

OSAWATOMIE CITY COUNCIL

AGENDA

September 12, 2019

6:30 p.m., Memorial Hall

1. Call to order
2. Roll Call
3. Pledge of Allegiance
4. Invocation
5. Consent Agenda
  - Consent Agenda items will be acted upon by one motion unless a Council member requests an item be removed for discussion and separate action.*
  - A. September 12th Agenda
  - B. Council Minutes for August 8 and August 22, 2019
  - C. Register Report 2019-08
  - D. Pay Application – Hall’s Bobcat Service – Trail – \$16,660.74
  - E. Pay Application – JEO – Consulting and Construction – \$760.00
6. Comments from the Public
  - Citizen participation will be limited to 5 minutes. Stand & be recognized by the Mayor.*
7. Presentations & Proclamations
  - A. LEAPS City Manager Search – Nikki Harrison, League of Kansas Municipalities
8. Public Hearings
9. Unfinished Business
  - A. LEAPS Agreement
  - B. Proposed Lease-Purchase Terms – Northland Tire Recycling
  - C. 2019-2024 CIP Recommended Budget
  - D. Trail Easement – Roseberry Property Agreement
  - E. EMP1 & KMEA Appointments
10. New Business
  - A. Interim City Manager Agreement – Michael Smith
  - B. Energy Management Consulting Services Agreement – Priority Power Management
  - C. Asphalt Repair Discussion
11. Council Report
12. Mayor’s Report
13. City Manager & Staff Reports
  - A. 409 5<sup>th</sup> Street Update
  - B. Fire Station Plans
14. Executive Session
15. Other Discussion/Motions
16. Adjourn

*NEXT REGULAR MEETING – September 26, 2019*

**Hall's Bobcat Service**

607 Mulberry Ave.  
Osawatomie, KS 66064

**Invoice**

Date	Invoice #
8/21/2019	3304

*Division of E & H Properties, Inc.*

Bill To
City of Osawatomie 439 Main Street Osawatomie, Ks 66064

**Excavation - Residential & Commercial**  
**Rock Yard - Landscape & Supplies (located 607 Mulberry, Osawatomie)**

*Office Hours: Mon.-Fri. 8-5 Sat. 8-Noon*  
*Office Phone #: 1-913-245-4089*

<u><b>Your Residential or Commercial Contractor!</b></u>	P.O. No.		Terms		Project	
			Net 10 days			
Description	Qty	U/M	Rate	Amount		
Day 5(Tear out old 15" culvert and install 2nd 24" culvert #0251A, found sewer line and culvert were encased in concrete, this culvert had to be lengthened to 30' same as #0251B because of depth of sewer)8/20/19						
Excavator/8,000 lbs Machine	4.7	hr	110.00	517.00		
Bobcat T630	2	hr	110.00	220.00		
Excavator/40,000 lbs. Machine	1	hr	150.00	150.00		
Excavation per hour	20.05	hr	60.00	1,203.00		
3/4" Screened(per ton)	34.43		12.30	423.49T		
Gravel Hauling (per ton)	34.43		6.67	229.65T		
Day 6(Leveled down spoils from culvert crossing on trail)8/21/19						
#82 Versatile 835 tractor	2.9	hr	110.00	319.00		
Bobcat T630	4.1	hr	110.00	451.00		
Excavation per hour	1.9	hr	60.00	114.00		
Day 7(Cut ditch east of Culverts #0251 & #0252, leveled trail from marker 4-7)8/29/19						
Bobcat T630	5.8	hr	110.00	638.00		
Excavator/8,000 lbs Machine	0.5	hr	110.00	55.00		
#86 Case 2290 tractor	3.9	hr	110.00	429.00		
#82 Versatile 835 tractor	3.6	hr	110.00	396.00		
Excavator/40,000 lbs. Machine	6.3	hr	150.00	945.00		
Excavation per hour	13.9	hr	60.00	834.00		
Marking paint	1		178.14	178.14		
Day 8(Worked and built up trail bed from marker #6-#10)9/3/19						
Excavator/40,000 lbs. Machine	3.9	hr	150.00	585.00		
Please make check payable to: Hall's Bobcat Service			<b>Sales Tax (0.0%)</b>			
Term: Cash - Accounts not paid within 10 days of the date invoiced are subject to a 1.5% monthly finance charge.			<b>Total</b>			
email: hallsbobcatservice@gmail.com			<b>Payments/Credits</b>			
THANK YOU FOR YOUR BUSINESS			<b>Balance Due</b>			

# Hall's Bobcat Service

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Osawatomie, KS 66064

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<u>Your Residential or Commercial Contractor!</u>		P.O. No.	Terms	Project
			Net 10 days	
Description	Qty	U/M	Rate	Amount
#82 Versatile 835 tractor	4	hr	110.00	440.00
#86 Case 2290 tractor	4	hr	110.00	440.00
Excavator/8,000 lbs Machine	0.5	hr	110.00	55.00
Bobcat T630	5.6	hr	110.00	616.00
Excavation per hour	11.25	hr	60.00	675.00
Day 9(Finished dirt and ditching from marker #5-#10)9/4/19				
Excavator/40,000 lbs. Machine	1.2	hr	150.00	180.00
#82 Versatile 835 tractor	4	hr	110.00	440.00
#86 Case 2290 tractor	6	hr	110.00	660.00
Bobcat T630	6.6	hr	110.00	726.00
Excavation per hour	6.9	hr	60.00	414.00
Day 10(Installed Culvert #661)9/5/19				
4" Ditch Liner(per ton)	16.2		18.80	304.56
Gravel Hauling (per ton)	16.2		6.67	108.05
1 1/4" Road Rock per scoop = about 1 cu. yd.	4		38.00	152.00
3/4" Clean Gravel per scoop = about 1 cu. yd	2		40.00	80.00
Gravel Hauling-6 Cu. Yd. per load	2		15.00	30.00
Excavator/8,000 lbs Machine	2.3	hr	110.00	253.00
Bobcat T630	1.8	hr	110.00	198.00
#86 Case 2290 tractor	0.5	hr	110.00	55.00
Excavation per hour	15.65	hr	60.00	939.00
Misc. Hauling-6 Cu. Yd. per load	1	hr	90.00	90.00
Day 11(Installed culverts #585 & #510)9/6/19				
1 1/4" Road Rock(per ton)	17.73		8.55	151.59
Gravel Hauling (per ton)	17.73		6.67	118.26
3/4" Clean Gravel per scoop = about 1 cu. yd	4		40.00	160.00
1 1/4" Road Rock per scoop = about 1 cu. yd.	1		38.00	38.00
Please make check payable to: Hall's Bobcat Service			<b>Sales Tax (0.0%)</b>	
Term: Cash - Accounts not paid within 10 days of the date invoiced are subject to a 1.5% monthly finance charge.			<b>Total</b>	
email: hallsbobcatservice@gmail.com			<b>Payments/Credits</b>	
THANK YOU FOR YOUR BUSINESS			<b>Balance Due</b>	

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<u><b>Your Residential or Commercial Contractor!</b></u>		P.O. No.	Terms	Project
			Net 10 days	
Description	Qty	U/M	Rate	Amount
Gravel Hauling-6 Cu. Yd. per load	2		15.00	30.00
Excavator/8,000 lbs Machine	3.8	hr	110.00	418.00
Bobcat T630	3.4	hr	110.00	374.00
Excavation per hour	12.3	hr	60.00	738.00
Misc. Hauling-6 Cu. Yd. per load	1	hr	90.00	90.00
Please make check payable to: Hall's Bobcat Service			<b>Sales Tax (0.0%)</b>	\$0.00
Term: Cash - Accounts not paid within 10 days of the date invoiced are subject to a 1.5% monthly finance charge.			<b>Total</b>	\$16,660.74
email: hallsbobcatservice@gmail.com			<b>Payments/Credits</b>	\$0.00
THANK YOU FOR YOUR BUSINESS			<b>Balance Due</b>	\$16,660.74



Invoice

August 21, 2019  
Project No: R190687.00  
Invoice No: 111488  
Invoice Amount: 760.00

City of Osawatomie  
439 Main Street  
PO Box 37  
Osawatomie, KS 66064

Project Manager Matt Kalin  
Project R190687.00 Osawatomie 2019 34.5 kV Breaker Addition  
**Professional Services through August 16, 2019**

	Contract Amount	Percent Complete	Billed-to-Date	Previous Billing	Current Billing
<b>Lump Sum Phase(s)</b>					
Final Design	\$9,275.00	8 %	\$760.00	0.00	\$760.00
Construction Services	\$6,500.00	0 %	0.00	0.00	0.00
Post Construction	\$275.00	0 %	0.00	0.00	0.00
<b>Total</b>	<b>\$16,050.00</b>		<b>\$760.00</b>	<b>0.00</b>	<b>\$760.00</b>
<b>Total Amount Due Upon Receipt</b>					<b>\$760.00</b>

# CITY OF OSAWATOMIE



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## STAFF AGENDA MEMORANDUM

**DATE OF MEETING:** September 12, 2019

**AGENDA ITEM:** LEAPS Agreement

**PRESENTER:** Meagan Borth, Assistant to the City Manager

**ISSUE SUMMARY:** Attached is a proposal from the League of Kansas Municipalities (LKM) to conduct the City Manager search. The League Executive/Administrative Position Search (LEAPS) program assists cities in filling city executive positions. The League offers a multi-faceted program that can be tailor-made to fit the needs of the city.

Nikki Harrison with the LKM will present to the City Council on the program and answer questions about the process.

**COUNCIL ACTION NEEDED:** Review and discuss the proposed agreement.

**STAFF RECOMMENDATION TO COUNCIL:** None.

August 28, 2019

Mayor Mark Govea  
City of Osawatomie  
439 Main Street PO Box 37  
Osawatomie, Kansas 66064

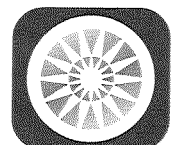
Dear Mayor Govea and Council:

Thank you for considering the League's Executive/Administrative Position Search program to assist the City of Osawatomie in the search for a new City Manager. Should the Council decide to select the League's service we have included a contract for review. Please feel free to have your city attorney look over the attached contract. A signed copy of the contract should be returned to the League at the address below. We appreciate the opportunity to be considered to work with the city through this process.

Thank you again and contact us anytime with questions.



Nikki Harrison  
Member Services Coordinator



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# LEAGUE OF KANSAS MUNICIPALITIES

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## CONTRACT FOR LEAGUE EXECUTIVE/ ADMINISTRATIVE POSITION SEARCH

### City of Osawatomie

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This **Service Agreement** is made and entered into between the City of Osawatomie, hereinafter referred to as the “City,” and the League of Kansas Municipalities, hereinafter referred to as the “League.”

Accordingly, the parties agree as follows:

#### **Section I: Obligations of the League**

The League shall assist the City in filling their position of City Manager. In assisting with this process, the League shall provide the services described below:

- (a) The League shall designate a Member Services Manager to work with the Mayor and City Council to develop a candidate recruitment profile.
- (b) The League shall use the candidate recruitment profile, any applicable ordinances, and the City’s current job description for the position to make recommendations for possible changes in the job description if needed.
- (c) Based on the job description and the data obtained in the surveys, the League shall assist the City in creating an advertisement for the position. The League shall place advertisements in the locations selected by the City.
- (d) The League shall receive and review all resumes for compliance with the selected characteristics, criteria and job description requirements. The League shall provide the City with the complete pool of candidates prior to the applicant-review meeting between the League and City. This shall be provided in a Candidate Profile Book, which will include all resumes submitted for the position; a report on top candidates; and a summary of the process.
- (e) Based on the job description and the data obtained from the City, the League shall review the candidates for the position and recommend candidates for interviews.



- (f) The League shall schedule all selected candidates for interviews on a date mutually agreeable to the candidate and the City.
- (g) The League shall assist the City in the interview process by providing resources and guidance on conducting an effective interview.
- (h) Upon request from the City, the League shall arrange appropriate background-checks on selected candidate(s). Background-checks will be provided by a third party and are performed under the applicable provisions of the Fair Credit Reporting Act (FCRA), to include verification of education credentials through the National Student Clearinghouse. The cost of background-checks for up to two candidates is included in the negotiated Fee.
- (i) Once a formal offer of employment has been extended and accepted, the League shall notify all candidates that the position has been filled.

## **Section II: Obligations of the City**

The City shall cooperate in the executive search process as follows:

- (a) The City Council shall take formal action in an open public meeting authorizing the proper execution of this Agreement.
- (b) The City shall coordinate the timely completion of the Distribution-of-Responsibility Surveys and the Ideal Candidate Profile.
- (c) The City shall provide the League with a current job description and any applicable ordinances concerning the duties of the position to be filled.
- (d) The City shall designate a single point of contact (POC) who will be responsible for the coordination with the League on all City LEAPS communication, activities and programs. The City shall provide the League with appropriate POC contact information.
- (e) The City shall not directly contact the candidates except as otherwise provided in this Agreement.
- (f) Upon being provided the complete pool of applicants by the League, the City shall determine the number of candidates to interview and which candidates to interview.

- (g) Following interviews, the City shall make any formal offer of employment directly to the candidate.
- (h) The City shall promptly notify the League when the City has filled the position or if the City has declined to select any of the candidates presented.
- (i) The City shall not reproduce any documents provided by the League without the express written consent of the League except as specifically authorized in this Agreement.

### **Section III: Compensation**

- (a) **Fee:** The City shall pay the League a Fee of \$5,000 for the services provided under this agreement. The Fee includes: (i) the cost of background-checks for up to two candidates; and (ii) League staff time and expenses for up to two trips to the City.
- (b) **Additional Costs:** In addition to the Fee, the City shall pay for: (i) Any additional trips to the City by League staff at the rate of \$150.00 per trip plus mileage at the current federal mileage rate per mile from the League's office; (ii) All advertising expenses at actual cost; and (iii) all additional background checks not included in the Fee at actual cost.
- (c) **Payment Due:**
  - (i) **Initial Payment:** The City shall pay half of the Fee upon accepting the League's offer to provide the City with an executive search program.
  - (ii) **Final Payment:** The City shall pay the balance of the Fee and all additional expenses upon a trigger of termination as specified in Section IV.
  - (iii) **Exception:** If the executive search is not completed before December 30, for accounting purposes, the League may invoice for all outstanding expenses.

### **Section IV: Termination**

- (a) **Term:** The executive search program will commence on the date that the League's Executive Director executes and delivers this agreement and ends when (i) the City has filled the position, (ii) the City has declined to select any of the candidates presented, or (iii) 12 months from the date of the League's Executive Director's signature on the contract, whichever occurs first. The executive search program will be conducted on a schedule mutually agreed to by the parties. Both parties agree that they will not unreasonably withhold agreement to such schedule.

- (b) **City's Obligations upon Termination:** Upon termination, the City shall pay the balance of the Fee and all unpaid expenses within 90 days.
- (c) **League's Obligations upon Termination:** Upon termination, the League's obligations are complete.
- (d) **Early Termination by the City:** If the City chooses to early terminate the contract, all outstanding expenses will immediately become due. All payments already made are nonrefundable. If the City chooses to terminate the contract after the League has provided the Candidate Profile book, the contract will be deemed substantially complied with and the City shall pay the balance of the Fee and all unpaid expenses within 90 days from the notice of termination. Upon early termination by the City, the League shall immediately notify all candidates that the League is no longer involved in the City's hiring process.
- (e) **Early Termination by the League:** The League reserves the right to terminate this contract at any time. Upon termination, the City shall be responsible for all costs incurred as of the date of termination. If the League chooses to exercise its right to terminate the contract, no information gathered about potential candidates will be shared with the City.

## **Section V: General Provisions**

- (a) This constitutes the whole agreement between the parties and supersedes all prior negotiations and agreements. The League's responsibility under this professional service agreement shall be to assist the City in its search for a new City [Position] as described in this contract. This Agreement binds and benefits the parties and their respective successors and assigns.
- (b) This Agreement is to be governed by and construed in accordance with the laws of Kansas, without regard to its conflict of law principles. The City shall hold the League harmless from any liability and shall indemnify the League for any expenses, costs, or damages in connection with any complaint or proceeding in regard to filling the position of City Manager. In the event a court of competent jurisdiction finds the League liable for negligence in the performance of its duties under this contract, the League shall hold harmless and indemnify the City to the extent of the League's liability. The League shall not be liable for any hiring decision made by the City.

(c) This Agreement may be amended only by an agreement approved and signed by both parties.

To evidence the parties' agreement to this Service Agreement, they have executed and delivered it on the date set forth in the preamble.

**League of Kansas Municipalities**

**City of Osawatomie**

\_\_\_\_\_  
**Erik Sartorius**  
**Executive Director**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Mark Govea**  
**Mayor**

\_\_\_\_\_  
**Date**

**ATTEST:**

\_\_\_\_\_  
**City Clerk**

# CITY OF OSAWATOMIE



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## STAFF AGENDA MEMORANDUM

**DATE OF MEETING:** September 12, 2019

**AGENDA ITEM:** Lease-Purchase Arrangement for Tire Recycling Business

**PRESENTER:** Don Cawby, City Manager

**ISSUE SUMMARY:** Earlier this summer, United Tire Recycling (UTR) inquired about purchasing/leasing property in the Northland to start a tire recycling business. After providing business plans to the City, we developed the attached lease-purchase agreement based on those conversations. Those conversations included a discussion that if we sold the land, there wouldn't be very many "strings" for the sale other than required state permitting and bonding, along with compliance with zoning regulations and approval of site plans, as we would in the normal course of business.

In late August, Shane Lamb, owner of UTR indicated the price requested was cost-prohibitive and requested the land be provided at no cost. I asked him to provide that request in writing and let him know that under that sort of arrangement, that we would normally expect some performance guarantees or additional use restrictions on the property.

Attached is a copy of the draft agreement, a copy of the request for free land, and a copy of an email provided by Mr. Lamb of the requirements for permitting provided by staff at KDHE.

**COUNCIL ACTION NEEDED:** Review, discuss and provide direction to staff on providing the land for free, the type of arrangement to craft and general direction on restrictions or "clawbacks".

**STAFF RECOMMENDATION TO COUNCIL:** If so desired, authorize staff to amend this lease-purchase agreement subject to direction or to draft a new conditional purchase agreement for sale to United Tire Recycling.

## PROPERTY LEASE-PURCHASE AGREEMENT

This Property Lease Agreement (“Agreement” or “Lease”) is entered into as of September \_\_, 2019 (“Effective Date”) by and between the **City of Osawatomie**, a municipal corporation (the “City” or “The City”), and **FMS North America, Inc.** (“Lessee”) for the lease of the property described herein to be used for the business purposes as described herein.

1. **Property Description.** The property to be leased (“Property”) is an area of approximately 40 acres, defined by the following legal description:

Southwest ¼ of the Southeast ¼ of Section 35, Township 17, Range 22

The defined area lies on the western half of approximately 77 acres of land (County Parcel Number 1473500002010000) located on the northwest 335<sup>th</sup> Street and Osawatomie Road intersection. The Property is outlined on the map included as Exhibit A.

2. **Term/Termination.** The term of this Agreement shall be a fixed term beginning on September 1, 2019 and ending on December 31, 2020, with the Lessee having an option for purchase, and/or an extension of one, one-year term, upon mutual agreement of both parties. This Lease Agreement, if not previously terminated, shall automatically expire at the end of the term specified.
3. **Use of Property.** The Lessee shall have the use of the premises for the term of this Agreement for the purpose of developing the land for use as a Tire and Plastics Recycling facility utilizing a pyrolysis for the recycling of such products. Lessee agrees prior to use of the facility for any storage or materials for recycling purposes, issuance of building permits, or other land preparation other than grading the property for vehicle and equipment road access, the Lessee will provide the City with the following:
  - a. bonding as required by this agreement,
  - b. all the necessary environmental and operations permitting and licensing required by all applicable state and federal authorities for the operation of a pyrolysis facility, and
  - c. approved site plans for the construction of the facility to be approved by the City Planning Commission and the City Council prior to the issuance of building permits.
4. **Legal Use of Property.** Lessee agrees not to use or permit the use of the Premises for any purpose which is illegal, or which violates authorized uses under the current zoning of the property. Lessee agrees to comply with all applicable laws, ordinances, rules, and regulations of the City of Osawatomie and State of Kansas. Specifically, Lessee shall use the building for no purpose which would constitute an environmental hazard under the Laws of the State of Kansas or the United State of America.

5. **Payment.** The Lease rent shall be cash rent. The Lessee agrees to pay the City rent based on the following schedule:

For the remainder of 2019 - \$10,000, due upon signing.

For 2020 - \$24,000, due in two \$12,000 installments to be paid on or before January 1 and July 1. For the subsequent year included in this Agreement or approved by mutual extensions, the rent payment will increase to \$36,000, with one-half due on January 1 and one-half due on July 1 of each calendar year.

6. **Purchase Option.** The Lessee shall have the exclusive first option to purchase this property at any time prior to the end of the term for Two Hundred Thousand dollars (\$200,000.00), subject to the Lessee first obtaining the bonding, permitting and licensure required under this Agreement, and Any purchase agreement will require a use restriction attached to the property by the City limiting activities on the property for these exclusive purposes allowed under the Use of Property section of this Agreement, subject to waiver by the City of such covenant or the modification thereof. The Lessee will be responsible for all such costs associated with the purchase from the City, including, but not limited to registration of title, boundary surveys, etc.
7. **Responsibility for Taxes.** The City shall not be responsible for nor indemnify Lessee for any taxes, fees, or assessments which may be imposed or levied upon the subject matter of this Lease Agreement. It shall be the responsibility of the Lessee to pay all such taxes, fees, and assessments. If any taxes for which Lessee is liable under this Paragraph are levied against The City or The City's property and if The City elects to pay the same or if the assessed value of The City's property is increased by inclusion of personal property and trade fixtures placed by Lessee in the Premises and The City elects to pay the taxes based on such increase, Lessee shall pay to The City upon demand that part of such taxes for which Lessee is primarily liable hereunder

Because only a portion of the parcel is being leased, the property taxes for the Property will be assessed to the City's parcel. The Lessee agrees to pay for 100% of all property taxes assessed on the property, unless other taxable activities also receive leases on the 36-acre parcel. In such cases where the city may be leasing one or more portions of the parcel on which the Property is located, the property taxes will be allotted to the leasing entities according to the assessments assigned to each lease by the County Appraiser. Payment of property taxes will be paid directly to the County by the required due dates, with confirmation of payment provided to the City within 10 days of payment.

8. **Utilities.** Any extensions of water, sewage, gas, electric or telecommunications to or onto the property will be paid for by the Lessee.
9. **Repair and Maintenance of Premises.** Repairs of damage caused by Lessee shall be paid for by Lessee.

- a. Any chemicals or materials used in the operation of the pyrolysis shall be handled in such a manner that they cannot be detected within 30 days of use. Any such damage left the property as a result of these chemicals and materials shall be required to be remediated by the Lessee.
  - b. Any buried footings, piers or anchor points, must be removed by the Lessee unless waived in writing by the City. Any improvements which cause changes to proper drainage on the property or cause ponding or pooling which interfere with other uses of the property must be approved by the City in advance of the changes, or upon discovery by the City. All such approvals shall be requested and provided in writing.
  - c. Lessee will also furnish and pay for routine maintenance of the grounds and understands that the City will may continue to lease out and not maintain the remainder of the undeveloped land owned by the City adjacent to the Property. Any such required mowing or maintenance on non-leased land will be the responsibility of the Lessee, with written permission from the City.
10. **Untentantable Premises.** If the Property shall be damaged so as to be untentantable for the Lessee’s purposes, the rental payments shall abate from the date of such damage and shall not resume until the premises are restored to tentantable condition or until Lessor can provide alternate acceptable space to Lessee. Any prepaid payments shall be returned to Lessee for the period the premises are untentantable. Lessee shall not create any condition on the property which makes the property untentantable for Lessee’s purposes and this provision shall have no applicability to any condition created by the Lessee. Lessee agrees that at the date of this lease the Property is in a tentantable condition.
11. **Agreement with Kansas Law.** This Lease Agreement shall be subject to, governed by, and construed according to the laws of the State of Kansas.
12. **Binding Effect.** The terms and conditions of this Lease Agreement shall be binding upon the parties, their agents, administrators, or legal successors.
13. **Liability for Damages.** Lessee agrees to hold harmless and indemnify Lessor from any and all claims that are brought or maintained by third parties against Lessor by reason of the acts or omissions of the Lessee. As also provided hereinafter Lessee shall maintain liability insurance which names the City as an additional named insured which will be in an amount not less than \$1,000,000 and insures the City against any form of claim against the City as a result of Lessees use of the property for the purposes authorized by this lease.
14. **Termination Prior to the Expiration of the Term.** Notwithstanding the length of the term of this lease agreement, the City may terminate this lease prior to the expiration of the term of the lease upon the Lessee’s failure to make lease payments, the Lessee’s use of the



Property for criminal activities, or significant damage to the Property caused by the Lessee's action. In this event, the Lessor will provide a 30-day written notice to:

LESSEE NAME	FMS North America Inc.
Address	PO Box 678
City, State, Zip Code	DeSoto, Kansas 66018

15. **Modification.** Lessor reserves the right to modify this Lease Agreement upon written notice to and subsequent written consent by Lessee. Modifications are subject to the same approvals and conditions as required for approval of this Lease Agreement.
16. **Entry by The City.** Lessee agrees to permit the City or its agents or representatives to enter into and upon any part of the Premises at reasonable hours (and in emergencies at all times) to inspect the same, or to show the Premises to insurers. Lessor shall give written notice to lessee at least five business days in advance of any entry upon the premises by lessor.
17. **Assignment or Sublease.** The Lessee may not sublet this Property or assign this Lease to any other persons without the written consent of the City.
18. **Mechanic's Liens.** Lessee will not permit any mechanic's lien or liens to be placed upon the Property and nothing in this Lease shall be deemed or construed in anyway as constituting the consent or request of the City, express or implied, by inference or otherwise, to any person for the performance of any labor or the furnishing of any materials to the Property, or any part thereof, nor as giving Lessee any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to any mechanics' or other liens against the Property. In the event any such lien is attached to the Property, then, in addition to any other right or remedy of the City, the City may, but shall not be obligated to, discharge the same. Any amount paid by City for any of the aforesaid purposes shall be paid by Lessee to The City on demand as additional rent.
19. **Bonding.** Less shall provide a bond to the City, in an amount to be determined by the City which will cover 150% of the estimated cost of the removal, disposal and remediation of any tires, plastics, metals, materials, hazardous materials or chemicals, garbage or other waste products that may be left by the Lessee should the property be abandoned by the Lessee without the remediation, removal or disposal of such products by the Lessee.
20. **Insurance.** Lessee shall be solely responsible for or insure any loss sustained by Lessee associated Lessee's use of the Property. The City shall have no obligation or responsibility for any loss sustained by the Lessee related in any way to Lessee's use of the building leased pursuant to the terms of this lease.
21. **Indemnification.** Lessee agrees to accept the condition of the property as is at the date of this lease and the City shall not be liable to Lessee, or to Lessee's agents, servants,

employees, customers, or invitees for any injury to person or damage to property caused by any condition existing on the property or by any act, omission, or neglect of Lessee, its agents, servants, or employees, invitees, licensees or any other person entering the Premises under the invitation of Lessee or arising out of the use of the Premises by Lessee and the conduct of its business or out of a default by Lessee in the performance of its obligations hereunder. Lessee hereby agrees to hold The City harmless from all liability and claims for any such damage or injury.

## 22. Events of Default Remedies.

- a. The following events shall be deemed to be events of default by Lessee under this Lease:
  - i. Lessee shall fail to pay the rent or property taxes when due and following five (5) days written notice thereof and opportunity to cure;
  - ii. Lessee shall fail to comply with any non-monetary provisions of this Lease or any other agreement between the City and Lessee all of which terms, provisions and covenants shall be deemed material within thirty (30) days following written notice thereof and opportunity to cure; provided, however, to the extent such non-monetary default cannot be cured within such 30-day time period, Lessee shall not be deemed in default as long as Lessee has commenced efforts satisfactory to the City to cure such default and diligently pursues the same;
  - iii. the leasehold hereunder demised shall be taken on execution or other process of law in any action against Lessee;
  - iv. Lessee files a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any State thereof; or a petition shall be filed against Lessee under any such statute by any party other than Lessor; or,
  - v. as part of any Bankruptcy or insolvency proceeding a receiver or trustee shall be appointed for Lessee's leasehold interest in the Premises or for all or a substantial part of the assets of Lessee (the mere appointment of a receiver or trustee as part of any civil litigation shall not constitute a default under the terms of this agreement).
- b. Upon the occurrence of any event or events of default by Lessee, as enumerated in subsection (a) of this section above, the City shall have the option to pursue any one or more of the following remedies without any notice or demand for possession whatsoever:
  - i. terminate this Lease in which event Lessee shall immediately surrender the Premises to the City;
  - ii. terminate Lessee's right to occupy the Premises and re-enter and take possession of the Premises (without terminating this Lease);
  - iii. enter upon the Premises and do whatever Lessee is obligated to do under the terms of this Lease; and Lessee further agrees that the City shall not be liable for any damages resulting to the Lessee from such action; and

- iv. exercise all other remedies available to the City at law or in equity, including, without limitation, injunctive relief of all varieties.
  - c. The City may, without prejudice to any other remedy which it may have for possession or arrearage in rent, expel or remove Lessee and any other person who may be occupying said Premises or any part thereof. In addition, the provisions of section 2 of this Agreement shall apply with respect to the period from and after the giving of notice of such termination to Lessee. All the City's remedies shall be cumulative and not exclusive. Forbearance by the City to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default.
  - d. This section shall be enforceable to the maximum extent not prohibited by applicable law, and the unenforceability of any portion thereof shall not thereby render unenforceable any other portion. To the extent any provision of applicable law requires some action by the City to evidence or effect the termination of this Lease or to evidence the termination of Lessee's right of occupancy, Lessee and the City hereby agree that notice, either oral or by telephone, or by any act of the City that comes to the attention of Lessee, its agents, servants or employees, which reflects the City's intention to terminate, shall be sufficient to evidence and effect the termination herein provided for, but Lessee hereby agrees that, as between the City and Lessee, its successors and assigns, no such notice shall ever be necessary to effect a termination hereunder.
23. **Peaceful Enjoyment.** Lessee shall, and may peacefully have, hold, and enjoy the Premises, subject to the other terms hereof, provided that Lessee pays the rent and other sums herein recited to be paid by Lessee and performs all of Lessee's covenants and agreements herein contained. This covenant and any and all other covenants of Lessor shall be binding upon Lessor and its successors only with respect to breaches occurring during its or their respective periods of ownership of the Lessor's interest hereunder.
24. **Holding Over.** In the event Lessee continues to occupy the Property after the termination of Lessee's right of possession pursuant to the Agreement hereof, Lessee shall, throughout the entire hold over period, pay rent equal on a per diem basis, one and one-half times the most recent annual rental payment.
25. **No Implied Waiver.** The failure of the City to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this lease shall not be construed as a waiver or a relinquishment thereof for the future. No payment by Lessee or receipt by the City of a lesser amount than the monthly installment of rent due under this Lease shall be deemed to be other than on account of the earliest rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of rent be deemed an accord and satisfaction,

and the City may accept such check or payment without prejudice to The City's right to recover the balance of such rent or pursue any other remedy in this Lease provided.

26. **Limitation on Liability.** The liability of the City to Lessee for any default by the City under the terms of this Lease shall be limited to the interest of the City in the Property and Lessee agrees to look solely to the City's interest in the Property for the recovery of any judgment from the City, it being intended that the City shall not be liable for any judgment or deficiency. Provided however, if any default hereunder is determined to be the result of the City's gross negligence, willful misconduct or an intentional breach of this agreement, the limitations upon The City's liability contained in this paragraph shall not apply and the City will be liable for the full amount of any judgment or deficiency.

27. **Notices.** All notices which shall or may be given pursuant to this Agreement shall be in writing and served by (1) electronic mail; and (2) personally served or transmitted through first class United States mail, or by express mail providing for overnight delivery, postage prepaid, to the following address or such other address of which a party may give written notice:

The City: City of Osawatomie  
439 Main Street, PO Box 37  
Osawatomie, KS 66064  
Attn: Tammy Seamands, City Clerk

Lessee: Shoot House LLC  
21650 W Johnson  
Spring Hill, KS 66083  
Attn: Douglas Petroskey

28. **Severability.** If any term or provisions of this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

29. **Recordation.** Lessee may in its discretion record this Lease, or a memorandum hereof.

30. **Force Majeure.** Whenever a period of time is herein prescribed for the taking of any action by either Lessee or The City, neither Lessee or The City shall be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions, or any other cause whatsoever beyond the reasonable control of The City or Lessee, as applicable.

31. **Time of Performance.** Except as expressly otherwise herein provided, with respect to all required acts of Lessee, time is of the essence of this Lease.

32. **Entire Agreement.** This written lease contains the entire agreement between the parties and provisions, agreements, or promises not contained herein shall have no force and effect.

33. **Applicable Law.** This Agreement shall be governed by the laws of the State of Kansas.

34. **Signatories.** This agreement shall be signed on behalf of the parties by the officers below, both having been authorized by their respective entities to approve this agreement. The Agreement shall be effective as of the date first written.

**The Landlord:**

City of Osawatomie, Kansas

\_\_\_\_\_  
Donald R Cawby, City Manager

\_\_\_\_\_  
Date

**Lessee:**

FMS North America, Inc. d/b/a United Tire Recyclers

\_\_\_\_\_  
Shane Lamb, President and CEO

\_\_\_\_\_  
Date



FMS North America INC  
September 4, 2019

City Of Osawatomie, KS

Dear Don:

We counter the cities offer by requesting a purchase price of 1\$ for 40 Ac located in the northland zoned Industrial. We are not requesting any additional incentives by the city in order to make the economics work. We do not need tax abatement as long as taxes are expected to be reasonable. The plan is to build out a public drop off location as well as a shred and transfer station to be opened right away. We would then start the process of building out the gasification plant. We anticipate a need for long-term warehouse growth and would like the option to pre build out warehouse space to lease short term till we can fill the need internally.

Our Construction plans:

Phase 1: install driveway, scale house, scales, fencing and public drop off and transfer area.

Phase 2: Install Initial warehouse building

Phase 3: Build out the gasification warehouse and yard area.

After reviewing market trends and a few anticipated changes soon to come in the next year or two with fellow recyclers we believe the need has increased for a transfer station, processing center, and gasification plant. We believe the volume loads will double our initial projections thus requiring additional capital expenditures for increased equipment to handle to load increases.

Given the time requirements for permitting, bonding, grants and improvements if the city and counsel find a deal acceptable we would like to complete the transaction within a reasonable amount of time to advance our application for USDA grants in this physical year.

Sincerely,

Shane Lamb  
President

**From:** "Emery F. Wiens [KDHE]"  
**Date:** September 5, 2019 at 4:47:29 PM CDT  
**To:** "Shane Lamb  
**Subject:** BWM Financial Assurance requirements

Mr. Shane Lamb –

RE KDHE Bureau of Waste Management (BWM) Financial Assurance requirements for waste tire permits and solid waste processing:

Financial Assurance requirements are stated in the Kansas Statutes and Regulations. Financial Assurance is required to protect the citizens of Kansas from having to pay the bill for cleanup of a facility that defaults on its solid waste responsibilities. The amount of Financial Assurance varies by permit type. The table below gives Financial Assurance requirements for several of the permits issued by the BWM:

Permit	Financial Assurance Req'd	Initial Application Fee	Annual Renewal Fee
Waste Tire Transporter	\$1000 for up to 1000 PTE's; \$5,000 for 1001 – 10,000 PTE's; \$10,000 for more than 10,000 PTE's per month, based on most recent records of whole tires actually transported.	\$100	\$50
Waste Tire Processing Facility (for chipping, shredding, sectioning, bageling, crumbing, etc)	\$1.25/PTE + \$30/ton of processed tire material, based on largest historical amounts, or on Facility Operating Plans, whichever is greater	\$250	\$100
Waste Tire Collection Center	\$1.25/PTE, based on largest historical amounts, or on Facility Operating Plans, whichever is greater	\$100	\$50
Mobile Waste Tire Processor	\$1000	\$250	\$100
Solid Waste Processing Facility (for gasification or pyrolysis of tires)	Each permit would have unique requirements. For each raw material and for each product or waste produced, some level of financial assistance would be assigned and	\$2000	\$1000

	required. BWM would need to approve the financial assistance required for each material, product, or waste.		
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NOTES: (1) PTE is Passenger Tire Equivalent, equal to 20 lbs.

(2) Unit costs may be changed at any time by BWM in order to approximate actual market costs.

For each pyrolysis or gasification plant for waste tires, you would need a Waste Tire Processing Facility permit and a Solid Waste Processing Facility permit. You would have to meet the requirements for both permits, but would only pay for the most expensive one of the two permits. You already have the Transporter permit, and you only need one for all of Kansas for one business organization. Same for the Mobile Waste Tire Processor permit, which you already have. A Waste Tire Collection Center Permit is required for a facility if tires are dropped off whole at that facility, unloaded, and then transported whole away from that same facility.

The BWM website has all the permit applications and permit renewal forms for the permits listed above.

For each facility, a Facility Operating Plan is required. These must be approved by BWM. They are to be kept up-to-date. KDHE inspector schedule each facility once per year, and more frequently as needed. Penalties for violations can and will be applied if regulations are not adhered to. Prior to issuing a facility permit, a site visit is required for a BWM representative.

For Financial Requirements, see K. A. R. 28-29-2011 through 28-29-2113. For Liability insurance requirements, see K. A. R. 28-29-2201. For standards for Waste Tire Management, see K. A. R. 28-29-28 through 28-29-33.

Each facility must meet all federal, state, county, city and other local laws that apply, in addition to BWM regulations..

Hopefully this helps to clarify things. Please call or email if you have further questions or concerns.

- Emery

Emery Wiens  
 Environmental Specialist  
 Bureau of Waste Management  
 1000 SW Jackson, Suite 320  
 Topeka, KS 66612  
 (785) 296-2751  
 Email: [emery.wiens@ks.gov](mailto:emery.wiens@ks.gov)  
 Fax: (785) 559-4253



# CITY OF OSAWATOMIE



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## STAFF AGENDA MEMORANDUM

**DATE OF MEETING:** September 12, 2019

**AGENDA ITEM:** Trail Easement and Land Swap

**PRESENTER:** Don Cawby, City Manager

**ISSUE SUMMARY:** After railbanking the remainder of the Flint Hills Trail in 2013, the City identified 5 pieces of property which would need to be acquired or be granted on easement upon, in order to bring the trail to the area of the Cole Sports Complex. Those pieces of property, from west to east were owned by 3 private citizens, the City of Osawatomie and USD 367. The City acquired the piece of property with the largest needed easement through the purchase of 37 acres. The western most piece of property was purchased by the City through private funds raised by the Trail Task Force. Finally, the attached agreement would allow for an easement for the Trail across the southernmost portion of the property of Helen Roseberry.

The agreement provides for an easement for three years, during which time the City would plan to plat a portion of the 37 acres it purchased, that are adjacent to the Roseberry property, in order to permanently swap a parcel of the platted property for outright ownership of the trail easement area.

The City also intends to acquire a utility easement, through a separate granted easement, across the same area of the trail easement. Utilities are already in place across the Trail Easement area, but no official easements were ever granted or filed when they were installed.

Under normal circumstances, easements are not brought to the City Council for approval, but in this case the easement provides for the granting of land to a private person, which requires the City Council's approval.

**COUNCIL ACTION NEEDED:** Review and discuss.

**STAFF RECOMMENDATION TO COUNCIL:** Approve the agreement as presented.

# **CONDITIONAL CONVEYANCE, TEMPORARY TRAIL EASEMENT AND AGREEMENT TO SWAP PARCELS**

THIS ~~TRAIL EASEMENT~~ AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between HELEN ROSEBERRY (“the undersigned Owner”) and THE CITY OF OSAWATOMIE, a Kansas Municipal Corporation (the “City”).

## **1. Background**

### **1.1. Property**

The undersigned Owner is the sole owner in fee simple of the property described in exhibit A (the “Property”). The Property is also described as 1801 Brown Ave., Osawatomie, KS 66064.

### **1.2. Easement Area**

The portion of the Property that is subject to this agreement (the “Easement Area”) is shown on the plan attached as exhibit B (the “Easement-Plan”).

### **1.3. Purpose**

This agreement establishes the easements (collectively, the “Trail Easement”) described in articles 2 and 3, details rules regarding the Trail Easement, and identifies rights and responsibilities of City and Owner.

### **1.4. Consideration**

The City Agrees to convey to owner a tract of land to be determined consisting of not less than .50 acre (approximately 125 ft by 175 ft) sized parcel of real property adjacent to the Property, described in Exhibit C, This agreement to convey is given in consideration of the Owner’s grant to the City of the easement ~~s~~ granted by owner to the City under this agreement. On conveyance of said property to Owner by City, Owner agrees to convey the property that is the subject of this easement to City free and clear of any interest of the present Owner or any other person or entity. The conveyance to the Owner by the City referenced in this Agreement shall occur not less than three (3) years from the date of this agreement. If such conveyance is not made by the City to Owner within said time period the temporary easement conveyed to the City by this Agreement shall cease and any further obligation owed by Owner or City by virtue of this Agreement shall terminate and be null and void.

### **1.5. Restitution**

Should the undersigned Owner not receive a deed for the Adjacent Property from the City within three (3) years, the Owner has the right to opportunity to begin the process of re-voking the easement through the Miami County Register of Deeds.

## **2. Grant of Conditional Easement for Trail Facilities**

### **2.1. Grant**

The undersigned Owner grants and conveys to City a conditional~~the~~ perpetual right to create the Trail identified below; to enter the Easement Area at any time to construct, install, maintain, and repair the items (collectively, with the Trail, the “Trail Facilities”) described in paragraph (a) below.

#### **(a) Permitted Trail Facilities**

- (1) A trail not to generally exceed the detailed area designated in Exhibit B.

- (2) Signs to mark the Trail, to provide information related to the Trail, and for interpretive purposes.
- (3) Fencing, gates, and barriers to control access.

## **2.2. Exercise of Rights**

Construction, installation, maintenance, and repair of the Trail may include trailblazing; grading; building retaining walls, steps, railings, boardwalks, and bridges; cutting vegetation; application of gravel, crushed stone, wood chips, or paving; and identifying the Trail's path. These activities may include vehicular use.

## **3. Grant of Easement for Public Access**

### **3.1. Grant**

The undersigned Owner grants and conveys to City during the term of this Easement the right to make the land that is the subject of this easement available to the a public easement and right-of-way over the Trail and the right to use Trail Facilities for the purposes described in paragraph (a) below:

Permitted Trail Uses. ~~Public use~~Use of the Trail as a right-of-way for (1) walking, hiking, jogging, bicycling, horseback riding, bird watching, nature study; (2) power-driven mobility devices for use by persons who have mobility impairments; and (3) emergency vehicles in the case of emergency within the Easement Area.

## **4. Enforcement; Liability Issues**

### **4.1. Public Enters at Own Risk**

Use of any portion of the Easement Area by members of the general public is at their own risk. Neither City nor Owner, by entering into this agreement, assume duty to or for the benefit of the general public for defects in the location, design, installation, maintenance, or repair of the Trail Facilities; for unsafe conditions within the Easement Area; or for the failure to inspect for or warn against possibly unsafe conditions; or to close the Trail Facilities to public access when unsafe conditions may be present.

### **4.2. Costs and Expenses**

All costs and expenses associated with Trail Facilities are to be borne by City.???

## **5. Miscellaneous**

### **5.1. Binding Agreement**

This agreement is a servitude running with the land binding upon the undersigned Owner, and, upon recordation in the Public Records, all subsequent Owners of the Easement Area or any portion of the Easement Area are bound by its terms whether or not the Owners had actual notice of this agreement and whether or not the deed of transfer specifically referred to the transfer being under and subject to this agreement. This agreement binds and benefits Owners and City and their respective personal representatives, successors, and assigns.

### **5.2. Incorporation by Reference**

Each exhibit referred to in this agreement is incorporated into this agreement by this reference.

### **5.3. Warranty**

The undersigned Owner warrants to City that:



IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

My Appointment Expires:

\_\_\_\_\_



# CITY OF OSAWATOMIE



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## STAFF AGENDA MEMORANDUM

**DATE OF MEETING:** September 12, 2019

**AGENDA ITEM:** Appointment of EMP 1 & KMEA – Representatives

**PRESENTER:** Don Cawby, City Manager

**ISSUE SUMMARY:** Each EMP1 member city is required to have one representative and one Alternate on its Board. Each representative should be appointed by the City Council and will serve the remaining term. Both positions are currently vacant.

Currently the appointments are as follows:

Representative:	Stuart Kasper	expires 4/30/2020
Alternate:	Blake Madden	expires 4/30/2020

Also, according to KMEA's Bylaws, each KMEA member city is required to have two Directors and one Alternate on its Board of Directors. Each Director should be appointed by the City Council and will serve the remaining term. Currently we have an opening for Director #1.

Currently the appointments are as follows:

Director # 1:	Don Cawby	expires 4/30/2020
Director #2:	William Butcher	expires 4/30/2020
Alternate:	Mark Govea	expires 4/30/2020

KMEA asks that Directors be able to attend KMEA's Board of Directors Meetings in May and November.

**COUNCIL ACTION NEEDED:** Discuss and make appointments for vacant positions.

**STAFF RECOMMENDATION TO COUNCIL:** Staff recommends that the following appointments to replace current vacancies:

EMP1 Representative - Chief Power Plant Operator, Will Butcher  
EMP1 Alternate - Electric Superintendent, Terry Upshaw  
KMEA Director #1 – Electric Superintendent, Terry Upshaw



## CERTIFICATE – DIRECTOR-1 (SPECIAL TERM)

### KANSAS MUNICIPAL ENERGY AGENCY BOARD OF DIRECTORS

This certificate duly documents the appointment of a **Director-1** to fill a **special term** on the Board of Directors of the Kansas Municipal Energy Agency (KMEA) as provided for in Article V of KMEA's Bylaws.

I, the undersigned City Clerk of the City of \_\_\_\_\_, Kansas, a member of KMEA, do hereby certify that at a meeting of the City Governing Body duly held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_; and

Name:	_____	Title:	_____
Address:	_____		
City:	_____	State:	_____
		Zip Code:	_____
Office Phone:	_____	Cell Phone:	_____
		Fax:	_____
Email Address:	_____		

who (a) resides within the territory served by the City's electric utility; or (b) is an employee of the member, was appointed to fill an unexpired term on the KMEA Board of Directors; the term to begin immediately upon execution of this Certificate and end on April 30, 2020.

I further certify that the foregoing appointment is reflected in the official Minutes of the Governing Body of the City for the meeting on the date indicated above.

This certificate is given this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
City Clerk  
  
\_\_\_\_\_, Kansas





## CERTIFICATE – DIRECTOR-2 (UNEXPIRED TERM)

### KANSAS MUNICIPAL ENERGY AGENCY BOARD OF DIRECTORS

This certificate duly documents the appointment of a **Director-2** to fill an **unexpired term** on the Board of Directors of the Kansas Municipal Energy Agency (KMEA) as provided for in Article V, Section 5.6 of KMEA's Bylaws.

I, the undersigned City Clerk of the City of \_\_\_\_\_, Kansas, a member of KMEA, do hereby certify that at a meeting of the City Governing Body duly held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_; and

Name:	_____	Title:	_____
Address:	_____		
City:	_____	State:	_____
		Zip Code:	_____
Office Phone:	_____	Cell Phone:	_____
		Fax:	_____
Email Address:	_____		

who (a) resides within the territory served by the City's electric utility; or (b) is an employee of the member, was appointed to fill an unexpired term on the KMEA Board of Directors; the term to begin immediately upon execution of this Certificate and end on April 30, 2020.

I further certify that the foregoing appointment is reflected in the official Minutes of the Governing Body of the City for the meeting on the date indicated above.

This certificate is given this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
City Clerk

\_\_\_\_\_, Kansas

# CITY OF OSAWATOMIE



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## STAFF AGENDA MEMORANDUM

**DATE OF MEETING:** September 12, 2019

**AGENDA ITEM:** Interim CM Agreement

**PRESENTER:** Meagan Borth, Assistant to the City Manager

**ISSUE SUMMARY:** Attached is the proposed agreement to hire Michael Smith as the interim City Manager for the City of Osawatomie beginning September 23, 2019. Mike was the City Administrator for the City of Lansing from 1999 until his retirement in 2015. Prior to that Mike served for two decades as the Police Chief of Lansing. Mike is currently in his third year of serving as the Mayor of Lansing and is also the current President of the Kansas Mayors Association.

The attached agreement would terminate upon the appointment of a permanent City Manager, but would not extend past March 27, 2019. The dates may be extended or modified by mutual agreement.

**COUNCIL ACTION NEEDED:** Review and discuss the proposed agreement.

**STAFF RECOMMENDATION TO COUNCIL:** Approve the proposed employment agreement to hire Michael Smith as the Interim City Manager.

## Employment Agreement

THIS EMPLOYMENT AGREEMENT (Agreement) made and entered into this 12th day of September, 2019, by and between the City of Osawatomie, Kansas, a municipal corporation existing under the laws of the State of Kansas and governed by the City Council, hereinafter referred to as "Employer," and Michael Smith, hereinafter referred to as "Employee".

WHEREAS, the Employer desires to employ the services of the Employee as the Interim City Manager of the City, subject to and upon the terms and provisions set forth in this Agreement; and

WHEREAS, the Employee has extensive experience as a public administrator and as a City Administrator in the State of Kansas, and his knowledge and experience will be beneficial until a permanent City Manager can be identified and retained; and

WHEREAS, the Employee has agreed to accept the employment as the Interim City Manager of the City, subject to and upon the terms and provisions set forth in this Agreement;

NOW, THEREFORE, IN CONSIDERATION of the mutual promises contained in this Agreement, the Employer and Employee agree as follows:

- 1. Duties.** The Employer hereby employs the Employee as its Interim City Manager to serve as the chief executive officer for the City for an interim period between employment of permanent City Managers. Employee accepts and agrees to such employment, subject to the general supervision, advice and direction of the City Council on behalf of the Employer. The Employee shall be responsible to the City Council for proper administration of all affairs of the City under his jurisdiction. All duties assigned to the Employee by the governing body shall be appropriate to and consistent with the professional role and responsibility of the Employee.

  - a. Meetings.** As the chief executive officer for the Employer, the Employee, or his designee, shall attend, and shall be permitted to attend, all meetings of the governing body, both public and closed, with the exception of those closed meetings devoted to the subject of this Agreement, or any amendment thereto or the Employee's evaluation or otherwise consistent with state law.
  - b. Best Efforts.** Employee shall perform and have such other legally permissible and proper duties as the Employer shall assign to him. Employee agrees to perform faithfully, industriously and to the best of Employee's ability, experience and talents, all of the duties that may be required by the express and implicit terms of this Agreement, to the reasonable satisfaction of the Employer.
  - c. Work Schedule; Time Requirements.** It is recognized that the Employee must devote a great deal of time outside the normal office hours to do business of the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule, with the expectation that the employee will on average work at least 24 hours in each work week. Such duties shall be provided at such places as the needs, business and opportunities of the Employer may require during the term of this Agreement.

- d. **Conduct.** Employee shall, at all times during the term of this Agreement, conduct himself in such a manner as to reflect credit to the Employer and shall not do or perform any acts in his capacity as an employee of the Employer or in his personal affairs which may cause the Employer to suffer loss of reputation or embarrassment.

**2. Authority of the Employee.** As the Chief Executive of the City, the Employee shall have the power and authority to perform, without interference, all legally permissible and proper duties and functions set forth in City ordinances, resolutions and motions approved by the City Council.

- a. **Staffing.** Consistent with policies, resolutions, ordinances, and state and federal law, the Employee shall have the authority and the duty to:
  - i. employ on behalf of the Employer all other employees of the City;
  - ii. direct, assign, reassign and evaluate all of the employees of the Employer;
  - iii. organize, reorganize and arrange the staff of the Employer;
  - iv. develop and establish internal regulations, rules and procedures which the Employee deems necessary for the efficient and effective operation of the Employer; and
  - v. accept all resignations of employees of the Employer consistent with the policies, ordinances, state and federal law, except the Employee's resignation which must be accepted by the governing body.
- b. **Reassignment.** The Employee cannot be reassigned from the position of Interim City Manager to another position without the Employee's express written consent.

**3. Term.**

- a. This agreement shall remain in full force and effect from September 23, 2019 until March 27, 2020, or until a permanent City Manager is appointed by the City Council, or unless otherwise terminated as provided in Section 6 of this agreement.
- b. The Employee agrees to remain in the exclusive employ of the Employer and will not accept other employment as a chief executive officer of any other municipality or organization until date of termination. The term "employ" shall not be construed to include consulting, teaching, counseling or any other non-profit volunteering or personal hobbies performed on the Employee's time off, provided that it does not interfere with the Employee's duties and responsibilities as City Manager, except that the Employer recognizes the Employee is currently the elected Mayor of the City of Lansing, Kansas and understands there are duties and responsibilities that the Employee must fulfill in that role. Any such consultation, teaching, or counseling for which the employee receives compensation or reimbursement requires the prior approval of the Employer.

**4. Salary.**

- a. Employee shall receive a bi-weekly salary of \$2,600, subject to mandatory deductions and withholdings as required by law, payable in accordance with the Employer's normal and usual payroll procedures, figured to and prorated for any partial week during the employment period (the "Salary").
- b. Employee shall be considered an "exempt" employee of the Employer for Fair Labor Standards Act purposes. Employee is employed as a salaried employee and shall not be entitled to hourly or overtime pay.

**5. Benefits.** The Employee shall receive the following benefits for the term of this Agreement, figured to and prorated for any partial employment period as applicable and agreed to by the Employee and Employer (the "Benefits").

- a. **Vacation and Sick Leave.** Employee shall not be eligible for sick or vacation leave, but it is understood that the Employee may set his own schedule to accommodate other events, so that the average number of work hours are met as outlined in Section 1 of this Agreement.
- b. **Holidays.** Employee shall be entitled to observe all Federal & State Holidays that are currently observed by the Employer and all other employees, and each holiday shall count as 8 hours toward the minimum average number of work hours per week.
- c. **Retirement.** The Employer agrees to provide any required coverage and pay required matching contributions for Employee under KPERS (Kansas Public Employees Retirement System).
- d. **Health Insurance.** The Employee will be eligible for all of the City's health insurance programs, subject to the terms and conditions as set forth in the Employer Personnel Policies for all full-time employees. However, the Employee's eligibility for medical coverage will expire if the employee becomes eligible for Medicare coverage while employed under the terms of this agreement. The City will work to ensure no gaps in coverage while transitioning the Employee's medical coverage to and from the City's healthcare plan.
- e. **Car Allowance.** The Employer shall pay to Employee a monthly car allowance (the "Car Allowance") of \$200.00 per bi-weekly period, all subject to applicable deductions and withholdings as required by law. The Car Allowance shall pay any costs to purchase, operate, maintain, repair replace or insure the automobile or automobiles utilized by Employee for City business purposes. In addition to the foregoing Car Allowance, Employer shall reimburse the Employee for mileage less than thirty (30) miles from Osawatomie City Hall on City business (not including commuting expenses from home to work) at the State of Kansas mileage reimbursement rate then in effect.
- i. **Communication Devices.** Employer shall provide Employee with a laptop and appropriate software. The Employer shall also provide the employee a cell phone to allow for mobile communication by phone or email, or in the alternative, provide a stipend at a rate of \$50 per bi-weekly pay period, to allow for mobile communication by phone or email. The cell phone stipend will be subject to applicable deductions and withholdings as required by law. The Employee may opt to use an Employer provided phone in lieu of the stipend.

- f. **Miscellaneous Benefits.** In addition to the other provisions hereof, Employee shall be entitled to all benefits provided for other full-time employees of the Employer as included in the City of Osawatomie Personnel Policy in effect as of the date of this agreement and as it may be amended.
  - g. **Business Expenses; Reimbursement.** Certain expenses of a non-personal and job-related nature will necessarily be incurred by Employee in the performance of his duties. The Employer will pay or reimburse such business expenses and the City Clerk or other City employee authorized to make such reimbursements is authorized to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipt, statements or personal affidavits. Notwithstanding the foregoing, the Employee shall not incur expenses for which he seeks reimbursement from the City in any amount in excess of \$500.00, as to any one occurrence of matter, without prior written consent of the Mayor or acting Mayor in the absence of the Mayor.
- 6. Termination; Resignation; Severance Benefits.**
- a. **Termination for Cause.** The Employer may terminate Employee's employment at any time with or without cause. If Employee's employment is terminated for cause, then and in that event the Employer shall have no obligation to provide the required notice provided herein. As used herein, the term "for cause" means:
    - i. Employee is convicted of any felony or Class A or Class B misdemeanor, or similar offenses under Kansas or other laws, whether state or federal; or
    - ii. The Employee is convicted of any illegal act involving personal gain to him or any other person, or a crime of dishonesty; or
    - iii. Employee breaches, defaults, fails to fulfill, perform or observe, or otherwise violates any of the terms or provisions of this Agreement and any such non-fulfillment, non-performance, non-observance or other violation has not been remedied within ten (10) calendar days after receipt from the Employer of written notice of same (except for violations of paragraph 6.a.i and 6.a.ii for which no cure period is available).
  - b. **Termination Without Cause.** The Employer may terminate Employee's employment at any time without cause. In the event the Employee is terminated, the Employee shall be provided with at least one week's notice that this agreement shall terminate.
  - c. **Termination Upon Appointment of New City Manager.** In the event the Employer has secured a contract with a permanent City Manager, the Employee's agreement shall terminate upon the day prior to the new City Manager beginning employment; however, subject to the agreement of the new City Manager, the Employer and the Employee, a time frame for later departure of the Employee may be agreed to by all parties, in writing, to extend the period of employment to a date certain, and no further notice of termination will be required.
  - d. **Resignation.** If Employee terminates this Agreement by voluntarily resigning as the City Manager of the City, Employee shall give the Employer one week's notice in advance unless the Employer otherwise agrees. If Employee voluntarily resigns, Employee shall not be entitled to any further compensation under this Agreement, from and after date

of resignation, unless otherwise negotiated in a separate agreement prior to such resignation.

- e. **Suspension.** The Employer may suspend the Employee, with or without pay, for just cause at any time during the term of this Agreement. The Employee shall be given written notice setting forth the reasons for the suspension. Suspension without pay with or without just cause for more than five (5) days during any portion of the term of this Agreement shall be considered a termination without cause under paragraph 7(b) of this Agreement.
- f. **Due Process Hearing.** If at any time during the term of the agreement the Employer suspends the Employee with or without pay and benefits, or terminates the employee for cause, the Employer agrees to give the Employee written notice of intent to suspend or terminate without cause or for cause. The notice of intent to suspend or terminate shall set forth the reasons or charges that are the basis for the proposed suspension or termination. Within five (5) days of the receipt of the written notice, the Employee may request a private or public hearing with the City Council on the reasons or charges that are the basis for the proposed suspension or termination. If requested by the employee, the hearing shall be conducted not less than five (5) days from the date of the Employee's request. If the Employee does not request a hearing within five (5) days, the suspension or termination will take effect on the sixth day, or upon a formal notice from the Employee of the waiving of the right to a hearing on the matter.
- g. **Death or Disability.** In the event Employee shall die or become disabled during the term of this Agreement, then and in such event, this Agreement shall automatically terminate as of such date. The Employer shall pay to Employee's legal representatives the Benefits, if any, then due and owing to Employee figured pro rata up to and including the date of death or disability. As used in this Agreement, the term "disability" shall have the meaning given such term in any disability insurance policy or policies covering the Employee if any such policy or policies is in force at the time a determination of disability is to be made. If no such policy is in force at such time, the term "disability" or "disabled" shall mean the physical or mental incapacity of the Employee which has prevented or will prevent such Employee from substantially performing the usual duties of his employment with the Employer for a substantially continuous period of at least ninety (90) days. If there is any dispute as to whether the Employee is disabled (whether or not any disability policy is in force), the Employer and Employee shall mutually select a medical doctor duly licensed in the state of Kansas within fifteen (15) days of the date the issue of disability first arises. The medial doctor so selected shall then, within 30 days following his selection, make a determination as to whether the Employee is disabled. The decision of the medical doctor so selected shall be conclusive on all parties concerned. The cost and expense of the medical doctor so selected shall be borne by the Employer.

## **7. Other Terms and Conditions of Employment.**

- a. **Personnel Policy.** The Employer's Personnel Policy as currently in effect, or as amended during the term of this Agreement, shall be applicable to Employee except to the extent of any inconsistency with any or the terms of this Agreement in which event the terms of this Agreement shall control.

- b. **Residency.** The Employee will not be required to maintain a personal residency within the city limits of Osawatomie, Kansas during the term of this Agreement.
- c. **Other Terms and Conditions of Employment.** The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Osawatomie Charter or any other law.
- d. **Conflict of Interest Prohibition.** The Employee shall not, during the term of this Agreement, individually, as a partner, joint venture, officer, manager, member, shareholder or in any other individual or representative capacity, invest or participate in any business venture conducting business in the corporate limits of the City, except for stock ownership in a company whose capital stock is publicly held and regularly traded on any national stock exchange or in the over-the-counter market, without the prior written approval of the Employer. For and during the term of the Agreement, the Employee shall, except for a personal residence or residential property acquired or held for future use as the Employee's personal residence, not invest in any other real estate or property improvements within the City, without the prior written consent of the Employer. In addition, to the extent applicable, the provisions of any Code of Ethics or Code of Conduct established or approved by the Employer shall apply to the Employee.
- e. **Confidential Information.**
  - i. Employee recognizes that the Employer's business interests require a confidential relationship between the Employer and Employee and the fullest practical protection and confidential treatment of the Employer's financial data, writings and other knowledge of the city's business (all of which is collectively referred to as the "Confidential Information"), which may in whole or in part be conceived or learned of by Employee in the course of Employee's employment with the City.
  - ii. Employee agrees to keep secret and to keep confidential all of the Employer's Confidential Information, both during and after the termination of Employee's employment with the City. Employee further covenants and agrees not to use or aid others in learning of or using any of the Employer's Confidential Information except in the faithful performance of Employee's duties for the City.

## **8. General Provisions.**

- a. **Section Headings.** All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provisions of this Agreement.
- b. **Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of Kansas. Venue shall lie exclusively in Miami County, Kansas.
- c. **Severability.** In the event any one or more of the sections, provisions or clauses contained herein shall for any reason be held to invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this



Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

- d. **Entire Agreement.** This Agreement incorporates all the agreements, covenants and understandings, whether written or oral, between the Employer and the Employee concerning the subject matter hereof, and all such covenants, agreements and understanding have been merged into this written Agreement. No other prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.
  - e. **Amendment.** This Agreement shall not be modified or amended except by a written instrument executed by the Employee and the duly authorized representative of the Employer.
  - f. **Effective Date.** This Agreement shall be and become in full force and effect as of the Effective Date upon the adoption and approval of the City Council, and the execution and delivery hereof by the authorized officer of the Employer and the Employee.
  - g. **Counterparts.** This Agreement may be executed in duplicate original counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one in the same instrument.
9. **Binding Effect.** This Agreement shall be binding upon and insure to the benefit of the Employee, his heirs, executors, administrators and legal representatives.

*THE REMIANDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written, effective the Effective Date.

**EMPLOYER**

CITY OF OSAWATOMIE, KANSAS

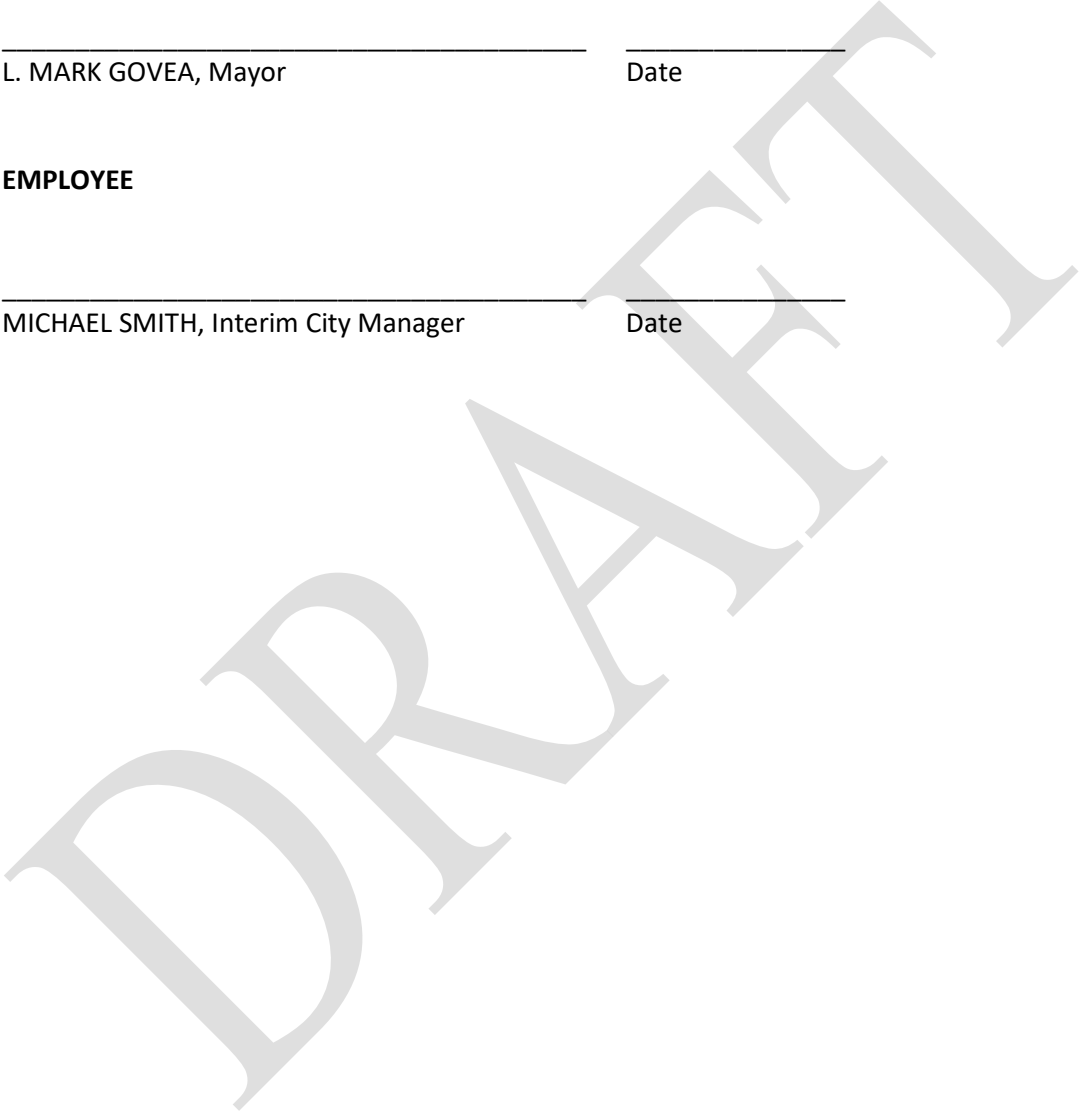
\_\_\_\_\_  
L. MARK GOVEA, Mayor

\_\_\_\_\_  
Date

**EMPLOYEE**

\_\_\_\_\_  
MICHAEL SMITH, Interim City Manager

\_\_\_\_\_  
Date



# CITY OF OSAWATOMIE



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## STAFF AGENDA MEMORANDUM

**DATE OF MEETING:** September 12, 2019

**AGENDA ITEM:** Energy Management Consulting Agreement

**PRESENTER:** Don Cawby, City Manager

**ISSUE SUMMARY:** Since 2012, we have had a month to month energy management consulting agreement with Energy Management Group (EMG) out of Topeka. Scott Shreve, co-owner of EMG, has been our consultant on all major energy agreements and electric projects, as well as a consultant on prospective businesses and industries. Scott has also attended EMP1 and KMEA meetings in order to update us on their activities and to assist in advising us in our approach to electric energy management. Our agreement has always been a month to month agreement, and has not been modified since 2012.

As of July 1, EMG became part of Priority Power Management (PPM) and they requested that we update the agreement with the new information. The only change they proposed is a 12-month agreement that can be cancelled with at least 90-days' notice of each automatic annual renewal.

**COUNCIL ACTION NEEDED:** Review and discuss.

**STAFF RECOMMENDATION TO COUNCIL:** Consider approving the revised agreement.

## Energy Management and Consulting Services Agreement

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

### Recitals

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

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

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

### Terms and Conditions

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

upon the energy.

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

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

If to PPM:

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

If to Client:

Don Cawby, City Manager  
439 Main St., PO Box 37  
Osawatomie, KS 66064  
  
913-755-2146 office  
913-755-4164 fax

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

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

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

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

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

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

Priority Power Management, LLC

City of Osawatomie, Kansas

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: John J. Bick  
Title: Managing Principal

Name: Don Cawby  
Title: City Administrator

**ATTACHMENT A**  
**(Services)**

PPM will perform the following Services:

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



**ATTACHMENT B**  
**(Facilities)**

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

City owned Generation Plant

**ATTACHMENT C**  
**(PPM Compensation)**

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

Base fee for services for PPM will be the sum of \$1000 a month. For this monthly retainer, PPM will perform all contract analysis, phone conferences with City staff, and provide each month, up to ten hours of work, at the City of Osawatomie or at another site on behalf of the City. If during the course of the month PPM performs more work than described above, then additional compensation will be paid by the City if authorized by the City on an hourly basis of \$120 per hour. In addition, vehicle mileage for travel conducted solely for the benefit of Client business will be billed at the prevailing United States Department of the Treasury Internal Revenue Service Standard Mileage Rate.

**ATTACHMENT D**  
**(Authority of PPM)**

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

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

Obtain energy supply data from power pools and suppliers

Obtain meter data and billing data from City and suppliers

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

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

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

# CITY OF OSAWATOMIE



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## STAFF AGENDA MEMORANDUM

**DATE OF MEETING:** September 12, 2019

**AGENDA ITEM:** **Asphalt Repair**

**PRESENTER:** Don Cawby, City Manager

**ISSUE SUMMARY:** Internally, we have been discussing that our current method of patching and sealing asphalt is inadequate and inefficient. We don't currently have the means to put down hot asphalt which will hold much longer and allow us to make better patches. As an alternative, we have been putting down either bagged patch material (which is very expensive) or cold bulk material which is cheaper but not as effective as hot bulk asphalt.

In our discussions, we noted that several of our "newer" streets are starting to develop potholes and soft spots (600 Main, Pacific), and that we need to cut them out and repair them correctly. Also, we noted that with the wet weather many of our patches are not holding.

So, I asked Bill to look at pricing for asphalt hot boxes with the hopes that we could get one fast enough to make some major headway on potholes and soft spots repairs before the plants shut down in late fall. Also, it would allow us (if rain cooperates) to get on potholes quicker in the spring to keep water from getting in the better asphalt we have.

Attached are pricing for asphalt hot boxes and accessories from CrafcO (formerly PMSI) in Lee's Summit. The model our staff is considering is the KM4000TEDD. It has diesel burners which are preferred by us over propane because of the hassle of taking cylinders to Paola to be filled. A dump bed would be necessary to facilitate reheating asphalt from a dump truck that has cooled to the point that it can't be worked. Being able to reheat would allow it to be used for patching, rather than just being dumped and spread. This machine would greatly improve our ability to patch pot holes that are spread out and don't necessarily need to be milled out before repair.

CrafcO reports they have a rental that has been out for 3 months and due back this week, but it is unknown how long it will be before it is ready to go back out again. We would obviously like to see machine in person before purchasing. If we could have delivery in a couple of weeks, that would allow

us around 4- 6 weeks of use before asphalt plants close down, which should help us getting some major progress on potholes before winter.

**COUNCIL ACTION NEEDED:** Review and discuss.

**STAFF RECOMMENDATION TO COUNCIL:** Consider approving the purchase of the hot box contingent upon our viewing and approval. Staff would recommend purchasing from the Street Improvements Fund which has ample budget available for the equipment and materials for 2019.

Tags + See more: Pavement Maintenance

Previous / Next



## Hot Box 2T Diesel Hyd Elec

430784

Brand KM International

Quantity

1

Add To Quote

### **KM 4000T: 2 Ton Trailer Mounted Hotbox Reclaimer (Diesel)**

*The KM 4000T is mounted on a 6" channel steel trailer with a single 7,000 axel.*

#### **FEATURES:**

- Heat Retention: Triple Wall Construction with high efficiency insulation
- Temperature Control: Thermostatically controlled heating system for better fuel efficiency
- Cost Savings: Maintain HMA for up to 48 hours or Reclaim bulk stored virgin HMA

- Low Maintenance: Burner and key components mounted above frame and in steel enclosure
- Ease of Use: Front to back loading doors with cantilevered handles
- Diesel
- 52° Dump feature (additional option)

#### **SPECIFICATIONS:**

- Dimension (Lx W x H) - 14' x 96" x 70"
- Weight - 2,180 Lbs.
- Capacity - 4,000 Lbs.
- Heating element - Diesel: 105,000 BTU
- Filling Door - Single insulated filling door, Single cantilever handle
- Shovel Door - Single insulated shovel door
- Insulation - 2"-3" of high efficiency insulation
- Construction - All welded: 16G Skin, 12G asphalt compartment
- Trailer Capacity - 7,000 Lbs. GVWR
- Axel - Single 7,000 Lb. TORFLEX, standard electric brakes
- Tire and Wheels - 3,520 LR E (each)
- Warranty - 2-year warranty parts and workmanship
- 5-year warranty of trailer frame structure

\*Specifications subject to change without notice

You may also like



THE CHOICE OF ASPHALT PROFESSIONALS WORLWIDE

**GENERAL PRICE GUIDE**

PRICING IS SUBJECT TO CHANGE WITHOUT NOTICE

*PRICES EFFECTIVE February 1, 2019*

F.O.B. NORTH BRANCH, MICHIGAN - PREPAID & ADDED

MODEL	DESCRIPTION	PRICE
KM 4000SXPX	2 Ton Skid Mount - Propane	\$ 9,800.00
KM 4000SXXD	2 Ton Skid Mount - Diesel	\$13,500.00
KM 8000SXPX	4 Ton Mount - Propane	\$14,900.00
KM 8000SXXD	4 Ton Skid Mount - Diesel	\$18,200.00
KM 1000SXPX	½ Ton Skid Mount- Propane	\$6,400.00
KM 4000TEPX	2 Ton Trailer Mount - Electric Brake - Propane	\$14,800.00
KM 4000TEPD	2 Ton Trailer Mount - Electric Brake - Propane - Dump	\$18,900.00
KM 4000TEDX	2 Ton Trailer Mount - Electric Brake - Diesel	\$17,250.00
KM 4000TEDD	2 Ton Trailer Mount - Electric Brake - Diesel - Dump	\$21,500.00
KM 4000THPX	2 Ton Trailer Mount - Hydraulic Brake - Propane	\$15,900.00
KM 4000THPD	2 Ton Trailer Mount - Hydraulic Brake - Propane - Dump	\$22,100.00
KM 4000THDX	2 Ton Trailer Mount - Hydraulic Brake - Diesel	\$18,300.00
KM 4000THDD	2 Ton Trailer Mount - Hydraulic Brake - Diesel - Dump	\$22,800.00
KM 8000TEPX	4 Ton Trailer Mount - Electric Brake - Propane	\$19,900.00
KM 8000TEPD	4 Ton Trailer Mount - Electric Brake - Propane - Dump	\$24,900.00
KM 8000TEDX	4 Ton Trailer Mount - Electric Brake - Diesel	\$22,700.00
KM 8000TEDD	4 Ton Trailer Mount - Electric Brake - Diesel - Dump	\$27,400.00
KM 8000THPX	4 Ton Trailer Mount - Hydraulic Brake - Propane	\$21,500.00
KM 8000THPD	4 Ton Trailer Mount - Hydraulic Brake - Propane - Dump	\$26,600.00
KM 8000THDX	4 Ton Trailer Mount - Hydraulic Brake - Diesel	\$24,200.00
KM 8000THDD	4 Ton Trailer Mount - Hydraulic Brake - Diesel - Dump	\$29,400.00

Phone: 810-688-1234 ☎ Toll Free: 800-492-1757 ☎ Fax: 810-688-8765

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THE CHOICE OF ASPHALT PROFESSIONALS WORLWIDE

<b>HOTBOX TRAILER OPTIONS</b>		
Solvent Tank	7 Gallon Utility Solvent Tank - Mounted on Trailer	\$ 315.00
Tool Rack	4-6 Hole Tool Rack - Mounted on Trailer	\$ 290.00
Spare Tire, Loose	ST235/80R16 Tire & Rim - Not Mounted on Trailer	\$ 260.00
Spare Tire, Mounted	ST235/80R16 Tire & Rim - Mounted on Trailer	\$ 525.00
60 Lb. Cylinders	60 lb. Propane Cylinders (Replaces std 30 Lb. cylinders)	\$ 325.00
100 Lb. Cylinders	100 lb. Propane Cylinders (Replaces std 30 lb cylinders)	\$ 520.00
Light Bar	Directional Arrow Board & Controller - Mounted on Unit	\$ 1,450.00
Strobe Light	Amber Strobe Light, Mounted and Switched	\$ 300.00
Hoist - Manual	Loading Hoist/ Winch & Davit - Manual Operation	\$ 1,600.00
Hoist - 12 V	Loading Hoist / Winch & Davit - 12 V Powered - Remote	\$ 2,850.00
Torch (LP Unit)	Hand Torch w/ 25ft Retractable Hose Reel	\$ 1,550.00
Torch (Diesel Unit)	Hand Torch w/ 25ft Retractable Hose Reel	\$ 1,550.00
Low Temp Thermostat	Allows Heating of Cold Patch 60-250* F	\$ 1,150.00
24 Hour Timer	24 Hour Timer, 110 Volt Powered * Requires power station	\$ 1,150.00
30 Gal Tack	30 Gallon Heated Tack Tank 10,000 Btu Propane Burner	\$ 3,975.00
Spray Tack Unit	¾ Roper Pump, Spray Wand and 5.5 HP Honda Engine	\$ 3,275.00
Wash Down Spray System	12V On Demand Pump, 2.2 GPM, 70PSI, 5.5 Gallon Tank, Rear Mounted Hose Wrap with Spray Wand (KM 8000T Only)	\$1,750.00
Extended KM 8000 Trailer	Adds 2 Ft. to overall length (20 Ft total) to accommodate Options	\$ 500.00
Extended KM 4000 Trailer	Adds 2 Ft. to overall length (16 Ft total) to accommodate Options	\$ 1,450.00
Mounted Deck for 2-18x	Deck Mounted to fit KM 2-18x on Front of Hotbox trailers	\$ 275.00
Work Lights	2 Worklights Mounted and Switched	\$350.00
Heated Shovel Deck	Heated Shovel Deck	\$600.00
Bottle Rack	Bottle rack to fit two 30lb propane cylinders (Skid Unit Only)	\$625.00
Extended Pigtailed	Extended pigtailed for skid mounted hotbox units	\$65.00

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### NCPA PRICE GUIDE

PRICING IS SUBJECT TO CHANGE WITHOUT NOTICE

*PRICES EFFECTIVE February 1, 2019*

F.O.B. NORTH BRANCH, MICHIGAN - PREPAID & ADDED

#### CONTRACT 05-25 ROADWAY MAINTENANCE EQUIPMENT AND SUPPLIES

MODEL	DESCRIPTION	NCPA SELLING PRICE
KM 4000SXPX	2 Ton Skid Mount - Propane	\$ 9,310.00
KM 4000SXDX	2 Ton Skid Mount - Diesel	\$12,825.00
KM 8000SXPX	4 Ton Mount - Propane	\$14,155.00
KM 8000SXDX	4 Ton Skid Mount - Diesel	\$17,290.00
KM 1000SXPX	½ Ton Skid Mount- Propane	\$6,080.00
KM 4000TEPX	2 Ton Trailer Mount - Electric Brake - Propane	\$14,060.00
KM 4000TEPD	2 Ton Trailer Mount - Electric Brake - Propane - Dump	\$17,955.00
KM 4000TEDX	2 Ton Trailer Mount - Electric Brake - Diesel	\$16,387.50
KM 4000TEDD	2 Ton Trailer Mount - Electric Brake - Diesel - Dump	\$20,425.00
KM 4000THPX	2 Ton Trailer Mount - Hydraulic Brake - Propane	\$15,105.00
KM 4000THPD	2 Ton Trailer Mount - Hydraulic Brake - Propane - Dump	\$20,710.00
KM 4000THDX	2 Ton Trailer Mount - Hydraulic Brake - Diesel	\$17,385.00
KM 4000THDD	2 Ton Trailer Mount - Hydraulic Brake - Diesel - Dump	\$21,660.00
KM 8000TEPX	4 Ton Trailer Mount - Electric Brake - Propane	\$18,905.00
KM 8000TEPD	4 Ton Trailer Mount - Electric Brake - Propane - Dump	\$23,655.00
KM 8000TEDX	4 Ton Trailer Mount - Electric Brake - Diesel	\$21,655.00
KM 8000TEDD	4 Ton Trailer Mount - Electric Brake - Diesel - Dump	\$26,030.00
KM 8000THPX	4 Ton Trailer Mount - Hydraulic Brake - Propane	\$20,425.00
KM 8000THPD	4 Ton Trailer Mount - Hydraulic Brake - Propane - Dump	\$25,270.00
KM 8000THDX	4 Ton Trailer Mount - Hydraulic Brake - Diesel	\$22,990.00
KM 8000THDD	4 Ton Trailer Mount - Hydraulic Brake - Diesel - Dump	\$27,930.00

Phone: 810-688-1234 ☎ Toll Free: 800-492-1757 ☎ Fax: 810-688-8765

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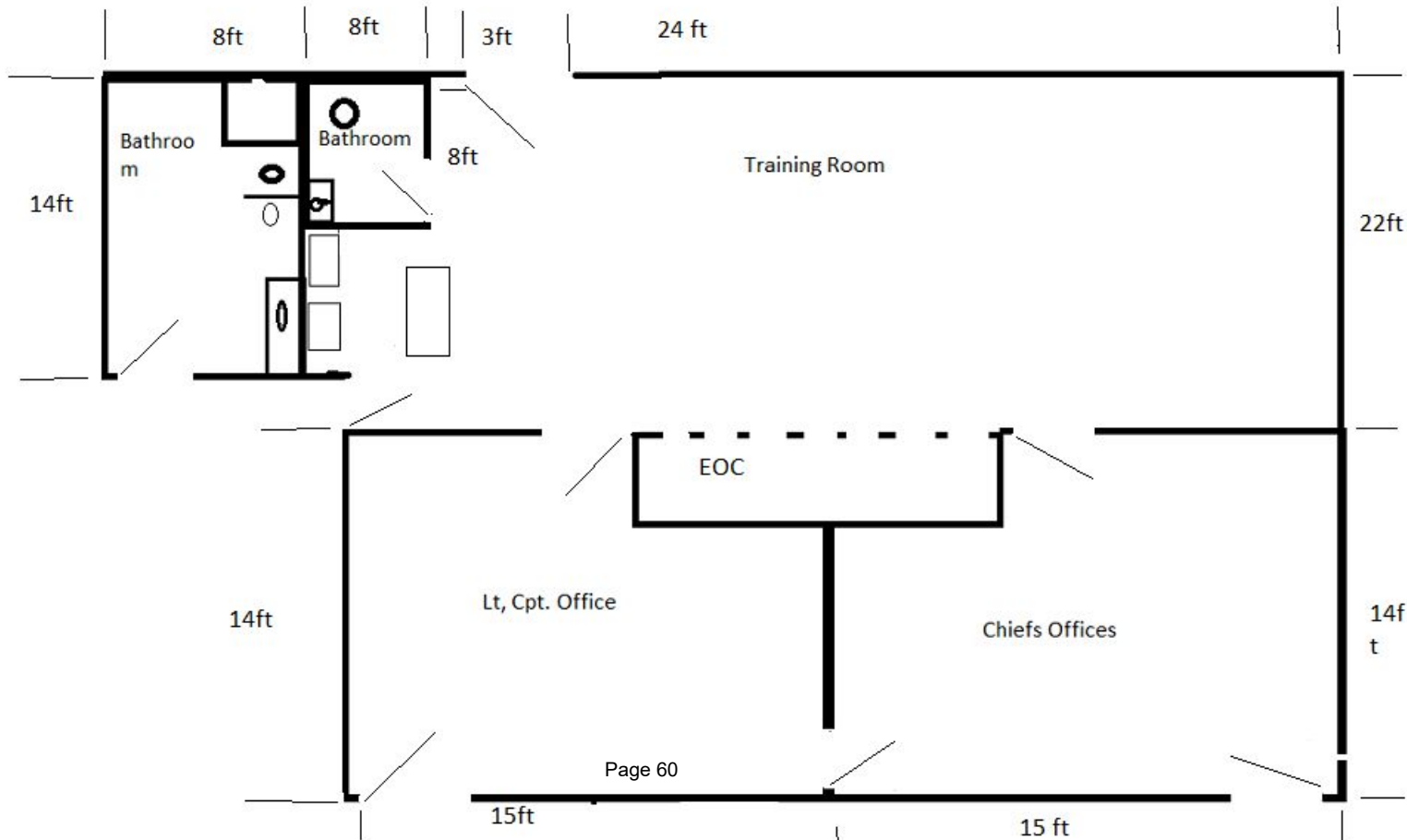
CONTRACT 05-25 ROADWAY MAINTENANCE EQUIPMENT AND SUPPLIES

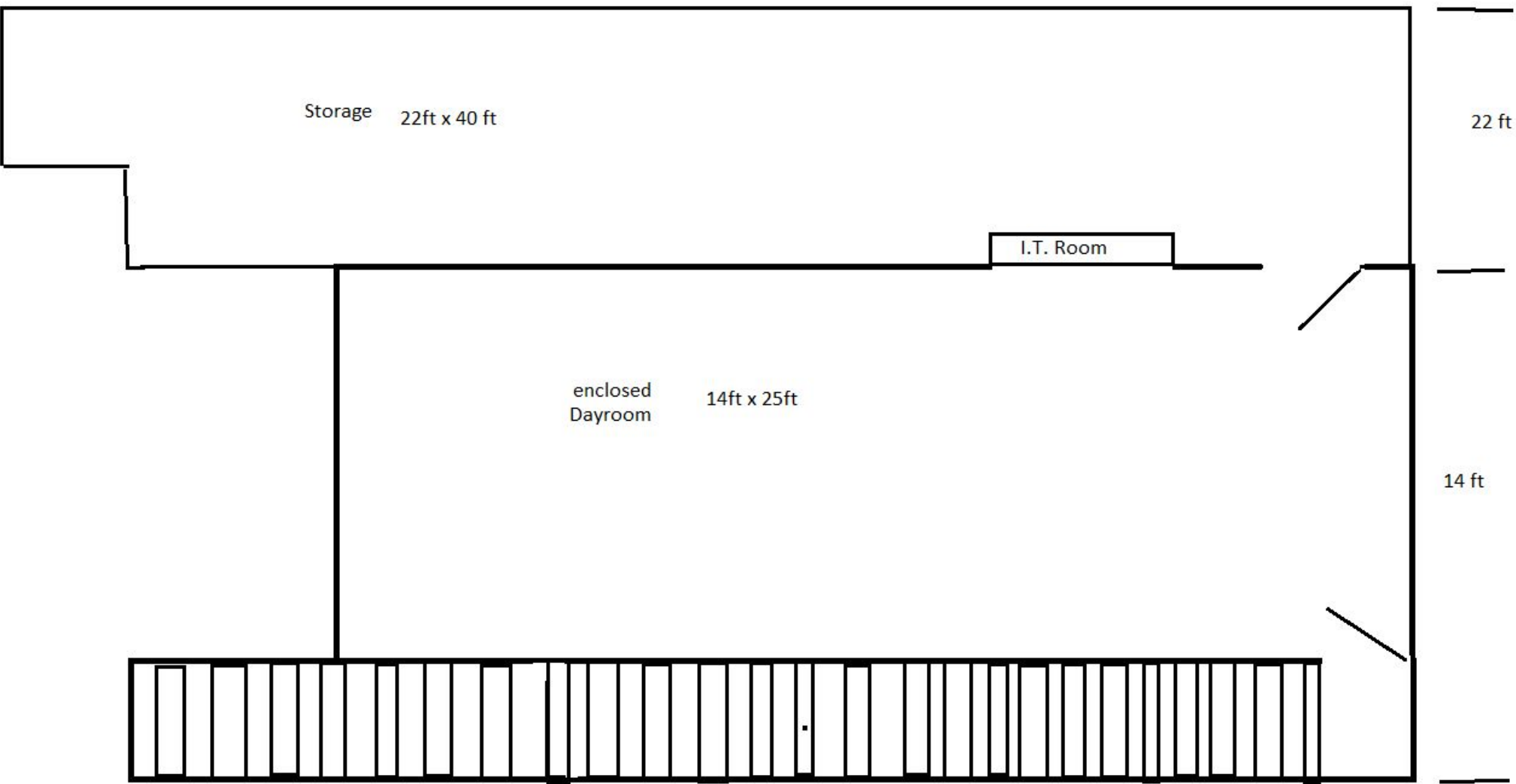
<b>HOTBOX TRAILER OPTIONS</b>		
Solvent Tank	7 Gallon Utility Solvent Tank - Mounted on Trailer	\$ 356.25
Tool Rack	4-6 Hole Tool Rack - Mounted on Trailer	\$ 275.50
Spare Tire, Loose	ST235/80R16 Tire & Rim - Not Mounted on Trailer	\$ 247.00
Spare Tire, Mounted	ST235/80R16 Tire & Rim - Mounted on Trailer	\$ 498.75
60 Lb. Cylinders	60 lb. Propane Cylinders (Replaces std 30 Lb. cylinders)	\$ 308.75
100 Lb. Cylinders	100 lb. Propane Cylinders (Replaces std 30 lb cylinders)	\$ 494.00
Light Bar	Directional Arrow Board & Controller - Mounted on Unit	\$1,377.50
Strobe Light	Amber Strobe Light, Mounted and Switched	\$ 285.00
Hoist - Manual	Loading Hoist/ Winch & Davit - Manual Operation	\$ 1,521.90
Hoist - 12 V	Loading Hoist / Winch & Davit - 12 V Powered - Remote	\$ 2,707.50
Torch (LP and Diesel Unit)	Hand Torch - 25 Ft retractable Hose Reel (KM 8000T)	\$ 1,092.50
Fender Mounted Strobe	4" Amber Strobes Mounted in Fenders: KM 8000T Only	\$ 660.00
Low Temp Thermostat	Allows Heating of Cold Patch 60-250* F	\$ 1,092.40
24 Hour Timer	24 Hour Timer, 110 Volt Powered * Requires power station	\$ 1,045.00
30 Gal Tack	30 Gallon Heated Tack Tank 10,000 Btu Propane Burner	\$ 3,776.25
Spray tack Unit	¾ Roper Pump, Spray Wand and 5.5 HP Honda Engine	\$ 3,111.25
Extended KM 8000 Trailer	Adds 2 Ft. to overall length (20 Ft total) to accommodate Options	\$ 475.00
Extended KM 4000 Trailer	Adds 2 Ft. to overall length (16 Ft total) to accommodate Options	\$1,377.50
Mounted Deck for 2-18x	Deck Mounted to fit KM 2-18x on Front of Hotbox trailers	\$ 261.25
Heated Shovel Deck	Heated Shovel Platform	\$570.00

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4ft wide stairs to 2nd  
floor day room and storage