

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

WORK SESSION

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

REGULAR MEETING – 7:30 p.m.

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

City of Osawatomie 2013 BUDGET CALENDAR

April 10 – CIP Plans Due to City Manager

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

April 12 – Review Street Assessments at Regular Meeting

April 27 – Review CIP Plans in Work Session

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

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

May 15 – Dept budget requests to City Manager

City Departments prepare requests for current services and enhancements

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

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

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

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

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

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

July 12 – City Manager’s 2013 Recommended Budget Presentation

July 26 – Council Final Review

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

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

Aug 5 – Last Day for Publishing Budget and Hearing Notice

Aug 15 – Last Day for Public Hearing on Budget

Aug 16 – Special Meeting – Public Budget Hearing

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

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

	Admin Deadline
	Regular Meeting
	Special Meeting
	Statutory Deadline



STAFF AGENDA MEMORANDUM

DATE OF MEETING: March 22, 2012

AGENDA ITEM: **Golf Course Lease Purchase**

PRESENTER: Don Cawby, City Manager

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

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

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

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

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

LEASE WITH OPTION TO PURCHASE AGREEMENT

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

I. Lessee Warranties

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

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

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

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

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

Price

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

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

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

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

III. Non-Appropriation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. Title and Security Interest

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

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

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

VII. Warranties.

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

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

VII. Default

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

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

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

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

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

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

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

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

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

Section. 8.4. Kansas Statutory Requirements.

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

Philip A. Dudley, Mayor

Ann Elmquist, City Clerk

Mark K. Fuchs, Senior Vice President

FIRST OPTION BANK
Osawatomie, Kansas

Exhibit "A"
To Lease with Option to Purchase

City of Osawatomie

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

EXHIBIT B AMORTIZATION SCHEDULE

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

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

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

Disbursement Date: March 23, 2012
Interest Rate: 3.250

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

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

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

GOVERNMENTAL CERTIFICATE

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

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

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

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

I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**GOVERNMENTAL CERTIFICATE
(Continued)**

Loan No: 17316

Page 2

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

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

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

CERTIFIED TO AND ATTESTED BY:

X _____
**Phillp A. Dudley, Mayor of City of Osawatomie,
Kansas**

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

DISBURSEMENT REQUEST AND AUTHORIZATION

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

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

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

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

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

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

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

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

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

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

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

BORROWER:

CITY OF OSAWATOMIE, KANSAS

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

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

ORDINANCE NO. _____

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

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

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

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

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

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

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

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

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

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

[Remainder of Page Intentionally Left Blank]

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

CITY OF OSAWATOMIE, KANSAS

By _____
Philip A. Dudley, Mayor

(SEAL)

ATTEST:

By _____
Ann Elmquist, City Clerk



STAFF AGENDA MEMORANDUM

DATE OF MEETING: March 22, 2012

AGENDA ITEM: Key Account and Energy Consulting Agreement with EMG

PRESENTER: Don Cawby, City Manager

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

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

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

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

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

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

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

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

**KEY ACCOUNT AND ENERGY CONSULTING
AGREEMENT**

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF OSAWATOMIE, KANSAS

By: _____
Mayor

ATTEST:

City Clerk

EMG, Inc.

By: _____
Member

ATTEST:

Secretary



MEMORANDUM

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

Projects

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

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

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

Issues

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

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

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

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

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

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

Upcoming Meetings/Dates

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

Manager's Out-of-town Schedule

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