 Subject To City Uses. Notwithstanding the provisions of Section 3.1 above, City's Animal Control Officers and their supervisors have the right to enter the Premises at any time. In addition, City has the right to enter Premises at any time for the purpose of inspection, emergency response and completion of special projects. Consultant shall, at City's request, immediately remove any property or improvements on the Premises to allow City access to the utilities or other City owned facilities/property. In the event City deems it necessary, for purposes of health, safety or building code requirements, in City's sole discretion, City shall have the right to move, alter or remove any such property or improvements and City shall be responsible for restoring or returning the same to its prior condition. For the avoidance of doubt, subject to the foregoing provisions of this Section 3.2, Consultant shall have exclusive control over the Premises during the term of this Agreement, and shall have the right to exclude third parties and trespassers onto the Premises.

1.3 Responsibility for Routine Interior Cleaning and Janitorial Activities. In connection with its use, Consultant shall maintain the Premises in a good, clean, safe, secure, sanitary, and slightly condition, so far as the Premises may be affected by Consultant's activities under this Agreement. Specifically, Consultant shall undertake routine cleaning and janitorial activities as necessary to maintain the interior of the Premises in an orderly condition. Consultant shall maintain all of its own equipment, furnishings and trade fixtures upon the Premises which are required for the maintenance and operation of the Osawatomie Animal Shelter.

1.4 Responsibility for Maintenance and Utilities. Outside of Consultant's responsibilities for routine interior cleaning and janitorial activities in Section 1.3 of this Exhibit, City shall be responsible for the maintenance of the interior and exterior of the Premises and the surrounding grounds, including (without limitation) the maintenance, repair, and replacement of the roof, building structure, improvements, and the HVAC, electrical, plumbing, and other building systems. City shall perform any alterations to the Premises (1) required by applicable laws or

laws of general application (i.e. ADA and building codes) and (2) to ensure that utilities (including, without limitation, water, gas, and electricity) are available to the Premises, in amounts sufficient for Consultant to perform the Services. City shall promptly perform its obligations under this Section 1.4 (“Responsibility for Maintenance and Utilities”). In the event of a maintenance issue that impacts the health and safety of the operations, the City shall respond within 24 hours of receipt of notice from Consultant to develop an action plan to address the issue in an expedited timeframe.

SECTION 2. DAMAGE TO UTILITIES. Consultant shall exercise reasonable care to not do anything in, on, under or about the Premises that could cause damage or interference to any City utilities (e.g. gas, water, wastewater, fiber, electric) located in, on, under or about the Premises. Consultant agrees to reimburse City within thirty (30) calendar days of City’s written request for any damages caused to City owned utilities caused by a failure of Consultant to exercise reasonable care of the Premises.

SECTION 3. REMOVAL OR ALTERATION OF IMPROVEMENTS. Without limiting City’s rights under this Exhibit B or this Agreement, Consultant shall promptly, at City’s written request, alter or remove any and all machinery and equipment placed in, on, under or about the Premises by Consultant, as may be necessary to avoid any actual or potential interference with any of City’s use or other structures now or later constructed, or with the maintenance thereof or with any other operations or land uses by City. In the request, City shall have the right to specify reasonable time limits for completion of the work. If after such written notice Consultant fails to complete the requested work within the prescribed time limits, City shall have the right to perform the requested work at Consultant’s expense; within ten (10) days of receipt of a bill, Consultant shall reimburse City for the cost of such work, or City may reduce any outstanding amount due to Consultant under the Agreement by the cost to City of such work. In the event of an emergency City may, at its sole option and without notice, alter, remove or protect any and all improvements installed or placed in, on, under or about the Premises by Consultant.

SECTION 4. SURRENDER; DUTIES UPON TERMINATION OR EXPIRATION. Upon the expiration or earlier termination of this Agreement, Consultant shall immediately surrender the Premises in the same condition as received upon completion of the improvements detailed in this Agreement and any other improvements completed by City during the term of this agreement (excepting reasonable wear and tear), broom cleaned, walk-through with City staff completed, and free from hazards and clear of all debris. At such time, Consultant shall remove all of its property from the Premises hereunder, and shall repair, at its cost, any damage to the Premises caused by such removal. Consultant’s obligations under this Section shall survive any termination of this Agreement. Consultant shall deliver to the City the originals of all books, permits, plans, records, licenses, contracts, and other documents pertaining to the Premises

and its operation, any insurance policies, bills of sale or other documents evidencing title or rights of the City, and any and all other records or documents pertaining to the Premise, whether or not enumerated herein, which are requested by the City or necessary or desirable for the ownership and operation of the Premise, which are in the Consultant's possession. Consultant shall also deliver to City all keys, alarm codes, passwords, and other items used to secure the Premise. Consultant further agrees to do all other things reasonably necessary to cause an orderly transition of the management and operation of the Premises without detriment to the rights of the City or to the continued management of the Premise. The provisions of this Section shall survive the expiration or earlier termination of this Agreement until the obligations of the Consultant under this Section are fulfilled to the reasonable satisfaction of the City.

SECTION 5. REPAIR OF DAMAGE. If any portion of the Premises or any property of City located on or about the Premises is damaged or at risk of damage by any of the activities conducted by Consultant or anyone acting by or through Consultant, Consultant shall immediately notify City in writing of such damage or risk of damage. City may remedy, but shall not be obligated to remedy, such damage or risk of damage at Consultant's sole cost, or City may elect to witness Consultant's repair work. In the event City elects not to remedy such damage or threat, Consultant shall repair any and all such damage and restore the Premises or such property to its previous condition subject to City's inspection, review and approval.

SECTION 6. CITY'S RIGHT TO CURE DEFAULTS BY CONSULTANT. If Consultant fails to perform any of its obligations under this Exhibit D to restore the Premise, remove or alter improvements or repair damage, or if Consultant defaults in the performance of any of its other obligations under this Exhibit D within a reasonable time after demand by City, then City may, at its sole option, remedy such failure at Consultant's expense; within ten (10) days of receipt of a bill, Consultant shall promptly reimburse the City's costs (including without limitation all costs, damages, expenses or liabilities incurred by City, reasonable attorneys', experts' and Consultants' fees) in remedying or attempting to remedy such failure, or City may reduce any outstanding amount due to Consultant under the Agreement by the cost to City of such remedial action.

SECTION 7. GENERAL PROVISIONS. (a) If Consultant consists of more than one person, the obligations of each person shall be joint and several. (b) Consultant may not record this Exhibit D or any memorandum hereof. (c) Any sale or conveyance by City of the Premise/Property shall automatically terminate this Agreement as provided for in Section 19 ("Termination") of this Agreement.

SECTION 8. HOLDING OVER. If Consultant remains in possession of the Premises or any part thereof after the expiration of the term of this Agreement, or any renewal option thereto, such occupancy shall be a revocable license from month to month with all the obligations of this

Exhibit B applicable to Consultant. Nothing contained Exhibit B or in the Agreement shall give to Consultant the right to occupy the Premises after the expiration of the term of this Agreement, or any renewal option thereto, or upon any earlier termination.

SECTION 9. ALTERATIONS BY CONSULTANT. Consultant shall not make any alterations or improvements to the Premises without obtaining the prior written consent of the City Manager, except for alterations or improvements that cost less than Two Thousand Dollars (\$2,000.00) and which do not affect any building systems or the structural integrity or any structural components of the Premises.

9.1 Ownership of Improvements. All improvements constructed, erected, or installed upon the Premises by Consultant must be free and clear of all liens, claims, or liability for labor or material and shall become the property of City, at its election, upon expiration or earlier termination of the term, and shall remain upon the Premises upon expiration or earlier termination of this Agreement. Any furniture, fixtures not affixed to the Premises, equipment or other property of Consultant (whether obtained prior to or during the term of this Agreement) shall remain the property of Consultant. In the event that the parties agree to make significant improvements in addition to those in this Agreement, the parties will complete an amendment to this Agreement with regard to such improvements.

9.2 Indemnity for Claims Arising Out of Construction. For the avoidance of doubt, included in Consultant's obligations under Section 9 ("Indemnity") of the Agreement to which this is an exhibit, is Consultant's obligation to indemnify, defend and hold harmless City Indemnified Parties against all Claims arising out of construction and maintenance work performed on the Premises by Consultant or caused to be performed on the Premises by Consultant.

9.3 Certificate of Inspection. In the event Consultant will perform, or cause to be performed, any construction, improvement or alteration or any other work on or to the Premises for which City requires a certificate of completion, then upon completion of any such construction, improvement or alteration, Consultant shall submit to the City Manager a Certificate of Inspection.

9.4 As Built Plans. Consultant shall provide the City Manager with a complete set of reproducible "as built plans" reflecting actual construction within or upon the Premises upon completion of any: (i) new construction or (ii) structural alterations.

EXHIBIT C CONSULTANT INSURANCE COVERAGES

Section 1. Consultant Insurance Coverages and Liability Limits shall be as stated:

1.1 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.

1.2 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)

1.3 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." 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)

1.4 Additional Insurance: Excess Liability coverage or additional insurance covering special hazards may be required on certain projects.

RESOLUTION NO. 846

BY THE CITY OF OSAWATOMIE, KANSAS

**A DIRECTING THE CITY MANAGER TO SIGN A FINAL AGREEMENT
WITH ALWAYS AND FUREVER MIDWEST ANIMAL SANCTUARY TO
OPERATE AS CONTRACTOR OF THE OSAWATOMIE ANIMAL SHELTER**

WHEREAS, the City of Osawatomie provides for the sheltering of animals at the Osawatomie Animal Shelter; and

WHEREAS, we also provide these services to other communities including the City of Paola and Miami County; and

WHEREAS, Always and Forever Midwest Animal Sanctuary has asked if the City of Osawatomie would consider them for operation of the Osawatomie Animal Shelter as a “no-kill” shelter; and

WHEREAS, the City of Osawatomie would commit to maintaining the facility over time. Maintenance including routine and regular maintenance; and

WHEREAS, Always and Furever has been a committed partner over the last two years in adopting out surrendered and lost animals.

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

SECTION ONE: Direct the City Manager to sign the Final Agreement with Always and Furever Midwest Animal Sanctuary.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas, this 11th day of February 2021, a majority voting in favor of.

APPROVED and signed by the Mayor.

L. Mark Govea, Mayor

(SEAL)

ATTEST:

Tammy Seamands, City Clerk



City of Osawatomie

ACTION ITEM SUMMARY	Item Number:	9.E
	Date:	February 9, 2021
City Manager	From:	Mike Scanlon

RE: RESOLUTION 847 OF THE CITY OF OSAWATOMIE, KANSAS DIRECTING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH PAYCHEX PAYROLL SOLUTIONS FOR BI-WEEKLY PAYROLL SERVICES

RECOMMENDATION: That the City Council approve A RESOLUTION OF THE CITY OF OSAWATOMIE, KANSAS DIRECTING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH PAYCHEX PAYROLL SOLUTIONS FOR BI-WEEKLY PAYROLL SERVICES

DETAILS: Resolution 847 directs the City Manager to enter into an agreement with PAYCHEX Payroll Solutions for payroll services for the City of Osawatomie. We don't think about the amount of time and costs associated with producing a bi-weekly payroll and the benefits and cost saving that can be achieved by doing so. Please find attached the estimated annual costs for this service. Please note that in this agreement the City was able to receive a discount in initial setup (\$800) and receive two months of payroll services for free. This totals 1,660.00 Additionally, this service will give us a suite of services we don't currently enjoy (those items are highlighted) and the service integrates into our general ledger system thus allowing for a "FULLY INTEGRATED" solution. I have included the Contract Summary in the packet and am willing to go through all the items. I would also share with you I believe this service will conservatively save us about \$12,500 annually once we eliminate much of the paper approvals and shuffling, we do every two weeks, as well as monthly and quarterly reporting.

Services we will receive in Flex Enterprise Version:

- Payroll processing
- 401k/457 deduction report
- Check insertion/seal
- Data Exports (exporting reports in multiple formats to help import into additional software)
- Direct Deposit & Pay Cards
- Employee Online Portal (can access/change personal information. Access W2s, check stubs, etc.)
- Employee Handbook (plug and play option for updating current handbooks)
- FinFit (financial wellness program for employees)
- Onboarding Essentials (electronic onboarding forms that integrate straight into payroll)
- General Ledger Report/Service (whether you just want the report or want us to integrate with your current software)
- HR Library (resources for you to search up to date information)
- HR Center
 - Performance Management
 - HR Calendar for Employees to see important company dates/notifications
 - Workflow approvals (for timecards/trainings)
- Document Management (electronic base to store documentation for each employee and also have acknowledgments from both employee and employer)
- Labor Compliance Posters (sent paper or electronic when something updates and affects your business)
- New Hire Reporting

Paychex Employee Screen Services (30 free basic background screens per year)

State Unemployment Service (making payments, helping with reporting should a claim be filed, etc.)

Taxpay (payment of federal, state and local taxes)

Quarterly/Annual reporting (things like 941, 940, etc.)

Workers' Comp payment/report service (whether we take the policy and make the pay-as-you-go payments and reports for you or just pull payroll reports for your audits.)

Investment Summary

City of Osawatomie

Federal ID: 48-6037846

Created Date: 11-09-2020
Quote Number: Q-41441

Prepared by:

Nicole Langemach
Sales Representative Level II - MMS
nlangemach@paychex.com
+1 8168307723

Prepared for:

City of Osawatomie
Michael Scanlon
mscanlon@osawatomieks.org

Per Pay Period - Bi-Weekly

Per Pay Period Fees	Units	Rate / Unit	Total	Discount	Rate / Unit after Discount	Net Total
Paychex Flex Enterprise						
Base Fee	1	\$150.00	\$150.00	35.0%	\$97.50	\$97.50
Paychex Payroll	50	\$4.95	\$247.50	35.0%	\$3.22	\$161.00
Flex Time	50	\$2.35	\$117.50	35.0%	\$1.53	\$76.50
Flex Time Base Fee	1	\$27.00	\$27.00	35.0%	\$17.55	\$17.55
Flex Benefits Administration Essentials	50	\$0.75	\$37.50	0.0%	\$0.75	\$37.50
Flex Benefits Administration Essentials Base Fee	1	\$25.00	\$25.00	0.0%	\$25.00	\$25.00
Total						\$415.05

Monthly Fees

Monthly Fees	Units	Rate / Unit	Total	Discount	Rate / Unit after Discount	Net Total
Employer Shared Responsibility - Base	1	\$125.00	\$125.00	0.0%	\$125.00	\$125.00
Employer Shared Responsibility - Per User	50	\$1.25	\$62.50	0.0%	\$1.25	\$62.50
Total						\$187.50

Annual Fees

Annual Fees	Units	Rate / Unit	Total	Discount	Rate / Unit after Discount	Net Total
YE Processing- Forms W2/1099 - Base	1	\$75.00	\$75.00	0.0%	\$75.00	\$75.00
YE Processing- Forms W2/1099 - Per User	50	\$6.75	\$337.50	0.0%	\$6.75	\$337.50
W2 Delivery	1	\$22.50	\$22.50	0.0%	\$22.50	\$22.50
Total						\$435.00

One-Time Fees

One-Time Fees	Units	Rate / Unit	Total	Discount	Rate / Unit after Discount	Net Total
Flex Implementation Fees	1	\$500.00	\$500.00	60.0%	\$200.00	\$200.00
Flex Time Setup Fee	1	\$1,000.00	\$1,000.00	50.0%	\$500.00	\$500.00
Flex Benefits Administration Essentials Implementation Fee	1	\$300.00	\$300.00	0.0%	\$300.00	\$300.00
Employer Shared Responsibility - Setup Fee	1	\$500.00	\$500.00	100.0%	\$0.00	\$0.00
Total						\$1,000.00

First year total

\$14,476.30

Annual total

\$13,476.30

Please initial to indicate your understanding and agreement with this proposal: _____

Notations

Product / Billing

Totals displayed do not include sales tax where applicable.

Prices are subject to change with advance notice; promotions are excluded from change.

* Additional training content for Paychex Learning Product offering is purchased through the e-commerce tool site by authorized users.

A \$65 fee will be applied to your invoice per each Remote I9 request.

A \$5 fee will be applied to your invoice per each E-Verify request.

Payroll Delivery: Delivery fees charged only if incurred. Delivery fees will apply.

Quarter/Year End Report Delivery: Quarter/YE Report Delivery fees are not included and will be charged if a package is delivered. Additional fees will apply.

Implementation

Check Signing or ReadyChex: ReadyChex

Worker's Compensation Report or Worker's Compensation Payment Service: Worker's Compensation Payment Service

General Ledger Report or General Ledger reporting service: General Ledger Report

Promotions

Payroll 2 Months Free: Payroll bundle fees will be waived for months 1 & 2. Promotion valid through: 11-30-2020

RESOLUTION NO. 847

**A RESOLUTION OF THE CITY OF OSAWATOMIE, KANSAS
DIRECTING THE CITY MANAGER TO ENTER INTO AN
AGREEMENT WITH PAYCHEX PAYROLL SOLUTIONS FOR
BI-WEEKLY PAYROLL SERVICES**

WHEREAS, the City of Osawatomie as an employer is required to produce a payroll (bi-weekly) and to fulfill all local, state and national reporting requirements; and

WHEREAS, the City of Osawatomie as a small community with limited staff needs to maximize how payroll tasks are accomplished and to do so at the lowest cost to the City; and

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

SECTION ONE: The City of Osawatomie City Council direct the City Manager to enter into a payroll services agreement with PAYCHEX Payroll Services.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas this 11th day of February 2021, a majority being in favor thereof.

APPROVED AND SIGNED by the Mayor.

L. Mark Govea, Mayor

(SEAL)

ATTEST:

Tammy Seamands, City Clerk



City of Osawatomie

ACTION ITEM SUMMARY	Item Number:	9.F
	Date:	February 11 th , 2021
City Manager	From:	Ed Beaudry

RE: Resolution 848 - A Resolution of the City of Osawatomie, Kansas Directing the City Manager to Identify Additional Funds to Renovate the City Fire Station

RECOMMENDATION: That the City Council approve Resolution 848.

DETAILS:

The Osawatomie Fire Department and the Osawatomie Electric Department shared a city owned building since 1994. This building was built to house both departments, but over the years the trucks and crews have become larger. The electric department moved to its new location in the summer of 2019. This move gave the entire building located at 700 Walnut Avenue to be utilized by the Osawatomie Fire Department.

Since then, the Osawatomie Fire Department and City Staff have worked hard to make funds available to create an in-house training room, which can also be used by citizens to hold meetings. This new buildout includes an ADA compliant restroom for the public to use, offices for the Fire Officers and administration, and a day room for firefighters to use when manning the station. There is also a built-in Emergency Operations Center for emergency operations when the need arises. All of the work completed to this point has been done by the firefighters. Since construction began, the Osawatomie Fire Department has spent approximately \$75,000.00.

City Manager Mike Scanlon and Fire Chief Brian Love agreed the best course of action to complete this project is to have city staff get bids to finish the project by a qualified contractor. Legacy Contracting had the low bid at \$ 70,442.00 and with tables, chairs, desks, computers, cabinets, and appliances, the price would be \$110,000.00. City Manager Scanlon stated he was able to fund \$55,000.00 out of the general fund to finish this project, but would need assistance from outside sources to finish the project.



Osawatomie Fire Department
P.O Box 37
Osawatomie, KS 66064
Dispatch: 913-755-2101

Legacy Contractors bid for the remodel \$ 70,442.00

Anything Drywall bid for the remodel \$69,850.00

Hennes Drywall refused to bid.

6 desktops \$7,200.00 and 1 laptop \$1,600.00 These computers are standardized by the city.

Chiefs/ Captains Office chairs \$900.00

Training room tables \$600.00

Training room chairs \$4,000.00

Schlage Door locks \$750.00

Bradley H/C to install exhaust fan and louver \$4,022.56

Appliances \$2,000.00

Option 1- Bradley H/C to move existing heater \$1000.00. This option would move the existing gas heater approximately 20 feet to free up open space in the bay, and to provide more directed heat towards the west side of the station.

Option 2- \$115.00 each for the 14"x14" high bay lights. Total \$2070.00. This option would eliminate the existing fluorescent lights with ballasts and replace them with more efficient LED lights.

Option 3- \$998.38 ea. for the all electric infrared heaters Total \$ 13977.43. This option would eliminate the gas heaters and replace them with infrared heaters positioned properly around the entire station.

Options 2 and 3 would eliminate a large bill from the Fire Department budget allowing for monies elsewhere. The Fire Department is next door to the generators allowing for quick response to utilities in the event of a power outage, this would leave the building without power for a minimal amount of time.

City staff will continue to finish the electric as discussed, as we know how it is wired and know what needs done to finish it, this will save approximately \$4,600.00, making the Legacy bid \$65,842.00.



*Osawatomie Fire Department
P.O Box 37
Osawatomie, KS 66064
Dispatch: 913-755-2101*

Legacy Contractors LLC bid \$ 70,442.00 with electrical work/ \$65,842.00, if city crew finishes the electrical work.

6 desktops \$7,200.00 and 1 laptop \$1,600.00 These computers are standardized by the city.

Chiefs/ Captains Office chairs \$900.00

Training room tables \$600.00

Training room chairs \$4,000.00

Schlage Door locks \$750.00

Bradley H/C to install exhaust fan and louver \$4,022.56

Total with out options \$86,914.00

Total with option-1- \$85,914.00

Total with options 2 and 3 \$102,961.43

RESOLUTION NO. 848

**A RESOLUTION OF THE CITY OF OSAWATOMIE, KANSAS
DIRECTING THE CITY MANAGER TO IDENTIFY
ADDITIONAL FUNDS TO RENOVATE THE CITY FIRE
STATION.**

WHEREAS, the City of Osawatomie maintains a volunteer fire department for the benefit of the City of Osawatomie and surrounding area; and

WHEREAS, with the transition of the electric shop to a new facility this has created the need to renovate and make operational the vacated space for fire operations; and

WHEREAS, the City Manager has identified a portion of the funds necessary for this renovation,

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

SECTION ONE: The City of Osawatomie City Council accepts the budgeted costs shown in the following attachment of construction, finishing, and furnishings.

SECTION TWO: That before these contracts let the City Manager identify the balance of funds necessary to complete the work outlined in Section 1.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas this 11th day of February 2021, a majority being in favor thereof.

APPROVED AND SIGNED by the Mayor.

L. Mark Govea, Mayor

(SEAL)

ATTEST:

Tammy Seamands, City Clerk