

OSAWATOMIE CITY COUNCIL

AGENDA

April 11, 2013

7:00 p.m., Memorial Hall

1. Call to order
2. Roll Call
3. Pledge of Allegiance
4. Consent Agenda
 - Consent Agenda items will be acted upon by one motion unless a Council member requests an item be removed for discussion and separate action*
 - A. Approve Minutes of March 14 and 28 Council Meetings
 - B. Approve April 11 Agenda
 - C. Appropriation Ordinances 2013-03.1
5. Comments from the Public; Presentations
 - Citizen participation will be limited to 5 minutes. Please stand & be recognized by the Mayor.*
6. Public Hearing – none
7. Unfinished Business
 - A. Update on Sewer Plant Project
 - B. Pool Rehabilitation Project – Contract Presentation
8. New Business
 - A. Election Results – Administer Oath of Office
 - B. Elect Council President and Vice President
 - C. Appointments
 - D. Proclamation – Arbor Day
 - E. Proclamation – Fair Housing Month
 - F. Ordinance on Council Meetings
 - G. Purchase – Chlorine Take Replacement at Water Plant
9. Council Reports
10. Mayor’s Report
11. City Manager’s Report
12. Executive Session - none
13. Adjournment

MEETING/WORK SESSION – April 25, 2012

REGULAR MEETING – May 9, 2012

BID AWARD - PLAYGROUND EQUIPMENT. Last month bids were received bids for playground equipment at the Sports Complex. The bids include all equipment, mulch, play area border, but not installation. The bids received were:

	<u>Item a.</u>	<u>Item b.</u>	<u>Item c.</u>	<u>Total</u>
ATHCO	---	---	---	\$41,674.00
AB Creative	\$32,735	\$34,897	\$38,768	---
Fry	---	---	---	\$37,774.78
Play Power	\$40,920	\$41,602	---	---

The Parks & Recreation Committee was tasked with reviewing the proposals and they chose the ATHCO option. While the price was higher, the Committee believed overall design and quality of the structure was better when compared to the other options. Motion made by Hunter, seconded by Farley to approve the ATCHO bid for \$41,674. Yeas: All.

ADVISORY BODY REORGANIZATION.

Charter Ordinance – Tourism Committee. The charter ordinance is modified so that only an ordinance or resolution is needed to establish the Committee and then to make changes. Motion made by Hunter, seconded by Dickinson to approve the Charter Ordinance to reform the Tourism Committee. Yeas: Dickinson, Farley, Hampson, Hunter, LaDuex, Maichel, and Moon. Motion passed by 2/3 majority. The Charter Ordinance was assigned No. 15.

Ordinance – Repeal Boards. Motion made by LaDuex, seconded by Hunter to approve the ordinance repealing the Housing Rehabilitation Advisory Committee and the Board of Health. Yeas: All. The Ordinance was assigned No. 3707.

Resolution – Advisory Bodies. Motion made by LaDuex, seconded by Hunter to approve the resolution updating the previous Advisory Bodies Resolution. Yeas: All. The Resolution was assigned No. 644.

Resolution – Historic Preservation Committee. The Committee would assist in planning for historic preservation and providing oversight and recommendations for maintaining the City’s historic buildings. The Committee would be made up of five members each serving a two-year term. Motion made by Dickinson, seconded by Moon to approve the resolution creating a Historic Preservation Committee. Yeas: All. The Resolution was assigned No. 665.

Resolution – New Economic and Community Development Committee. The new committee would consolidate economic and community development issues. The resolution outlines the role of the Committee and its delegating powers and responsibilities. The Committee would be made up of five members with stipulations on who they would be representing. Members would serve a two-year term with a two- term limit. Motion made by Hunter, seconded by LaDuex to approve the resolution creating an Economic and Community Development Committee. Yeas: All. The Resolution was assigned No. 666.

Council Reports:

Maichel: Would like to see snow routes in town with parking on only one side.

Hunter: Tourism Committee has been planning Railroad Day on April 20.

LaDuex: The Library will continue the pancake fundraiser the Saturday of Memorial Day and Alumni weekend.

Farley: Mulch is needed at the Sports Complex as well as a new table.

Moon: The public bleachers at the Complex need to have the panels fixed. The Chamber of Commerce came up with a solution for business owners and their employees parking downtown. One of the items the Public Safety Advisory Board discussed was that there were 2-hour parking signs downtown before the streetscape project.

Mayor's Report:

Attended the Osawatome Legislative Breakfast in February. Thanked Chamber Executive Director Shelagh Wright for organizing the breakfast.

The Arbor Day celebration will be planting trees in John Brown Park and at the Golf Course. Along with Govea discussed the tree nursery being planned at the Golf Course.

Commented on the potholes. City Manager Cawby said the crew has been doing cold patch.

City Manager's Report:

2012 REPORTS FROM DEPARTMENTS AND SUPERVISORS UPDATE MEMO.

UPDATE MEMO.

Projects:

Website. The City's website is up and running. Work is being done to get some of the new functionalities running. A press release will be issued about a soft opening of the website.

RICE Conversion. The RICE conversion is going slowly, but proceeding without issue.

Issues:

Water Plant Chlorine. There is a leak in the large 2,800 gallon chlorine tank at the water plant. A fiberglass company repaired it and it still leaked. Recommended replacing the tank with a plastic tank which should not have leak issues, should be much easier to repair, and will cost less. Looking at approximately \$20,000.

Mini-Excavator. In the CIP plan for 2014, staff requested \$50,000 for a mini-excavator. The main reason is so that crews can reach into small spaces that a backhoe can't. Bobcat has a municipal lease program to lease a Bobcat compact excavator for an entire year for \$6,000. If the lease is extended, the City we would get a new model each year for the same rate.

Legislative Issues. Attended the Miami County Intergovernmental Meeting with Senator Pat Apple and Representative Jean Vickrey present. The main issue discussed was concealed carry in public buildings. The biggest concern was the requirement to allow the public and employees to have concealed carry in local government buildings, unless full-time security and metal detectors are used.

Basin Advisory Committee. The City hosted the Marais des Cygne Basin Advisory Committee recently. Drought continues to be the major concern and the reservoirs in the basin, Melvern and Pomona, are in better condition than most, but still near record low levels.

CASH FLOW REPORT.

Motion made at 8:44 p.m. by Hunter, seconded by Dickinson to adjourn. Yeas: All.

Ann Elmquist, City Clerk

Osawatomie, Kansas. **March 28, 2013.** The Council meeting was held in Memorial Hall. Mayor Dudley called the meeting to order at 7:00 p.m. Council members present were Dickinson, Farley, Hampson, Govea, Hunter, LaDuex, Maichel, and Moon. Also present was City Manager Cawby, City Attorney Wetzler, and City Clerk Elmquist. Visitors were Will Cutburth, Amanda Martin, Cindy Govea, Jeff Walmann, Gordon Schrader, Alan Hire, Web Hawkins, Ryan Crowley, and Coleen Truelson.

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

PRESENTATION OF POOL REPAIR PROPOSAL BY TRIANGLE BUILDERS. Web Hawkins and Gordon Schrader met with the City Manager about repairing the swimming pool. They had hired Alan Hire of Triangle Builders and believed they had a plan that could be implemented for approximately \$75,000 to \$125,000. The project would be funded by Hawkins. Alan Hire gave a presentation on the proposal. There was discussion on the condition of the pool, its problems, and what action needed to be taken to resolve the problems. Schrader said they were trying to bridge the time until a new pool could be built. Hawkins committed \$150,000. The Council was poled and all agreed to go with the plan.

EXECUTIVE SESSION – PRELIMINARY DISCUSSIONS RELATING TO THE ACQUISITION OF REAL PROPERTY. Motion made by Moon at 9:03 p.m., seconded by Hunter to recess into executive session for preliminary discussions relating to the acquisition of real property, to include City Manager Cawby and Attorney Wetzler; and that the Council will resume the open meeting in this room at 9:08 p.m. Yeas: All. The meeting reconvened with no action taken.

Motion made at 9:15 p.m. by Hunter, seconded by LaDuex to adjourn. Yeas: All.

Ann Elmquist, City Clerk

Record of Ordinances

ORDINANCE NO. 2013-03

DATE WARRANTS ISSUED:
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AN ORDINANCE MAKING APPROPRIATION FOR THE PAYMENT OF CERTAIN CLAIMS.

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

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

CLAIMANT	NATURE OF CLAIM OR SERVICE	CLAIM NUMBER	AMOUNT
City of Osawatomie	Petty Cash Reimbursement	1330	3,035.29
KMEA	Nearman Electricity	1331	30,470.23
Void	Void	41214	-
Michael & Shirlee Wood	Release for Damages	41215	400.00
Void's 41216-41226			-
Arrowhead Scientific, Inc.	Tubular Rollstock	41227	260.00
AT&T	RTU'S	41228	221.15
Baker & Taylor	Books	41229	991.41
Bradley A/C & Heating	Replace Blower Motor & Filter	41230	441.38
Brewer's Automotive Repair	Tires	41231	166.60
BSN Sports	Whistles/Lanyards	41232	49.19
C & G Merchants Supply, Inc.	Candy, Popcorn, Towels, Toilet Tissue	41233	347.12
California Contractors Supplies, Inc.	Underground Warning Tapes	41234	149.97
City of Osawatomie	Utilities	41235	14,858.69
Comfort Inn-Hutchinson	Lodging	41236	177.18
En-Mark Simulator Rentals	Driving Simulator	41237	618.00
Entersect	Police Online	41238	79.00
Family Center	Spreader, Chainsaw, Pole Pruner	41239	1,458.48
Gallagher Benefit Services, Inc.	February Administration fee	41240	386.00
Hanes Florist & Greenhouse	Flowers	41241	55.00
John Deere Financial	Bolts & Washers	41242	21.09
Kansas City Wilbert	Grave Openings	41243	2,254.00
Kansas Dept. of Commerce	JTC Oil Lease	41244	2,000.00
Kansas One Call Concepts	Locates	41245	22.40
K.C. Bobcat	Wiper Motor	41246	168.38
Knapheide Truck Equipment Center	Headlight Housing, Disc Shoe Assem	41247	385.40
Lacal Equipment, Inc.	Rubber Plow Blade	4128	337.42
Lybarager	Fuel	41249	7,893.57
Miami Lumber, Inc.	7' Flush Slab, 2x4's	41250	216.38
Moon's Hometown Market	Cleaning Supplies, Beer, Chips, Buns	41251	471.96
New Century Dodge	Tire Pressure Sensor, Engine Support	41252	146.48
NPG Newspapers	Ad-s Condemnation, Map, Land	41253	552.17
Ozonia	Ballast, Pigtail, Power Supply	41254	3,421.63
QA Balance Services	Scale Calibration	41255	105.00
Quill.com	Staple Remover, Staples	41256	13.36
Rejis Commission	LE Web Subscription	41257	31.50
Royal Publishing	Ad-Ottawa B & G Basketball	41258	80.00
Rural Water District #1	Service	41259	141.00
Smitty's Lawn & Garden Equipment	Blades, Grommet, Remote Vent	41260	96.77
Suddenlink	Internet	41261	329.75

CLAIMANT	NATURE OF CLAIM OR SERVICE	CLAIM NUMBER	AMOUNT
Superior Signals, Inc.	Strobe	41262	76.86
Tri-County Ice Co., Inc.	Tokens	41263	200.00
Elizabeth Trigg	Gift Cards	41264	75.00
USA Blue Book	Hydrant Flow Tester/Diffuser	41265	790.20
USA Mechanical, Inc.	Install Unit Heater, Fan Motor & Cap	41266	308.00
Vernon's Electric & Repair	Rebuilt C5130	41267	135.00
Wade Quarries	Rock	41268	1,604.93
Water Products	Pk Tee for Irrigation #4	41269	461.40
Winterscheid Auto Parts	Filters, Spark Plugs, Batteries, Fuses	41270	1,842.93
Winterscheid Auto Parts		41271	-
KMEA	Wapa Hydro Electricity	1332	8,927.75
KMEA	SPA Hydro Electricity	1333	3,276.94
KMEA	GRDA Electricity	1334	76,846.83
Altec Industries, Inc.	Bolt Cutters	41272	107.98
Bollings Bargain	Screwdriver	41273	26.85
Brewer's Automotive Repair	Explorer Plus-Crack Seal Machine	41274	78.56
Dish Network	Service	41275	94.89
EMG, Inc.	Energy Consulting	41276	1,000.00
Galls	Flashlights	41277	352.24
Grainger	Submersible Pump	41278	99.33
Hasty Awards	Table Tennis Trophies	41279	34.50
Hoover's Upholstery	Recover & Repair Cushion	41280	185.00
Kansas Department of Health	Operator Certificate-Robertson	41281	20.00
Kansas Department of Revenue	Sales Tax	41282	12,228.75
Kansas Department of Revenue	Compensating Use Tax	41283	175.55
L & K Services, Inc.	Refuse	41284	31,423.74
Louisburg Ford	Bushing	41285	7.72
Martin Pringle Attorneys at Law	Municipal Matters, City Prosecutor	41286	6,159.44
Ricoh Americas Corporation	Copier Lease	41287	183.90
Ricoh Americas Corporation	Copier Lease	41288	289.00
Scott A Michie Planning Services	Consulting Services	41289	150.00
Suddenlink	Internet	41290	74.24
Visa	Lodging, Postage, Graphics	41291	604.63
Visa	DVDs, Basket, Phone, Stickers, Pens	41292	322.64
Winkler, Domoney & Schultz	Municipal Court Judge	41293	2,000.00
Bob's Sales and Service	Void	41294	-
KMEA	EMP Electric Transmission	1335	42,452.29
KMEA	Nearman Electricity	1336	23,850.12
Bob's Sales and Service	Recharge Fire Extinguishers	41295	207.00
Crawford Sales Company	Budweiser	41296	172.85
Bob's Sales and Service	Recharge Fire Extinguishers	41297	39.50
Amateur Sports Promotion	2013-14 Sports Calendar Ad	41298	129.00
Baker & Taylor	Books	41299	137.65
Beachner Grain, Inc.	Cat & Dog Food, Fescue, Concrete	41300	578.75
Bearing Headquarters Company	Drive Chain	41301	1,362.43

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CLAIMANT	NATURE OF CLAIM OR SERVICE	CLAIM NUMBER	AMOUNT
Sheldon Booe	Soccer Official	41302	108.00
Brenntag Mid-South, Inc.	Ammonium Sulfate	41303	888.00
Brewer's Automotive Repair	Tube, MT-34	41304	394.03
Bridgewell	Poles	41305	8,102.89
BSN Sports	Safety Screens, Bases, Tee Ball, Tee	41306	1,418.78
California Contractors Supplies, Inc.	Red Marking Flags	41307	515.64
Don Cawby	Mileage, Meals	41308	159.99
Century Link	RTU'S	41309	236.56
Century Link	Long Distance	41310	345.61
Century Link	Service	41311	2,285.66
Champion Brands, LLC	Snow Blades, Chain Oil, Paint	41312	452.21
CMI, Inc.	Mouthpiece	41313	55.39
Conrad Fire Equipment, Inc.	1.5" Nozzle	41314	1,005.82
Correct Care Solutions, LLC	Inmate Healthcare Services Repricing	41315	17.50
Coventry Health Insurance	Health Insurance	41316	28,683.68
Delta Dental	Dental Insurance	41317	3,602.38
Donna & Viola's Shirts	Shirts-Bradshaw	41318	45.28
Elliott Insurance Inc.	Treasurer's Bond, Ins. For Chargers	41319	247.00
Emergency Vehicle Parts & Products	Hook-On Kit for Dodge Charger	41320	95.25
Environmental Laboratories, Inc.	Wastewater Sample & Analysis	41321	240.00
Evco Wholesale	Chips, Coffee, Snack Crackers	41322	255.25
Richard Fisher, Jr. LLC	Attorney Fees	41323	575.00
Gerken Rent-All	Portable Toilet	41324	108.00
Grainger	Incandescent Bulb, Pilot Light, Blades	41325	372.45
Hach	Lamp Assembly	41326	263.95
Austin Harper	Soccer Official	41327	100.00
Hot Spot Graphics	BBQ Logo-Jamboree	41328	50.00
Jay's Uniforms	Pants	41329	88.44
John Deere Landscapes	Stonewall WDG, Fertilizer	41330	3,877.31
Kansas City Power & Light	Service	41331	1,683.67
Kansas Gas Service	Service	41332	7,397.09
KC Bobcat	Cutting Edge, Plow Bolt, Lock Nuts	41333	239.79
Kelcon Technologies	Server Maintenance, Remove Virus	41334	868.50
KGCSA	2013 Membership Dues-Golf Course	41335	80.00
Courtney Kilbourn	Soccer Official	41336	40.00
Kriz-Davis Co.	Splices, PVC, Wire, Insulator	41337	7,667.14
Master Pitching Machine, Inc.	Power Cable	41338	44.67
Miami County Sheriff's Office	Prisoner Care	41339	55.07
ND&H, LC	Attorney Fees	41340	590.00
Drew Needham	Soccer Official	41341	24.00
NPG Newspapers	Ads-Repealing 2 Advisory Boards	41342	132.65
Oil Patch Pump & Supply, Inc.	Jiffy Repair Clamp, PVC Pipe	41343	34.82
Olathe Winwater Works	Adapters	41344	310.00
Paola Hardware	Bags, Solder Kit, Soft Copper	41345	109.45
Paving Maintenance Supply, Inc.	Regulator	41346	75.57

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CLAIMANT	NATURE OF CLAIM OR SERVICE	CLAIM NUMBER	AMOUNT
Pepsi	Pepsi	41347	429.43
Quill Corporation	LaserJet, Highlighters, Correction Tape	41348	421.79
Redwood Toxicology Laboratory	Drug Testing	41349	25.00
Rejis Commission	LEWeb Subscription Service	41350	31.50
RMI Golf Carts	Sheave, Oil Seal, Gaskets	41351	486.51
Scott Michie Planning Services	Zoning, Procedures Manual	41352	726.00
Morgan Soucie	Soccer Official	41353	54.00
Sprint	Service	41354	20.27
State Industrial Products	Bags, Soap, Magic Mat	41355	522.10
Suddenlink	Service	41356	59.95
Superior Lamp, Inc.	Bulbs	41357	863.50
Surrency	Vision Insurance	41358	605.07
Debbie Talley	Memorial Hall Janitorial	41359	375.00
Tri-County Ice Co., Inc.	Ice Machine	41360	50.00
USA Bluebook	3' Cable, Hydrant Flow Tester, Adapter	41361	994.48
Vernon's Electric & Repair	Hoses & Fittings	41362	85.33
Brad Waggoner	Pro Shop	41363	113.47
Wal-Mart	Cleaning Supplies, Coffeemaker	41364	327.32
Wycoff's Locksmithing	1000 Series Clutch Assembly	41365	125.32
YMCA of Greater KC	City Share Wellness Program	41366	22.50
City of Osawatomie	Petty Cash Reimbursement	1337	4,302.84
Payroll 03/08/13			93,181.89
Fica 03/08/13			6,775.42
Payroll 03/22/13			89,215.94
Fica 03/22/13			6,472.25
KPERS			14,807.37
			586,984.08
GO	150,720.50		
WT	26,324.47		
EL	266,937.64		
Emp Ber	53,230.46		
Refuse	31,423.74		
Library	991.41		
Rural Fir	1,686.23		
IND	2,171.32		
SP&R	11,604.52		
St. Imp	4,964.25		
Sewer	17,377.33		
Golf	16,414.28		
Trsm	414.44		
Cap-GO	2,337.49		
Caf	386.00		
	586,984.08		



STAFF AGENDA MEMORANDUM

DATE OF MEETING: April 11, 2012

AGENDA ITEM: Pool Repair Proposal and Contract

PRESENTER: Don Cawby, City Manager

ISSUE SUMMARY: At the March 28 meeting, the Council asked staff to look into a few items concerning the proposal by Web Hawkins and Triangle Builders for pool rehabilitation. At the conclusion of the meeting you asked staff to provide the following information:

- Public feedback on the proposal
- The appropriate scale of the repairs
- How we would pay for repairs over the donated funds
- Operational costs

I also suggested that we come forward with a contract so that we could move forward quickly if you should approve the proposal at the April 11 meeting. Below is a response to each of these items.

Public Feedback. I have nothing factual to report on this issue. Ryan Crowley should be at the meeting to relay information he has learned. I can also state that responses from Facebook and the Graphic's website that most people believe we should have a pool. At the same time there seem to be expectations that this pool will have more to do. Unfortunately, that won't be the case. In fact, we won't have a diving board, just our small slide, so I expect people to be disappointed with what they are getting for the money. Of course, most people seem to want a modern or new pool but also don't want to see the admission fee increase.

Scale of Repairs. I believe that we should limit repairs to the pool structure and operation and the bath house should be left as an alternate. By eliminating the bath house repairs and the

alternative entrance, that brings the estimate to \$166,500. That amount is an increase of \$4,500 for the statutorily required bond for this work that was not in the original estimates.

I examined whether or not we should attempt the zero-depth area so as to eliminate costs. However, after speaking with some pool experts we will have more problems with the kiddie pool, it will create the need for an extra life-guard (about \$3,800 per summer) and we would need to expend funds for a fixed lift.

I have asked Alan Hire to break down the repairs to the pump house and possible there are some areas to cut back there, but after examining the provided Scope of Work, there are very few areas where I could recommend cutting back, especially if we have a lump sum contract. The pump house is a mix

Based upon the provided Scope of Work, we have some higher risk contingencies that are not built into the previous estimate. The first is the pool pump. We assume it still works, but we won't know until we get everything filled. If we need a new pump we need to plan on \$7,500. If we needed to replace the basket with it, that total would increase to \$10,500. The second contingency is a motor control starter. I am still awaiting a total what a replacement would cost.

As for other contingencies, I have asked for all changes based upon site conditions and quantities changes to the responsibility of Triangle. This means they would be responsible if there were such issues as sub-soil or existing piping issues, or additional concrete needed beyond what was estimated for the bids. Other possible issues which the City would be liable for are hazardous material remediation we don't already know about or equipment failures.

Contract.

NOTE: *The contract is still under negotiation. I am providing a summary of where we are at this time. This memo is likely to be updated before the meeting.*

In the contract, I have offered a lump sum price of \$150,000 to provide the work listed by Triangle at \$162,000. That amount did not include the \$4,500 bond, which is statutorily required for all projects over \$100,000. Also, Triangle indicated they would need to add \$400 for lead paint testing and any remediation they expected to be around \$700.

We requested a warranty of work through Sept 1, 2015.

To ensure that we agree on what work is to be provided, we have attached a scope of work for the work to be performed. We have also included a schedule of values to be a guide for the

cost of each major portion of work. Currently that schedule of values is greater than the \$150,000 offer made by the City.

As far as hazardous materials are concerned, the City would be responsible for remediation of hazardous materials, excluding the asbestos pipe which we know about and any lead paint issues in case they arise. However, Triangle has now included that lead paint cost in their price.

Another major issue in the contract is that we are proposing Triangle be responsible for any worksite issues (subsoil or physical conditions of the pool) which arise. This provision would hold Triangle responsible to deliver the end product they promised at the price they promise. As mentioned earlier, if pool equipment such as pumps or filters fail, then the City would be responsible for those items.

Funding. Any funding the City would provide towards repairs would come from the General Capital Improvements Fund. We believe that we have saved about \$40,000 in doing our own mold abatement. However, we had already targeted those funds to two projects: (1) Cover the difference in lack of funding to fix the Library foundation (only \$20k budgeted), and (2) use the remainder to help with planning and possible match for a Baehr Grant application for replacing the buildings at the Sports Complex (there are now sizable gaps in the blocks on the buildings). We also have a few thousand left from the original pool planning.

Operational Costs. We did not budget for pool operation costs this year, but we did set aside \$18,000 to cover any costs associated with the YMCA providing their pool to the public, insurance and other general costs.

We estimate operational costs of approximately \$51,000 for the entire year, which includes about \$25,000 in salaries, \$10,000 in equipment and other general operating costs. That leaves us with \$33,000 to find in our 2013 for operations. If we were to open for only six weeks this year, that would likely only save us about \$11,000 for this year.

COUNCIL ACTION NEEDED: Review and discuss the proposal and contract.

STAFF RECOMMENDATION TO COUNCIL: The Council needs to review the proposal and to provide direction to staff on the proposed contract. Staff will provide the contract to the Council as soon as possible before the meeting.



PRESENTED CONTRACT SUMMARY

SUMMARY: Triangle Builders completed a contract but are still not in agreement on the price. I will summarize the major issues in the contract and then at the end will discuss the disagreement on price.

Warranty (5.6). We have agreed to a warranty through September 1, 2015. Triangle would only be liable for areas they addressed or remedied.

Hazardous Material (5.8). Triangle would be responsible for handling of hazardous waste where we know there are issues, the pipes and possible lead paint. Money is included in the schedule of values for lead paint testing.

Worksite Conditions (5.11). We would allow change orders but they would be subject to a limitation. The limit is set at \$10,000 in Section 11. There is also a provision for us to stop work if we discover an issue which would likely create a Change Order in excess of our maximum amount.

Financial Information (6.1). The donor would be required to put the money for the project in an escrow account controlled by the City.

Changes (11). We limit the total of change orders to \$10,000. This would not include any change orders for mechanical equipment (such as the pump). However, the City would reserve the right to do such work ourselves and outside of the contract.

Bonds (15). The cost of the statutorily required bonds would be included in the project. I have included them in the price and they are shown on the Schedule of Values.

Termination of the Contract (18). Either party would be able to terminate the contract if it is discovered there are conditions which would require a Change Order in excess of the maximum amount (\$10,000). Terms are provided for paying for work to that point.

I would caution the Council that this provision only protects the City at the beginning of the project. If a large change order were to occur at the end of the project, which is somewhat unlikely, the City would be faced with a tough decision on finishing the project or letting the spent money, most of which would be from the donor, go to waste.

Price. Triangle and I could not come to consensus on price. I have offered a lump sum amount of \$157,000 plus a maximum contingency of \$10,000. Triangle has quoted \$167,260 with a maximum contingency of \$10,000.

Triangle's proposal is the same values presented at the last meeting, without the pool house. The proposal you saw last week was \$148,000 before contingencies. At the last meeting the ADA ramp at \$14,000 was added on to the bottom of the document since it was added after the packet went out before the meeting. After adding that amount, the required statutory bond at \$4,860, and lead paint testing of \$400, you come to the total presented by Triangle.

My proposal is based on a couple of elements.

First, I am not confident in Triangle's numbers through this process. The proposal was put together for a third party with a set budget. Then the City is expected to come up with the difference but we don't have the money, or time, to pay a third party to adequately evaluate the proposal or the cost, nor do we the ability to see if this is a fair price through a bid process. We are expected just to accept these numbers as presented. Also, I have concerns that this process has had a "bait and wwitch" element to it. The original proposal presented as \$75,000 to \$125,000 ended up being over \$400,000. We have been presented with options for a new pool by both Triangle and their sister company Carrothers. Now we have a proposal that was \$148,000 on March 25, \$162,000 on March 28 and \$167,260 on April 11 for the exact same project.

Second, and most importantly, I believe the City should limit its contribution to this project to a maximum of \$20,000. The amount proposed by the City would limit our contribution to \$17,000 and would allow about \$3,000 for any mechanical or other problems we encounter. We may still go over the \$20,000 by a considerable amount should the pump needs to be replaced, but having half of the cost sitting there would help.

I make this recommendation based upon what I believe the City has available in savings from other projects and would still allow the City to address some other important issues, such as the Library and Sports Complex Buildings. We have no shortage of building maintenance issues. Furthermore, as stated in my staff memo, the City will need to find around \$30,000 in operating funds for this year, and just as importantly up to \$50,000 in subsequent years for annual operations.

Presented by: Don Cawby, City Manager

AGREEMENT BETWEEN OWNER AND CONSTRUCTOR (Lump Sum Price)

Job Number: 2013-14

This Agreement is made this 12th day of April, 2013, by and between OWNER, City of Osawatomie, 439 Main St, Osawatomie, KS 66064 and CONSTRUCTOR, Triangle Builders, LLC, 401 W Wea, Paola, KS 66071

The Owner and Constructor are collectively the "Parties." Notice to the Parties shall be given at the above addresses.

PROJECT: City Swimming Pool Repairs

1. THE WORK The Constructor shall furnish construction administration and management services and use the Constructor's diligent efforts to perform the Work in an expeditious manner consistent with the Contract Documents. The Constructor shall provide all labor, materials, equipment and services necessary to complete the Work, as described in Exhibit A "The Work", all of which shall be provided in full accord with and reasonably inferable from the Contract Documents.

2. PRICE As full compensation for performance by the Constructor of the Work, the Owner shall pay the Constructor the lump sum price of **one hundred fifty thousand dollars (\$157,000) / [one hundred sixty-seven thousand two hundred sixty dollars (\$167,260)]**, to complete the work as detailed in Exhibit A. The lump sum price is hereinafter referred to as the Contract Price, which shall be subject to increase or decrease as provided in this Agreement.

3. EXHIBITS The following attached exhibits are made part of this Agreement:

- A. EXHIBIT A: Scope of Work
- B. EXHIBIT B: Schedule of Values
- C. EXHIBIT C: Site Drawing with Proposed Changes
- D. EXHIBIT D: Drawing of Zero-Depth and ADA Ramp
- E. EXHIBIT E: Progress Schedule
- F. EXHIBIT F: Alternates, Bathhouse scope of work

4. ETHICS The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest and promptly discloses any to the other Party; and (b) warrants that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, subcontractors, or others for whom they may be liable, to secure preferential treatment.

5. CONSTRUCTOR'S RESPONSIBILITIES The Constructor shall be responsible for supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.

5.1. Except for permits and fees that are the responsibility of the Owner pursuant to this Agreement, the Constructor shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work.

5.2. The Constructor shall pay all applicable taxes legally enacted when bids are received or negotiations concluded for the Work provided by the Constructor.

5.3. In the event that the Owner elects to perform work at the Worksite directly or by others retained by the Owner, the Constructor and Owner shall coordinate the activities of all forces at the Worksite and shall agree upon fair and reasonable schedules and operational procedures for Worksite activities. The Owner shall require each separate contractor to cooperate with the Constructor and assist with the coordination of activities and the review of construction schedules and operations. The Contract Price and Contract Time shall be equitably adjusted, as mutually agreed by the Parties, for changes made necessary by the coordination of construction activities, and the construction schedule shall be revised accordingly.

5.4. In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work, the Constructor shall examine and compare the drawings and specifications with information furnished by the Owner pursuant to section 6.2; relevant field measurements made by the Constructor; and any visible conditions at the Worksite affecting the Work.

5.5. COMPLIANCE WITH LAWS The Constructor shall comply with all laws at its own costs. The Constructor shall be liable to the Owner for all loss, cost, or expense, attributable to any acts or omissions by the Constructor, its employees, subcontractors, and agents for failure to comply with laws, including, fines, penalties, or corrective measures.

5.6. WARRANTY

5.6.1. The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. The Constructor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. The Constructor further warrants that the Work will be free from material defects. The Constructor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage or for existing conditions which were not a part of the work addressed or remedied by the Constructor under this agreement, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by the Owner or others retained by Owner, or abuse.

5.6.2. If, prior to the Date of Substantial Completion and after date of Substantial Completion of the Work through September 1, 2015, any portion of the Work is found to be not in conformance with the Contract Documents ("Defective Work"), the Owner shall promptly notify the Constructor in writing. Unless the Owner provides written acceptance of the condition, the Constructor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.

5.6.3. The parties agree that this agreement concerns a community swimming pool and its accessory structures that are in a state of disrepair. The Constructor shall not be liable for existing conditions which were not addressed or remedied by Constructor under this agreement. Furthermore, if there are conditions or circumstances where the Constructor proposes a Change Order or additional work that is necessary to the project and it is not accepted or agreed to by the owner, the Constructor shall not be liable for any warranty work or subsequent issues resulting from the Owner's decision not to pursue such work. The parties may agree in writing in and addendum to this agreement on work which may be excluded from the warranty.

5.7. SAFETY The Constructor shall have overall responsibility for safety precautions and programs in the performance of the Work, except that the Constructor's subcontractors shall also be responsible for the safety of persons or property in the performance of their work, and for compliance with the provisions of laws. The Constructor shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite; materials and equipment stored at on-site or off-site locations for use in the Work; and property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Work.

5.8. HAZARDOUS MATERIALS A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. The Constructor shall not be obligated to commence or continue work until any Hazardous Material at the Worksite, which was unknown to the Constructor at the time of the approval of the contract, has been removed, or rendered or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate government agency. If the Constructor incurs additional costs due to the presence or remediation of Hazardous Material, the Constructor shall be entitled to an equitable adjustment in the Contract Price or the Contract Time. The Constructor acknowledges the existence of asbestos in the pipes and drainage system of the pool and the reasonable existence of lead paint on the premises and agrees to follow all federal, state, or local law or regulation in the remediation and disposal of these known hazardous materials, should remediation be necessary.

5.9. MATERIALS BROUGHT TO THE WORKSITE The Constructor shall be responsible for the proper delivery, handling, application, security, storage, removal, and disposal of all materials and substances brought to the Worksite by the Constructor in accordance with the Contract Documents and used or consumed in the performance of the Work.

5.10. SUBMITTALS The Constructor shall submit to the Owner and Design Professional for review and approval all shop drawings, samples, product data, and similar submittals required by the Contract Documents. Submittals may be submitted in electronic form if required in accordance with ConsensusDocs 200.2 and section 6.5. The Constructor shall be responsible to the Owner for the accuracy and conformity of its submittals to the Contract Documents. The Constructor shall prepare and deliver its submittals to the Owner and Design Professional in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of the Owner and others retained by the Owner. The Constructor submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The approval of any Constructor submittal shall not be deemed to authorize deviations, substitutions, or changes in the requirements of the Contract Documents unless express written approval is obtained from the Owner specifically authorizing such deviation, substitution, or change. Further, the Owner shall not make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to the Constructor. The Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay. The Constructor shall perform all Work strictly in accordance with approved submittals. The Owner's approval does not relieve the Constructor from responsibility for Defective Work resulting from errors or omissions of any kind on the approved shop drawings.

5.11. WORKSITE CONDITIONS If the conditions at the Worksite are (a) subsurface or other physical conditions which are materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions which are materially different from conditions ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, the Constructor shall give prompt written notice of the condition to the Owner

5.11.1. In the presence of such conditions as described in 5.11 (a) or (b) of the above paragraph, the Constructor shall be responsible to remediate such conditions and to complete the Work as specified in this agreement.

5.11.2. Any change in the Contract Price or Contract Time as a result of unknown conditions as described in 5.11 shall be made by Change Order; however, the total of all such Change Orders shall not exceed the maximum amount allowed under Section 11 of this agreement.

5.11.3. During the course of Work such worksite conditions are discovered that indicated that total Change Orders in excess of the maximum amount agreed to by the parties under this agreement, either party may choose to suspend work and begin termination of this agreement in accordance with Section 18.4 of this agreement.

5.12. CUTTING, FITTING, AND PATCHING The Constructor shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of the Owner or others retained by the Owner.

5.13. CLEANING UP The Constructor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Constructor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. The Constructor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Constructor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

6. OWNER'S RESPONSIBILITIES Any information or services to be provided by the Owner shall be provided in a timely manner.

6.1. FINANCIAL INFORMATION Before commencing the Work, the Benefactor providing financing for this project shall place the funds for the project into an escrow account controlled by the Owner. These funds shall only be expended for the financing of this project and shall be expended for the Work in a manner agreed to by the Benefactor and Owner. Evidence of such financing shall be a condition precedent to the Constructor's commencing or continuing the Work. The Constructor shall be notified prior to any material change in Project financing.

6.2. WORKSITE INFORMATION Constructor acknowledges that worksite involves a pool that has existed for many years and has been the subject of previous repairs and that the Owner has done very limited investigation regarding the pool, the conditions of the pool and the work necessary to make the pool operable and has relied on the Constructors representations as to the work necessary to make the pool operational. Owner agrees to provide as much information as is known and available, subject to the limitation that there may be information and records of testing and evaluation that have been lost or are no longer available as a result of the passage of time and changes of administration. Subject to the foregoing, the Owner shall provide at the Owner's expense and with reasonable promptness the following

6.2.1. Any previously obtained and information known to Owner describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface, and environmental studies, reports and investigations;

6.2.2. As presently known to Owner, any previous tests, inspections and other reports dealing with environmental matters, hazardous material and other existing conditions, including structural, mechanical, and chemical tests required by the Contract Documents or by law; except for those tests or inspections specifically included in the Scope of Work or Schedule of Values as part of this agreement; and

6.2.3. Any other information or services requested in writing by the Constructor that are relevant to the Constructor's performance of the Work and under the Owner's control. The information required by this subsection shall be provided in reasonable detail. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent Worksite conditions.

Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the Constructor in laying out the Work.

6.2.4. Constructor also acknowledges that it has done its own testing prior to the execution of this agreement that is sufficient to satisfy itself as to the feasibility of the Work.

6.3. MECHANICS AND CONSTRUCTION LIEN INFORMATION Within seven (7) days after receiving the Constructor's written request, the Owner shall provide the Constructor with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include the Owner's interest in the real property on which the Project is located and the record legal title.

6.4. BUILDING PERMIT, FEES, AND APPROVALS Except for those required of the Constructor pursuant to this Agreement, the Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit. The Constructor will be required to be licensed to perform such work by Miami County, Kansas and will be registered with the City of Osawatomie to perform the same work in the City of Osawatomie. Expenses associated with licensing and registration will be the responsibility of the Constructor.

6.5. DOCUMENTS IN ELECTRONIC FORM If the Owner requires that the Owner, Design Professional, and Constructor exchange documents and data in electronic or digital form, prior to any such exchange, the Owner, Design Professional, and Constructor shall agree on a written protocol governing all exchanges in ConsensusDocs 200.2 or a separate addendum.

7. SUBCONTRACTS Work not performed by the Constructor with its own forces shall be performed by subcontractors. The Constructor agrees to bind every subcontractor and material supplier (and require every subcontractor to so bind its subcontractors and material suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the subcontractor's and material supplier's portions of the Work.

8. CONTRACT TIME

8.1. DATE OF COMMENCEMENT The Date of Commencement is the Agreement date on page one, unless otherwise set forth below: April 12, 2013.

8.2. TIME Substantial Completion of the Work shall be by June 24, 2013. Unless otherwise specified in the Certificate of Substantial Completion, the Work shall be finally complete within ten (10) days after the date of Substantial Completion, subject to adjustments as provided for in the Contract Documents. Time is of the essence for this Agreement.

9. SCHEDULE OF THE WORK Before submitting the first application for payment, the Constructor shall submit, for review by the Design Professional and approval by the Owner, a Schedule of the Work that shall show the dates on which the Constructor plans to begin and to complete various parts of the Work, including dates on which information and approvals are required from the Owner.

9.1. The Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the Schedule of the Work. The Owner may require the Constructor to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by the Owner or others. To the extent such changes increase the Constructor's time and costs, the Contract Price and Contract Time shall be equitably adjusted.

10. DELAYS AND EXTENSIONS OF TIME

10.1. If the Constructor is delayed at any time in the commencement or progress of the Work by any cause beyond the control of the Constructor, the Constructor shall be entitled to an equitable extension of the Contract Time. Examples of causes beyond the control of the Constructor include, but are not limited to, the following: acts or omissions of the Owner or its agents; changes in the Work or the sequencing of the Work ordered by the Owner or arising from decisions of the Owner that impact the time of performance of the Work; transportation delays not reasonably foreseeable; labor disputes not involving the Constructor; general labor disputes impacting the Project but not specifically related to the Worksite; fire; terrorism, epidemics, adverse governmental actions, unavoidable accidents or circumstances; adverse weather conditions not reasonably anticipated; encountering unknown Hazardous Materials; concealed or unknown conditions; and delay authorized by the Owner pending dispute resolution. The Constructor shall process any requests for equitable extensions of Contract Time in accordance with the provisions of article 12.

10.2. In addition, if the Constructor incurs additional costs as a result of a delay that is caused by acts or omissions of the Owner or others, changes in the Work or the sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work, encountering unknown Hazardous Materials, concealed or unknown conditions, or delay authorized by the Owner pending dispute resolution, the Constructor shall be entitled to an equitable adjustment in the Contract Price subject to article 12.

10.3. In the event delays to the Work are encountered for any reason, the Constructor shall provide prompt written notice to the Owner of the cause of such delays after the Constructor first recognizes the delay. The Owner and Constructor agree to undertake reasonable steps to mitigate the effect of such delays.

10.4. NOTICE OF DELAY CLAIMS If the Constructor requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay, the Constructor shall give the Owner written notice of the claim. If the Constructor causes delay in the completion of the Work, the Owner shall be entitled to recover its additional costs, subject to the mutual waiver of consequential damages herein.

11. CHANGES

11.1. The Constructor may request or the Owner may order changes in the Work or the timing or sequencing of performance of the Work that impacts the Contract Price or the Contract Time. All such changes in the Work that affect the Contract Time or Contract Price shall be formalized in a Change Order.

11.2. Constructor will use all reasonable efforts to immediately notify the Owner as to the discovery of any worksite condition that will require a material change in the time, scope or cost of the Work.

11.2.1. The total of such Change Orders under this agreement shall not exceed ten thousand dollars (\$10,000). This limit shall not include Change Orders for mechanical equipment in the pump house, such as pumps or motor controls, not included in the Scope of Work.

11.2.2. The Owner reserves the right to purchase equipment or replace or repair equipment at the pool or its accessory structures that is not included under the Scope of Work of this agreement. All such work shall be coordinated with the Constructor as outlined in this agreement.

11.3. The Owner and Constructor shall negotiate in good faith an appropriate adjustment to the Contract Price or the Contract Time and shall conclude these negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price or Contract Time shall not be unreasonably withheld.

11.4. INTERIM DIRECTED CHANGE

11.4.1. The Constructor shall not be obligated to perform changes in the Work that impact the Contract Price or the Contract Time until a Change Order has been executed or a written Interim Directed Change has been issued. The Owner may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with the Constructor on the adjustment, if any, in the Contract Price or the Contract Time.

11.4.2. The Owner and the Constructor shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Contract Time arising out of an Interim Directed Change. As the changed work is performed, the Constructor shall submit its costs for such work with its application for payment. If there is a dispute as to the cost of the Work, the Owner shall pay the Constructor fifty percent (50%) of its estimated cost to perform the work. In such event, the Parties reserve their rights as to the disputed amount, submitted to the requirements of article 20.

11.4.3. When the Owner and the Constructor agree upon the adjustment in the Contract Price or the Contract Time, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of a Change Order.

11.5. COST OR CREDIT DETERMINATION

11.5.1. An increase or decrease in the Contract Price or the Contract Time resulting from a change in the Work shall be determined by one or more of the following methods:

11.5.1.1. unit prices set forth in this Agreement or as subsequently agreed;

11.5.1.2. a mutually accepted, itemized lump sum;

11.5.1.3. costs calculated on a basis agreed upon by the Owner and Constructor plus 10% overhead and 8% profit; or

11.5.1.4. If a cost or credit determination cannot be agreed to above, the cost of the change in the Work shall be determined by the reasonable actual expense incurred or savings realized in the performance of the Work resulting from the change. If there is a net increase in the Contract Price, the Constructor's overhead and profit shall be adjusted accordingly. In case of a net decrease in the Contract Price, the Constructor's overhead and profit shall not be adjusted unless ten percent (10%) or more of the Project is deleted. The Constructor shall maintain a documented itemized accounting evidencing the expenses and savings.

11.6. UNIT PRICES If unit prices are included in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit price items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the Owner or Constructor, such unit prices shall be equitably adjusted.

11.7. PERFORMANCE OF CHANGED WORK The Constructor shall not be obligated to perform Changed Work until a Change Order has been executed by the Owner and Constructor.

12. PAYMENT

12.1. SCHEDULE OF VALUES Within twenty-one (21) days from the date of execution of this Agreement, the Constructor shall prepare and submit to the Owner and, if directed, the Design Professional, a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a monetary price such that the total of all items shall equal the Contract Price.

12.2. PROGRESS PAYMENTS The Constructor shall submit to the Owner and, if directed, the Design Professional application for payment no later than the first and third Thursdays of each calendar month. The Constructor's applications for payment shall be itemized and supported by the Constructor's schedule of values and any other substantiating data as required by this Agreement. Payment applications shall include payment requests on account of properly authorized Change Orders. The Owner shall pay the amount otherwise due on any payment application, less any amounts as set forth below, no later than twenty (20) days after the Constructor has submitted a complete and accurate payment application. The Owner may deduct, from any progress payment, such amounts as may be retained pursuant to section 13.3.

12.3. RETAINAGE From each progress payment made prior to Substantial Completion the Contractor shall deduct from the billing five percent (5 %) of the amount otherwise due after deduction of any amounts as provided in section 13.4, to be accounted for as retainage. After an agreement of Substantial Completion, the Contractor shall provide a billing to the Owner for such retainage that was deducted on all prior payments.

12.4. ADJUSTMENT OF CONSTRUCTOR'S PAYMENT APPLICATION The Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Constructor is responsible for such under this Agreement:

12.4.1. the Constructor's repeated failure to perform the Work as required by the Contract Documents;

12.4.2. loss or damage arising out of or relating to this Agreement and caused by the Constructor to the Owner or to others retained by the Owner to whom the Owner may be liable;

12.4.3. the Constructor's failure to properly pay subcontractors for labor, materials, or equipment furnished in connection with the Work following receipt of such payment from the Owner;

12.4.4. Defective Work not corrected in a timely fashion;

12.4.5. reasonable evidence of delay in performance of the Work such that the Work will not be completed within the Contract Time;

12.4.6. reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work; and

12.4.7. uninsured third-party claims involving the Constructor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Constructor furnishes the Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which are sufficient to discharge such claims if established.

No later than seven (7) days after receipt of an application for payment, the Owner shall give written notice to the Constructor disapproving or nullifying it or a portion of it, specifying the reasons for the disapproval or nullification. When the above reasons for disapproving or nullifying an application for payment are removed, payment shall be made for the amounts previously withheld.

12.5. PAYMENT DELAY If for any reason not the fault of the Constructor, the Constructor does not receive a progress payment from the Owner within seven (7) days after the time such payment is due, the Constructor, upon giving seven (7) days' written notice to the Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to the Constructor has been received. The Contract Price and Contract Time shall be equitably adjusted by Change Order for reasonable cost and delay resulting from shutdown, delay, and start-up.

12.6. SUBSTANTIAL COMPLETION When Substantial Completion of the Work or a designated portion thereof is achieved, the Constructor shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and the respective responsibilities of the Owner and Constructor for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by the Constructor to the Owner for written acceptance of responsibilities assigned in the Certificate. Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

12.6.1. Upon acceptance by the Owner of the Certificate of Substantial Completion, the Owner shall pay to the Constructor the remaining retainage held by the Owner for the Work described in the Certificate of Substantial Completion less a sum equal to two hundred percent (200%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Owner and Constructor as necessary to achieve final completion. Uncompleted items shall be completed by the Constructor in a mutually agreed timeframe. The Owner shall pay the Constructor monthly the amount retained for unfinished items as each item is completed.

12.7. FINAL COMPLETION When final completion has been achieved, the Constructor shall prepare for the Owner's acceptance a final application for payment stating that to the best of Constructor's knowledge, and based on the Owner's inspections, the Work has reached final completion in accordance with the Contract Documents.

12.7.1. Final payment of the balance of the Contract Price shall be made to the Constructor within twenty (20) days after the Constructor has submitted to the Owner a complete and accurate application for final payment and the following submissions:

12.7.1.1. an affidavit declaring any indebtedness connected with the Work, e.g. payrolls or invoices for materials or equipment, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber the Owner's property;

12.7.1.2. as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

12.7.1.3. release of any liens, conditioned on final payment being received;

12.7.1.4. consent of any surety, if applicable; and

12.7.1.5. a report of any accidents or injuries experienced by the Constructor or its subcontractors at the Worksite.

12.8. Claims not reserved by the Owner in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects. Unless the Constructor provides written identification of unsettled claims known to the Constructor at the time of making application for final payment, acceptance of final payment constitutes a waiver of such claims.

12.9. LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.

13. INDEMNITY

13.1. To the fullest extent permitted by law, the Constructor shall indemnify and hold harmless the Owner, Owner's officers, directors, members, consultants, agents, and employees (the Indemnitees) from all claims for bodily injury and property damage, other than to the Work itself and other property insured under section 15.3, including reasonable attorneys' fees, costs, and expenses, that may arise

from the performance of the Work but only to the extent caused by the negligent acts or omissions of the Constructor, subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

13.2. NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the Constructor, anyone directly or indirectly employed by the Constructor or anyone for whose acts the Constructor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Constructor under Workers' Compensation acts, disability benefit acts, or other employment benefit acts.

14. INSURANCE

14.1. Before commencing the Work and as a condition precedent to payment, the Constructor shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. The Constructor shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. The Constructor shall provide the Owner with certificates of the insurance coverage required. The Constructor's Employers' Liability, Business Automobile Liability, and CGL policies, as required in this article, shall be written with at least the following limits of liability:

14.1.1. Employers' Liability Insurance:

- a. \$1,000,000 bodily injury by accident per accident;
- b. \$1,000,000 bodily injury by disease policy limit
- c. \$1,000,000 bodily injury by disease per employee.

14.1.2. Business Automobile Liability Insurance:

- a. \$1,000,000 per accident.

14.1.3. CGL Insurance:

- a. \$1,000,000 per occurrence;
- b. \$2,000,000 general aggregate;
- c. \$2,000,000 products/completed operations aggregate;
- d. \$1,000,000 personal and advertising injury limit.

14.2. Employers' Liability, Business Automobile Liability, and CGL coverage required in the subsection above may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies. The Constructor shall maintain in effect all insurance coverage required in the section immediately above with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If the Constructor fails to obtain or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and charge the expense to the Constructor, or terminate this Agreement. To the extent commercially available to the Constructor from its current insurance company, insurance policies required under section 15.1 shall contain a provision that the insurance company or its designee must give the Owner written notice transmitted in paper or

electronic format: (a) 30 days before coverage is nonrenewed by the insurance company and (b) within 10 business days after cancellation of coverage by the insurance company. Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Constructor shall furnish the Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under section 15.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Constructor shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

14.3. To the extent of the limits of the Constructor's CGL insurance specified in section 15.1 the Constructor shall indemnify and hold harmless the Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of the Owner's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent acts or omissions of the Constructor, subcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

14.4. OWNER'S INSURANCE The Owner may procure and maintain insurance against loss of use of the Owner's property caused by fire or other casualty loss. The Owner shall either self-insure or obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including without limitation, loss of use and claims, losses and expenses arising out of the Owner's errors or omissions. **Owner will insure work in place. Constructor does not have a Builders Risk Policy.**

15. BONDS Performance and Payment Bonds are required of the Constructor. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must comply with statutory requirements and in form acceptable to the Owner. The Owner's acceptance shall not be withheld without reasonable cause. The penal sum of the Payment Bond shall equal the penal sum of the Performance Bond. **The Constructor's expense for the purchase of the Bonds shall be included in the Schedule of Values for the project.**

16. LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for (a) losses covered by insurance required by the Contract Documents, or (b) specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below, the Parties agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement. The following items of damages are excluded from this mutual waiver: n/a.

16.1. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. The Owner and the Constructor shall require similar waivers in contracts with subcontractors and others retained for the project.

17. RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Work shall be upon the Constructor until the Date of Substantial Completion, unless otherwise agreed to by the Parties.

18. NOTICE TO CURE AND TERMINATION

18.1. NOTICE TO CURE A DEFAULT If the Constructor persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work in accordance with article 9, or fails to make prompt payment to its workers, subcontractors, or material suppliers, disregards law or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, the Constructor may be deemed in default. If the Constructor fails within seven (7) business days after written notification to commence and continue satisfactory correction of such default with diligence and promptness, then the Owner shall give the Constructor a second written notice to correct the default within a three (3) business day period. If the Constructor

fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the Owner, without prejudice to any other rights or remedies, shall have the right to take reasonable steps it deems necessary to correct deficiencies and charge the cost to the Constructor, who shall be liable for such payments including reasonable overhead, profit, and attorneys' fees.

18.2. TERMINATION BY OWNER If, within seven (7) days of receipt of a notice to cure pursuant to section immediately above, the Constructor fails to commence and satisfactorily continue correction of the default set forth in the notice to cure, the Owner may notify the Constructor that it intends to terminate this Agreement for default absent appropriate corrective action within fourteen (14) additional days. After the expiration of the additional fourteen (14) day period, the Owner may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to the Owner. If the Owner's costs arising out of the Constructor's failure to cure, including the cost of completing the Work and reasonable attorney fees, exceed the unpaid Contract Price, the Constructor shall be liable to the Owner for such excess costs. If the Owner's costs are less than the unpaid Contract Price, the Owner shall pay the difference to the Constructor. In the event the Owner exercises its rights under this section, upon the request of the Constructor, the Owner shall furnish to Constructor a detailed accounting of the costs incurred by the Owner.

18.2.1. The Owner shall make reasonable efforts to mitigate damages arising from the Constructor default and shall promptly invoice the Constructor for all amounts due.

18.3. TERMINATION BY CONSTRUCTOR Upon seven (7) days' written notice to the Owner, the Constructor may terminate this Agreement if the Work has been stopped for a thirty (30) day period through no fault of the Constructor for any of the following reasons: (a) under court order or order of other governmental authorities having jurisdiction; (b) as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Constructor, materials are not available.

18.3.1. In addition, upon seven (7) days' written notice to Owner, Constructor may terminate the Agreement if the Owner does any of the following: (a) fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with section 6.1; (b) assigns this Agreement over the Constructor's reasonable objection; (c) fails to pay the Constructor in accordance with this Agreement and the Constructor has complied with the notice provisions of section 13.5; or (d) otherwise materially breaches this Agreement.

18.3.2. Upon termination by the Constructor pursuant to this Agreement, the Constructor shall be entitled to recover from the Owner payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable overhead and profit.

18.4. TERMINATION BY EITHER PARTY During the course of Work such worksite conditions are discovered that indicated that total Change Orders in excess of the maximum amount agreed to by the parties under this agreement, either party may choose to suspend work and begin termination of this agreement in accordance with this Section. Constructor will use all reasonable efforts to immediately notify the Owner as to the discovery of any worksite condition that will require a material change in the time, scope or cost of the Work.

18.4.1. Upon termination by either party under Section 18.4, the Parties shall negotiate and amount to be paid based upon the Work completed in accordance with the Schedule of Values and for any outstanding obligations of the Constructor for equipment, materials or costs accrued in connection with the Work completed at the time of suspension of the Work. The Constructor will not be eligible to claim expenses for future profits from Work not performed.

18.5. OBLIGATIONS ARISING BEFORE TERMINATION Even after termination the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

19. CLAIMS AND DISPUTE RESOLUTION

19.1. CLAIMS FOR ADDITIONAL COST OR TIME Except as provided in sections 10.3 and 10.4 for any claim for an increase in the Contract Price or the Contract Time, the Constructor shall give the Owner written notice of the claim within fourteen (14) days after the occurrence giving rise to the claim or within fourteen (14) days after the Constructor first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Any change in the Contract Price or the Contract Time resulting from such claim shall be authorized by Change Order.

19.2. WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Constructor shall continue the Work and maintain the Schedule of the Work during any dispute resolution proceedings. If the Constructor continues to perform, the Owner shall continue to make payments in accordance with the Agreement.

19.3. DISPUTE MITIGATION THROUGH DIRECT DISCUSSIONS If a dispute arises out of or relates to this Agreement or its breach, the Parties shall endeavor to settle the dispute through direct discussions. Within five (5) business days, the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions shall conduct direct discussions and make a good faith effort to resolve such dispute.

19.4. MEDIATION Disputes between the Owner and Constructor not resolved by direct discussion shall be submitted to mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association (AAA). The Parties shall select the mediator within fifteen (15) days of the request for mediation. Engaging in mediation is a condition precedent to any form of binding dispute resolution.

19.5. BINDING DISPUTE RESOLUTION If neither direct discussions nor mediation successfully resolve the dispute, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

Arbitration using the current Construction Industry Arbitration Rules of the AAA, or the Parties may mutually agree to select another set of arbitration rules. The administration of the arbitration shall be as mutually agreed by the Parties.

19.6. COST OF DISPUTE RESOLUTION The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

19.7. VENUE The venue of any binding dispute resolution procedure shall be the location of the Project, unless the Parties agree on a mutually convenient location.

20. MISCELLANEOUS

20.1. EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

20.2. ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign its interest in this Agreement, in whole or in part, without the written consent of the other Party. The terms and

conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives.

20.3. GOVERNING LAW This Agreement shall be governed by the law in effect at the location of the Project.

20.4. JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms prior to execution. This Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

OWNER: City of Osawatomie, Kansas

BY: _____

L. Mark Govea, Mayor

ATTEST:

By: _____

Ann Elmquist, City Clerk

CONSTRUCTOR: Triangle Builders, LLC

BY: _____

Alan M Hire, President

END OF DOCUMENT.

DRAFT

EXHIBIT A



TRIANGLE
BUILDERS, L.L.C.

401 West Wea • P.O. Box 345
Paola, KS 66071-0345
www.trianglebuilders.com

Phone: (913) 294-2525
Fax: (913) 294-8125

SCOPE OF WORK

1. Design and Consultation;
 - a. Design of concrete wall and floor slab at zero entry.
 - b. Assistance with locating leak in the recirculation line.
 - c. Calculations confirming that the main drains meet the Virginia Graeme Baker regulations.
 - d. General consultation.
2. Regrading and Seeding;
 - a. General clean up and fine grading after project completion.
 - b. Seed disturbed areas.
 - c. All concrete and soil debris will be stockpiled for removal by the city.
3. Fence
 - a. Repair all fence removed for construction.
4. Pool Floor, Walls, and Gutter repairs;
 - a. Pressure wash.
 - b. Sand blast floor walls and gutter
 - c. Remove caulk from all joints.
 - d. Clean all joints and lightly sand blast.
 - e. Repair all spalled concrete with proper epoxy or fortified patching. materials, MasterBuilders or equal.
 - f. Prime, and caulk all joints.
5. Zero Entry Area;
 - a. Install concrete dividing wall @ Zero entry transition to the 36" deep pool.
 - i. 35 lf of 3'-6" wall.
 - b. Modify existing gutter drain.
 - i. 20" to Zero Entry, 35' to remain 6" step at gutter.
 - c. Floor; 3,500 psi AE concrete w/ # 4 bars @ 18" OC.
 - d. Piping; Schedule 80 PVC piping.
 - i. Add 4 ea floor inlets, tied to existing wall outlets.
 - ii. Add 2 ea valved lines for future play features
 - iii. Add 2 ea Bubblers with concrete islands.
 - iv. Valved lines tied to valve box in pool deck.
 - e. Fill between new and old slab to be filled with $\frac{3}{4}$ drainage rock.
 - f. Electrical bonding of all floor fittings.
 - g. Install 18" tall Stainless Steel Tubing and plastic panel railing on divider wall 42" above the Zero floor. On top of the retaining wall.

EXHIBIT A

6. Pool Deck replacement;
 - a. Remove and Replace pool deck at Deep end of pool.
 - i. Disposal of concrete from rubble pile by City.
 - ii. 1300 sf @ deep end of pool and misc. locations
 - iii. Pool deck spot replacement 15 ea Less than 2 sf each.
 - iv. 5" 3,500 psi AE concrete, w/ #4 Resteel @ 18" OC.
 - v. Pin new deck to existing pool wall.
 - vi. Expansion joint, control joints, and caulk as needed.
 - vii. Curb replacement to be discussed and installed if required.
 - viii. 12" foundation piers 6' oc at fence line to stabilized pool deck.
 - b. Remove and Replace pool deck at Bathhouse / Zero Entry
 - i. Disposal of concrete from rubble pile by City.
 - ii. 1600 sf @ Bathhouse / Zero Entry area.
 - iii. 5" 3,500 psi AE concrete, w/ #4 Resteel @ 18" OC.
 - iv. Pin new deck to existing pool wall.
 - v. Expansion joint, control joints, and caulk as needed .
 - vi. Modify pool deck and pool gutter.
 - vii. Tie into bathhouse, pin and expansion joint.
 - c. Install 2ea light pole bases @ bathhouse.
 - i. 1@ the NW corner of Bathers Covered Snack Area.
 - ii. 1@ the area between the men's locker room door and the storage room.
 - iii. Includes conduit to the water heater closed by the concession stand.
 - iv. Pole lights are in Bathhouse Option 2 "Upgrade"
 1. No lights pole or light fixtures are included. Pole bases only.
7. Piping Systems;
 - a. Main drain.
 - i. Main Drain basins repair / refurbish/ paint.
 - ii. Confirm main drain covers are Virginia Graeme Baker compliant.
 - iii. Replace if they do not meet regulation.
 - b. Recirculation Line
 - i. Locate and repair recirculation line leak.
 - ii. Location is in the upper 1/3 of Pool.
 - iii. Pipe removal and modifications and repair.
 - iv. Necessary and proper precaution will be taken when repairing this line.
 - v. Modify existing wall inlets to floor inlets in the new zero depth area.
8. Pump room repairs
 - a. Replace 4" valve on the surge tank drain line.
 - b. Replace 4" & 2" valve on the 4" water fill line.
 - c. Pool drain valve will be left in the existing condition (inoperable).
 - d. Build brackets as needed to secure piping and valve stems.
 - e. Relocate Chlorine feeder to the east end of the pump room.
 - i. Replace piping, supply and feed line.
 - f. Install emergency eye wash.
 - g. Install hose bibs. 2 ea.
 - h. Repair doors.

EXHIBIT A

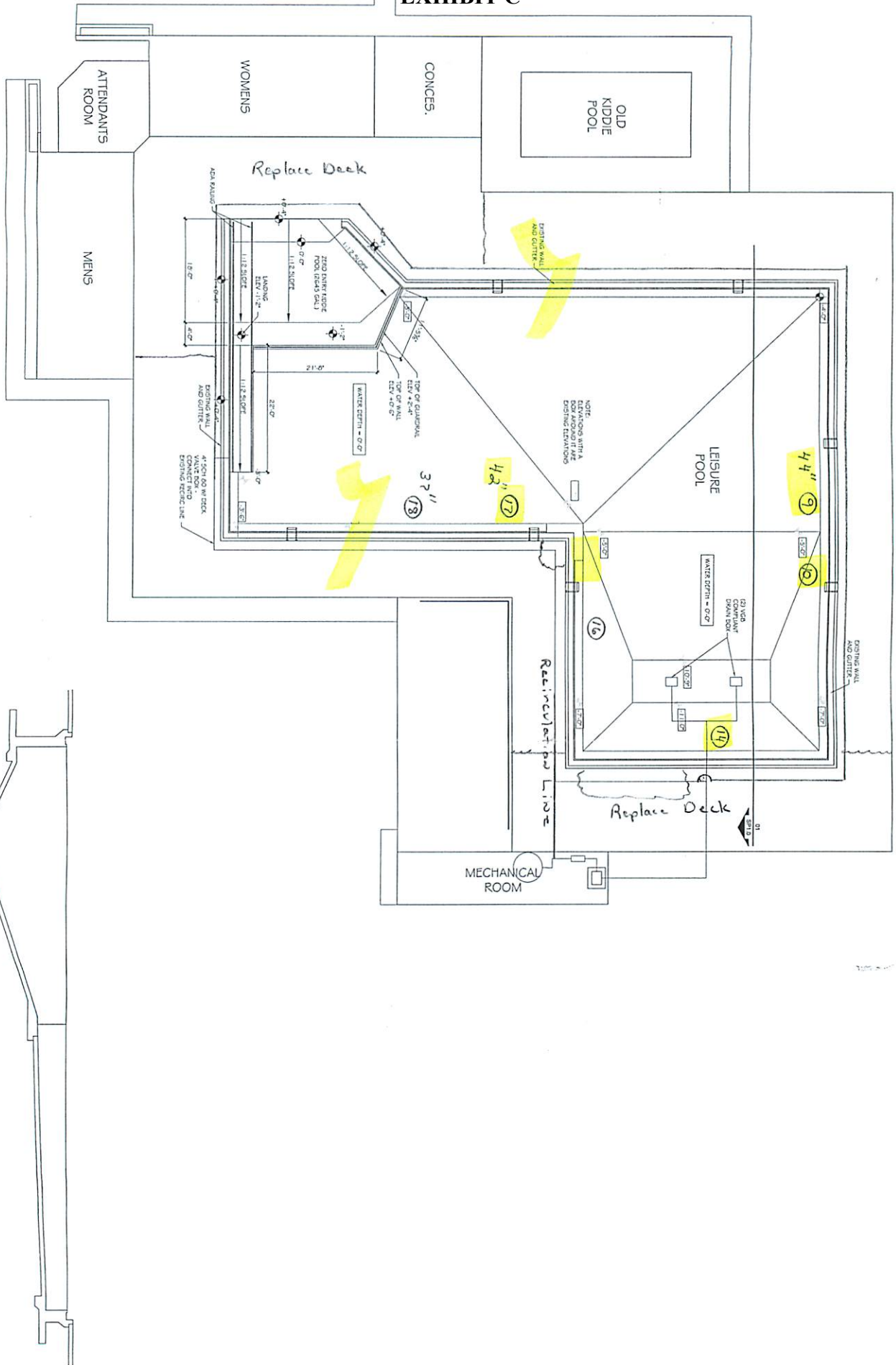
- i. Demo existing chlorine closet.
 - j. Existing Main pump and supply piping.
 - i. Pressure wash and sand blast 12' from wall to pump.
 - ii. Paint 12' of pipe.
 - iii. Repair, clean and put back in service the Trash basket at pump inlet.
 - k. Pump; The pump was instant started to see if it would start when we did the pool inspection. We need to run the pump. We need to put the pump under load to see if pump is still in operating condition.
 - i. Test for load and condition of windings.
 - ii. We will install temporary line to cycle water from the pump to the surge tank.
 - iii. We will test 3 times and run for 2 hrs at a time to see how the pump is holding up
 - iv. This will be done as soon as we move on site.
 - l. Electrical;
 - i. Replace switch bank on surge tank wall. Rewire if required
 - ii. Replace light fixtures with new Jar type fixtures
 - iii. Remove and reinstall pump starter and contactor to a proper location.
 - 1. Motor control starter is to be reused, it works today, the location is unsafe.
 - 2. We wont know the condition of the motor control starter until we take it off the wall and examine.
 - 3. If a new motor control starter is required it will have to come from the contingency.
 - iv. Inspect existing deck lighting, poles and fixtures.
 - 1. Check grounding and bonding. Return to working condition.
 - 2. Clean up and minimal repair only.
 - 3. Replace light bulbs as needed.
 - v. Install 2 ea 110 v GFI receptacles in pump room. One on the west and one on the east side of the pump room.
 - vi. Check all bonding clean and reinstall connections.
9. Pool Painting
- a. Water Blast Pool floor, walls, gutter, and pool deck edge.
 - b. Sand Blast Pool floor, walls, gutter, and pool deck edge.
 - c. Remove all caulk and sand blast joint to clean.
 - d. Cut out caulked edge joints at deep end overlay
 - i. Cut groove at edge joints to accept caulk
 - e. Replace all Caulking, prime, backer rod and caulk.
 - f. Paint; 2 coats of Tnemec Epoxy Pool Paint.
 - i. Pool floor; "Pool White"
 - ii. Gutter; "Pool White".
 - iii. Pool Deck/ Top of wall; Red or Black or as selected by owner.
10. Exclusions;
- a. Pool features.
 - i. Piping that is allowed in the Zero Entry area, are for future small volume children's features. Water supply to be fed by the existing recirculation line.
 - b. Repairs to Pool, Pump House, and Bathhouse that are not mentioned above.

EXHIBIT B

SCHEDULE OF VALUES POOL REMEDIATION BY TRIANGLE BUILDERS

<u>Item</u>	<u>Values</u>
1. Design and Consultation Fees	\$ 9,000
2. Re-grading and Seeding	1,000
3. Fence Repair	1,000
4. Concrete Repairs to Pool (floors, walls and gutters)	20,000
5. New Zero-Depth Entry Area	16,000
a. ADA Ramp	14,000
6. Pool Deck	
a. Removal - includes piping excavation and backfill	16,000
b. Replacement - includes replacing 2 light pole bases	30,000
7. Piping Systems	
a. Surge tank drain re-build	900
b. Main drain basis repair	1,600
c. Recirculation line repairs	5,500
8. Pump Room Repairs and Piping Upgrades	20,000
9. Cleaning, Sealing and Pool Painting	27,000
10. Bond	4,860
11. Lead Abatement Testing	400
TOTAL	\$ 167,260

EXHIBIT C



01/SP1.0

OSAWATOMIE POOL RENOVATION
OSAWATOMIE, KS



Project No.: 13-0014
Date: 03-23-13
Prepared For: PROPODOL
Prepared By: MRS. J. B. BROWN
No. Date Description

SHEET TITLE
POOL PLAN A
DETAILS
SHEET NUMBER
SP1.0

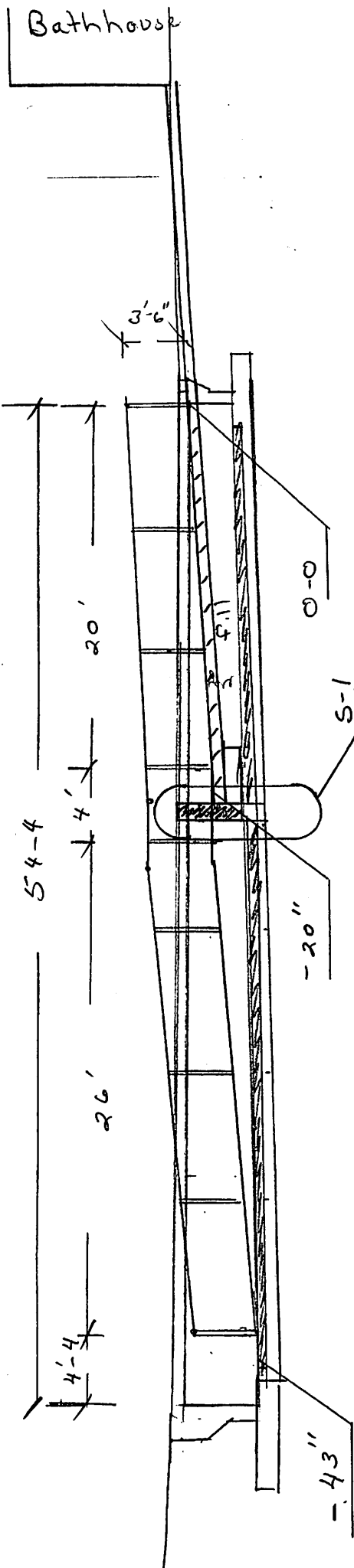
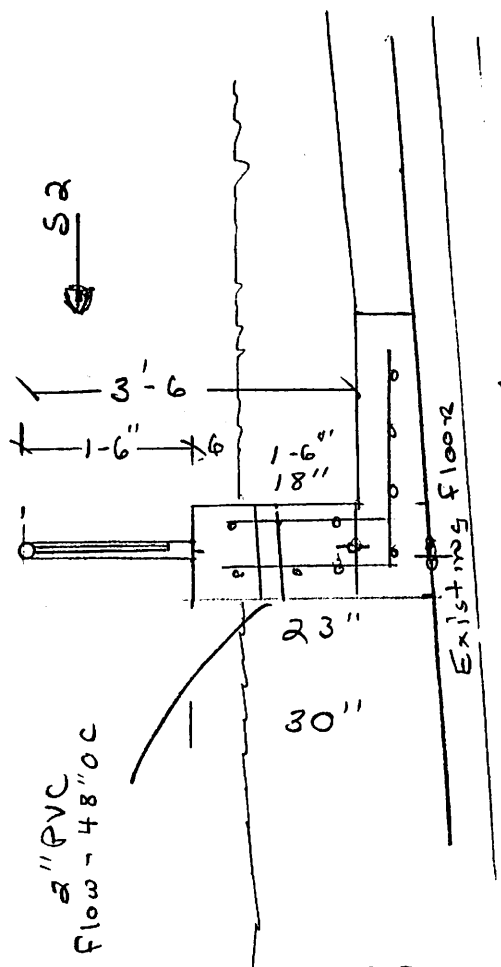
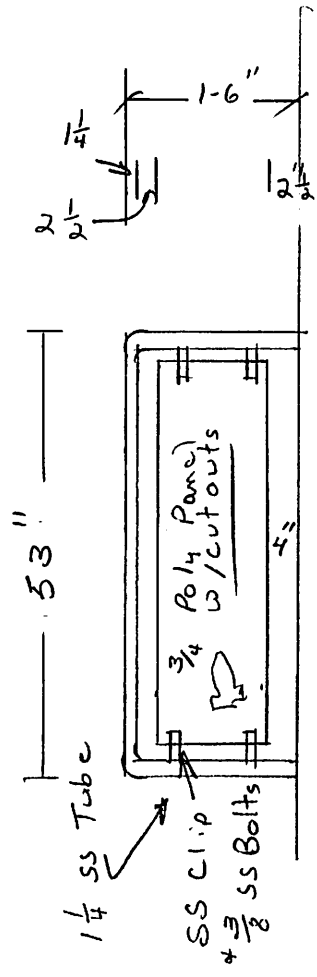


EXHIBIT D

Section SP-1



TRIANGLE
 BUILDERS, L.L.C.
 401 W. Wea • P.O. Box 345
 Paola, KS 66071
 913-294-2525

8 ea
 S-2

S-1

3-28-13 AH



TRIANGLE

BUILDERS, L.L.C.

401 West Wea • P.O. Box 345
Paola, Kansas 66071-0345
www.trianglebuilders.com

Phone: (913) 294-2525
Fax: (913) 294-5459

page 1 of 2

3/26/2013

OSAWATOMIE SWIMMING POOL

Bathhouse Scope of Work

Minimal amount of work to open
Contingency

39,500

5,000

\$ 44,500

General Clean and Pressure wash interior and exterior

Masonry; Some Tuck pointing, caulking \$ 3,200 allowance.
Water proof and clean 50% of paint off of the brick

Building Maintenance

Doors Install one new steel door and jamb.
Install doors on north bathrooms.
Install owners steel doors.
Hardware repair and replacement as needed.

Coiling Door at Lifeguard Room;

Demo existing and prep opening for new door.
Coiling door; economy similar to a ministorage coiling door.

Windows; replace 3 ea with Aluminum White single hung.
Paint; existing building, new doors and frames, toilet partitions.

Toilet Partitions; Modify old panels to provide ADA compliant
stall in both bathrooms.

Toilet accessories. Grab Bars, mirrors, towel dispensers,

Plumbing

Rebuild water entrance line in water heater closet.
Install backflow preventer.
General water line and fixture repairs.
Shower lines and valves in service.
Tub sink, 1 compartment 20"x 20" Poly tub sink.
Replace 2 ea toilets with ADA.
Drinking Fountain Bubbler at old location.

Electrical

Repair / Replace lights.
Check all circuits.
General housekeeping and checking of panels and circuits.
Install GFI's at all locations.
Confirm all Bonding and Grounding.

EXHIBIT F



TRIANGLE
BUILDERS, L.L.C.

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page 2 of 2

Bathhouse Scope of Work

Upgraded amount of work.	64,000
Contingency	5,000
	<u>\$ 69,000</u>

Door replacement and repair
Parapet cap flashing

Plumbing

Water heater in Mechanical closet 40 gal electric.
Run tempered water line to showers.
Rebuild shower piping, surface mounted with ball valves.
replace shower heads
General repair after new line are installed. Cover on lines, caulk and repair.

Electrical

Upgrade electrical service to 200 amp.
City to provide conduit and wire and labor to new meter can.
Upgrade panel in Snack Bar to 100 Amp, relocate to new location.
2 new 20' pole lights at bathhouse, 2 head Shoe box type fixture.

Additional items

- | | | |
|---|--|-----------|
| 1 | New Entrance on north side of Bathhouse;
Concrete sidewalk 22 x 10.
Fence Modifications and additions.
Canopy / Awning 10 x 22. | \$ 12,500 |
| 2 | Canopy at Snack Bar material allowance for Boy Scouts or volunteers to repair. | \$ 800 |
| 3 | Pump Room
Relocate electrical service.
Rewire and replace fixtures.
Add 3 ea GFI'S plugs.
Tuck-point and caulk masonry. | \$ 7,850 |
| 4 | ADA Ramp, Handrails, | \$ 14,000 |
| 5 | Pool Features; None are included; | |

Alan M Hire
President

Janet White
Miami County Clerk
201 S. Pearl, Suite 102
Paola, Kansas 66071



Phone: (913) 294-3976
Fax: (913) 294-9544
countyclerk@miamicountyks.org
www.miamicountyks.org

Osawatomie City Hall
Attn: Ann Elmquist
PO Box 37
Osawatomie, KS 66064

I, Janet White, Miami County Election Officer, do hereby certify the votes for the April 2, 2013, City/School General Election as canvassed by the Miami County Board of Canvassers on April 8, 2013, in the Public Information/Election Verification Room, and hereby declare the following election results.

Mayor		City Council Ward 1	
Mark Govea	575	Ted L. Hunter	55
Philip Dudley (wi)	4	Will Cutburth	51
Gordon L. Schrader (wi)	3		
Michael Young (wi)	3	City Council Ward 2	
John Farley (wi)	2	Amanda Martin	113
Barns (wi)	1	Mike Moon	94
Jerry Burns (wi)	1		
Ed Clearwater (wi)	1	City Council Ward 3	
Marc Cochrane (wi)	1	Jeffrey D. Walmann	144
Daffy Duck (wi)	1	Brett A. Henderson	73
Dan Govea (wi)	1	Rusty Thomas (wi)	1
Kody Medina (wi)	1		
Brian Mereman (wi)	1	City Council Ward 4	
Any Body Else (wi)	1	Nicholas G. Hampson	98
		Dan Govea (wi)	1

DONE THIS 9th DAY OF APRIL, 2013.



Janet White

Janet White
Miami County Clerk



Proclamation

Issued by the Mayor of Osawatomie

WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and

WHEREAS, 2013 is the 141st anniversary of the holiday and Arbor Day is now observed throughout the nation and the world, and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife, and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires, and beautify our community, and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal, and

NOW, THEREFORE, I, L. Mark Govea, Mayor of Osawatomie, do hereby proclaim April 27, 2013 as the 141st anniversary celebration of

ARBOR DAY

in the city of Osawatomie, and urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands, and

FURTHER, I urge all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

Proclaimed this 11th day of April, 2013.

L. Mark Govea, Mayor

Osawatomie PRIDE 8th Annual Arbor Day Celebration



April 27, 2013

9 a.m. – Noon

**Meet at Shelter House in John Brown Park
Hot Dog/Chip Lunch provided at noon**

**Please bring your own gloves, shovels, racks, buckets,
etc. and help us make John Brown Park even more
beautiful by helping landscape, clean and plant!!!**

**For information, contact Tammy Booe
913-755-3003**

**Bring the family and spend the morning
in OUR Park!!!**



Proclamation

Issued by the Mayor of Osawatomie

WHEREAS, the Congress of the United States passed the Civil Rights Act of 1968, of which Title VIII declared that the law of the land would now guarantee the rights of equal housing opportunities; and

WHEREAS, the City of Osawatomie is committed to the mission and intent of Congress to provide fair and equal housing opportunities for all, and today, many realty companies and associations support fair housing laws; and

WHEREAS, the Fair Housing groups and the US Department of Housing and Urban Development have, over the years, received thousands of complaints of alleged illegal housing discrimination and found too many that have proved upon investigation to be violations of the fair housing laws; and

WHEREAS, equal housing opportunity is a condition of life in our City that can and should be achieved,

NOW, THEREFORE, I, L. Mark Govea, Mayor of the City of Osawatomie, on behalf of its citizens, do hereby proclaim the month of April, 2013 as

FAIR HOUSING MONTH

in the city of Osawatomie, and express the hope that this year's observance will promote fair housing practices throughout the city.

Proclaimed this 11th day of April, 2013.

L. Mark Govea, Mayor
City of Osawatomie



STAFF AGENDA MEMORANDUM

DATE OF MEETING: April 11, 2013

AGENDA ITEM: Meeting Changes

PRESENTER: Don Cawby, City Manager

ISSUE SUMMARY: In February, the Council directed me to draft a change to move City Council meetings to 6:30. While drafting this change, I took the opportunity to modify the ordinance to provide more flexibility for work sessions and also provide a provision for cancelling meetings.

The following changes were made to the ordinance:

- Regular meetings will be at 6:30 on the second and fourth Thursday.
- A regular meeting can be cancelled by the Mayor in the event of a lack of business or an emergency. If two Council Members provide written objections to the City Clerk, the meeting can't be cancelled.
- The City Council must meet at least once per month.
- Work sessions can be held as part of any meeting and are not required to be scheduled as part of the second meeting each month.

Should the Council decide to approve this ordinance this week, it would be published next week and be in effect for the meeting on April 25.

COUNCIL ACTION NEEDED: Consider the proposed ordinance.

STAFF RECOMMENDATION TO COUNCIL: Approve the proposed ordinance.

ORDINANCE NO. ____

AN ORDINANCE AMENDING COUNCIL MEETING TIMES AND PROCEDURES FOR RESCHEDULING OR CANCELING CITY COUNCIL MEETINGS BY AMENDING CHAPTER ONE, ARTICLE TWO OF THE MUNICIPAL CODE OF THE CITY OF OSAWATOMIE OF KANSAS.

WHEREAS, the City Council desires to amend the times for regularly scheduled meetings; and

WHEREAS, the City Council also seeks to provide more flexibility in setting meetings and agendas to meet the demands and schedules of our modern society; and

WHEREAS, the City Council recognizes the sacrifices made by its elected officials to volunteer their time and efforts to the City of Osawatome and wishes to make the times and meetings more convenient for members while continuing to recognize the need for openness and accountability to the citizens of the community;

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

Section 1. Section 1-203 of the Code of the City of Osawatome is hereby amended to read as follows:

1-203. SAME; MEETINGS. (a) Regular meetings of the Governing Body shall be held on the second and fourth Thursday of each month at 6:30 p.m. In the event the regular meeting day shall fall on any legal holiday, any day observed as a holiday by the City offices, or conflict with a community event or other event of regional or national importance, the Governing Body at a prior meeting shall either cancel the meeting or reschedule the date and time of the meeting; however, the new meeting date shall be no less than seven (7) days from the day the Governing Body approved the new meeting date.

(b) Special meetings may be called by the mayor or acting mayor on the written request of any three members of the Council, specifying the object and purpose of such meeting, which request shall be read at a meeting and entered at length on the journal.

(c) A regular meeting may be cancelled by approval of the Governing Body at a prior meeting. Regular meetings may also be cancelled by the Mayor or Acting Mayor in the event of a lack of business to be conducted or in the event of an emergency or inclement weather, unless there is written objection provided to the City Clerk by two or more City Council members within 24 hours of cancellation notification. However, under no circumstances shall the City Council meet less than once each month.

(d) Regular or special meetings of the Governing Body may be adjourned for the completion of its business at such subsequent time and place as the Governing Body shall determine in its motion to adjourn.

(e) Work session meetings of the Governing Body may be held at any time to be determined by the City Council. The purpose of these work session meetings is to address any questions of the Governing Body concerning certain agenda items to be acted upon at the regular meeting and to study issues in an open meeting that may come before the Governing Body at a later date. No binding action shall be taken at work session meetings.

Should the work session be held immediately prior to, as a part of, or immediately after a regular meeting, the work session shall be included on the agenda for the regular meeting of the City Council. Work sessions are subject to the Kansas Open Meetings Act and unless the work session is held as part of a regular agenda or the Governing Body adjourns into a work session as provided in subsection (d) herein, may require a special meeting to be called to comply with state statutes.

Section 2. EXISTING SECTION REPEALED. Section 1-203 of the Code of the City of Osawatomie as adopted prior to the passage of this Ordinance is hereby repealed.

Section 3. EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its passage and one publication in the official City newspaper.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas, a majority being in favor thereof, this 11th day of April, 2013.

APPROVED AND SIGNED by the Mayor.

L. Mark Govea
Mayor

(SEAL)

ATTEST:

Ann Elmquist
City Clerk



STAFF AGENDA MEMORANDUM

DATE OF MEETING: April 11, 2013

AGENDA ITEM: Chlorine Tank at Plant

PRESENTER: Don Cawby, City Manager

ISSUE SUMMARY: For over a year, we have had a continual leak in the fiberglass chlorine tank. About two years ago, the tank sprung a major leak and we \$4,200 to refurbish the tank. Then last year, another leak started and we spent \$4,100 to recoat the bottom half of the tank, but that didn't fix our leak.

Since there are no requirements to have a fiberglass tank, other than the ease of getting it in the building, we have opted to move to a poly-plastic tank. It is much less likely to leak and should we get a leak it will be easier to fix.

The proposed cost of replacement is \$17,600 for a 2,500 gallon tank. The maximum we can put in our current tank is 2,800 gallons. The cost of the tank does not include the cost of a crane to place it or some work we might have to do in the building to squeeze the tank in.

We looked at numerous options to solve this problem and we believe this is the best solution. A new fiberglass tank would have been at least \$30,000. We also looked at the option of a made in place poly-plastic tank, but that would have been between \$25,000 and \$30,000.

This was not a specifically budgeted item, but we do have \$20,000 budgeted for capital improvements at the Water Plant. This will likely cause us to go over budget for 2013, but we now have enough reserves that I am not concerned about it having a major impact on the fund.

This replacement is absolutely necessary for safe, efficient and reliable operation of the water plant.

COUNCIL ACTION NEEDED: Review the proposed tank purchase.

STAFF RECOMMENDATION TO COUNCIL: Approve the tank purchase.



Sales Order B751417

Order Date 04/03/13

Shipped From:
 414 East 16th Ave
 N Kansas City, MO 64116
 Phone: 816-842-5050
 Fax: 816-842-2979

Ordered By: MARTY
 Phone: 913/755-4138
 Fax: 913/755-4164

Bill To:
 CITY OF OSAWATOMIE
 100 11th St
 Osawatomie, KS 66064

Ship To:
 CITY OF OSAWATOMIE
 100 11th St
 Osawatomie, KS 66064

THIS IS A BID/ESTIMATE

Customer	Ship Via	F.O.B.	Terms	Purchase Order Number	Salesperson	Reference No.				
7OSA01		Origin	1/2% 10, Net 30 Days		0702	HM				
Req.	Quantity	Ship	B.O.	Item Number	Unit of Measure	Ship Date	T A X	Unit Price	Extended Price	
				Item Description					Cust PN	
1				MISC-2 CUSTOM POLYPRO TANK 10'Lx7.5'Wx5'H 3/4"THICK FITTINGS PER FINAL DRAWING THREADED COUPLINGS, COLOR BLACK , 18" MANWAY, 2" OUTLET, 2" INLET, 4" VENT, 2-3/4 FOR SITE GLASS, 2" FOR LEVEL INDICATOR.	EACH	04/03/13	N	17600.00	17600.00	
1				COMMENT QUOTE PER ORIGINAL DRAWING CHANGES MAY INCREASE COSTS		04/03/13	N	0.00	0.00	
1				SHIP/F-DIRECT FOB FACTORY FREIGHT QUOTE ON REQUEST 4-6 LEAD ARO		04/03/13	N	0.00	0.00	
<p>All pipe and fabricated items are non-cancelable and non-returnable. Pipe prices quoted are valid for 5 days. All other items quoted are valid for 15 days.</p>										
									Non Taxable Subtotal	17600.00
									Taxable Subtotal	0.00
									Tax	0.00
									Total Order	17600.00



MEMORANDUM

To: Mayor and City Council
From: Don Cawby, City Manager
Re: **Projects & Issues Update**
Date: April 11, 2013

Projects

Highway Signs. I have authorized staff to replace the Osawatomie billboard on US-169. It is around 10 years old and very faded. In fact, we would be better off to remove it than leave it up. The cost is around \$2,500 to replace and install it. We also have a sign by Greeley that directs people to the cabin. That sign is five years old and also faded. I also noticed that it has incorrect directions on it. That sign will be replaced for around \$700. Funding will come from the Industrial Fund.

Levees. We received a proposal last week from Wilson & Company to do preliminary engineering for Phase III of the levee work. The proposal is \$236,000. I have not had time to review the proposal but I thought you should know that Wilson & Company is ready and willing to start this project. We are rapidly approaching a point where we are going to have to invest some of my time in really examining the cost effectiveness of this project. I would expect this to take several days of concentrated time to really put an analysis together.

Issues

Audit. On top of everything going on, our Auditors were here for two days this week. We got a verbal indication of a good bill of health, but they are still looking at some documentation and finishing up their work back at their office.

Train Town USA. Osawatomie has been selected by the Union Pacific Railroad as "Train Town USA" because of the community's railroad history and heritage. The Union Pacific would like to present a sign and declaration to our community officials at Railroad Days, April 20. Please meet at the Missouri Pacific Railroad Depot Museum a little before noon so we can gather for the presentation.

Facilities Tour. We have been asked to do a facilities tour for the leadership program "Strive to Thrive" on April 20. I would like to invite those members of the Council that are interested to join the tour. We will start at 1:30 outside of the Police Station. We will go through the Police Station, the City Hall basement and the Auditorium, the Fire Station, Water and Power Plant and the Sewer Plant. I don't expect this to take much more than a couple of hours.

Upcoming Meetings/Dates

Apr 20	Railroad Days (Ceremony and Tour)
Apr 20	P.I.E. Carnival
Apr 24	Planning Commission
Apr 25	Council Meeting
Apr 27	Arbor Day Celebration in John Brown Park (PRIDE Committee)
May 9	Council Meeting

Manager's Out of Town Schedule

April 12-13	BBQ Event Training (Osage City)
April 15	Presentation to MPA Students (KU)
April 17-19	KACM Spring Conference (KU)