

OWOSSO CITY COUNCIL

JANUARY 18, 2011

7:30 P.M.

- PRESIDING OFFICER:** MAYOR BENJAMIN R. FREDERICK
- OPENING PRAYER:** PASTOR KENNETH HERBRUCK
OWOSSO ASSEMBLY OF GOD
- PLEDGE OF ALLEGIANCE:** COUNCILPERSON CHRISTOPHER T. EVELETH
- PRESENT:** Mayor Benjamin R. Frederick, Mayor Pro-Tem Cindy S. Popovitch, Councilpersons Thomas B. Cook, Michael J. Erfourth, Christopher T. Eveleth, Joni M. Forster, and Gary W. Martenis.
- ABSENT:** None.

APPROVE AGENDA

City Manager Donald D. Crawford explained there had been legal developments on the Farmer's Market issue in the hours leading up to the meeting. He advised Council against making a decision on the item until such time as legal counsel has had the opportunity to review the questions at hand.

Mayor Frederick noted the number in attendance for the Farmer's Market item and indicated that while Council would defer making a decision at this meeting each party could choose a representative to make a 10 minute presentation on the issue during the Special Presentations portion of the agenda.

Motion by Councilperson Eveleth to approve the agenda with the following changes:

SPECIAL PRESENTATIONS

Add 1. Farmer's Market Presentations

CONSENT AGENDA

Amend the warrant to reflect a payment of \$16,119.41 to Caledonia Charter Township
Add Boards and Commissions Appointments for Gary Wilson, W. Shaffer Fox, and Terry Kemp

ITEMS OF BUSINESS

Remove 2. Farmer's Market Permission

Motion supported by Councilperson Forster and concurred in by unanimous vote.

APPROVAL OF THE MINUTES OF REGULAR MEETING OF JANUARY 3, 2011

Motion by Councilperson Erfourth to approve the Minutes of the Regular Meeting of January 3, 2011 as presented.

Motion supported by Mayor Pro-Tem Popovitch and concurred in by unanimous vote.

SPECIAL PRESENTATIONS

Robert Callard of Owosso's Original Farmers Market presented the details of their organization including its size, method of rule, and some of the issues they had with the market manager during the 2010 season.
Richard Davidson of Owosso Farmers Market detailed the steps he took to formalize the organization and to increase the size and scope of market during the 2010 season.

PUBLIC HEARINGS

None.

STUDENT REPRESENTATIVE REPORT

None.

CITIZEN COMMENTS AND QUESTIONS

Attorney Thomas Emery, representing Owosso's Original Farmers Market, presented his reasoning why the Council should choose to allow his clients to use the Armory Parking Lot.

Burton Fox, 216 East Oliver Street, said he hoped there was a way for both groups to compromise and work together. He suggested moving the farmers market to a location large enough for both groups.

Liz Schautz commented on the level of discord among the vendors this past year.

Eddie Urban, 601 Glenwood Avenue, encouraged everyone present to stay for the entire meeting. He also noted there is a second period for citizen comments at the end of the meeting.

Brian Berry, 627 North Washington Street, said he was pleased with the farmers market and sincerely enjoyed getting to know the long time vendors and was happy to support local providers.

Mayor Frederick noted the difficulty of the farmers' market situation for Council saying that everyone appreciates the market but there were outstanding legal questions raised in the preceding few hours that would need to be answered prior to Council rendering a decision.

Mayor Pro-Tem Popovitch indicated she appreciated the farmers market as well as the changes that were made in the last year. She went on to say that she hoped a compromise between the two organizations could be reached. She also commended the recent class organized by the City to educate alcohol related establishments on alcohol management.

Councilperson Cook asked if there was a legal organization for the market prior to 2010, it was noted there was not. He too expressed a desire to see the two groups compromise. On an unrelated note he pointed out the presence of a Leadership Shiawassee candidate in attendance at the meeting.

City Attorney William Brown inquired whether the Original farmers' market group was represented by Clark Shanahan or Mr. Emery.

CITY MANAGER REPORT

City Manager Crawford distributed literature from a recent session put on by Phil Power of the Center for Michigan detailing some citizen initiated goals for the state.

CONSENT AGENDA

Motion by Councilperson Forster to approve the Consent Agenda as follows:

Traffic Control Order No. 1176 Amendment. Authorize amendment to Traffic Control Order No. 1176 to allow for one designated parking spot in Lot No. 10 for a delivery driver.

Payment Authorization. Authorize Progress Payment No. 4 to the Michigan of Transportation for the City's share of work completed on the replacement of water main along South M52 from Main Street to Gute Street in the amount of \$8,097.62 as follows:

RESOLUTION NO. 20-2011

AUTHORIZING PAYMENT TO THE MICHIGAN DEPARTMENT OF TRANSPORTATION FOR WORK COMPLETED ON THE SOUTH M-52 WATER MAIN INSTALLATION PROJECT

WHEREAS, the city of Owosso, Shiawassee County, Michigan, entered into a cost sharing agreement with the Michigan Department of Transportation for replacement of water main on South M-52 between Main Street and Gute Street; and

WHEREAS, the work on this project has been completed and is now eligible for payment; and

WHEREAS, the Michigan Department of Transportation has requested reimbursement (Progress Billing # 4) for the City's share of the construction work completed and for the City share of Preliminary Engineering costs for the water main portion of the project.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that:

FIRST: The city of Owosso has heretofore determined that it is advisable, necessary and in the public interest to reimburse the Michigan Department of Transportation for eligible funds spent in the course of designing and installing the water main.

SECOND: The accounts payable department is authorized to submit payment to the Michigan Department of Transportation in the amount of \$8,097.62 as detailed on the attached Invoices No. AP 332055 and AS332238 as authorized by Council on January 18, 2011.

THIRD: The above expenses shall be paid from the Water Fund.

Warrant No. 416. Accept Warrant No. 416 as follows:

Vendor	Description	Fund	Amount
Caledonia Charter Township	Caledonia Utility Fund payment covering the period from October – December 2010	Water	\$16,047.33
Huron & Eastern Railway Company Inc	Annual maintenance of active traffic control devises	Major Streets	\$ 5,690.00
Netarx, LLC	Network Engineering Support-December 2010	General	\$ 5,712.00
Brown & Stewart, PC	Professional Services – December 9, 2010 – January 10, 2011	General	\$ 7,860.32

Check Register. Receive and approve the Check Register for December 2010.

Revenue & Expenditure Report. Accept the December 2010 Revenue & Expenditure Report.

Boards and Commissions Appointments. Approve the following Mayoral boards and commissions appointments:

Name	Board/Commission	Term Expires
W. Shaffer Fox*	Historical Commission	12-31-2013
Gary Wilson*	Historical Commission	12-31-2013
Terry Kemp*	Board of Review	12-31-2015

Motion supported by Councilperson Erfourth.

Roll Call Vote.

AYES: Councilperson Erfourth, Mayor Pro-Tem Popovitch, Councilpersons Cook, Martenis, Eveleth, Forster, and Mayor Frederick.

NAYS: None.

ITEMS OF BUSINESS

PLANNING COMMISSION BYLAWS

Councilperson Cook highlighted Section 6 of the Bylaws pointing out the list of 13 principles that he said could be applicable to any governing body when addressing planning and land use issues.

Motion by Mayor Pro-Tem Popovitch to approve the Planning Commission Bylaws as follows:

RESOLUTION NO. 21-2011

**BYLAWS OF THE
CITY OF OWOSSO PLANNING COMMISSION**

WHEREAS, the City of Owosso is authorized by the provision of Act 33, Public Acts of Michigan, 2008, as amended, to create a planning commission; and

WHEREAS, the Owosso Planning Commission is a public commission which is responsible for holding its own meetings in accordance with the Open Meetings Act, Act 267, Public Acts of Michigan, 1976, as amended; and

WHEREAS, the commissioners of the Owosso Planning Commission of the City of Owosso have drafted and approved bylaws to direct the conduct and activities of such meetings and are submitting them to the Owosso City Council for approval.

NOW, THEREFORE, BE IT RESOLVED that the City of Owosso City Council hereby approves the bylaws of the Owosso Planning Commission as follows, such bylaws to be effective immediately:

**BYLAWS
CITY OF OWOSSO, MICHIGAN
PLANNING COMMISSION**

ARTICLE I. Bylaws of the City Planning Commission of the City of Owosso, Michigan.

Section 1.1 This document shall be known as the Bylaws of the City Planning Commission of the City of Owosso.

Section 1.2 For simplicity of presentation the words Chairman, Vice-Chairman or his shall be representative of either gender.

ARTICLE II. Purpose

Section 2.1 The purpose of the City Planning Commission shall be to oversee the orderly growth of the City, to perform the functions of a planning commission as set forth in Public Act No. 33 of 2008 and Public Act 110 of 2006, as amended, to perform other duties assigned to it by the City Council from time to time.

ARTICLE III. Membership

Section 3.1 Membership: As provided in the state statute, the members of the Planning Commission shall be a member of the Council other than the Mayor, to be designated by the Council and eight other persons who are not officers or employees of the City, having the qualifications of elective officers set forth in the Charter and representing in so far as is possible different professions or occupations to be appointed by the Mayor, subject to the confirmation of the Council.

Section 3.2 Term of Office: The Planning Commission shall consist of nine (9) members. One (1) of whom shall be a member of the legislative body to be selected by resolution of the legislative body to serve as a member ex officio, and eight (8) of whom shall be appointed by the mayor as provided in this subsection. An appointment by the mayor shall be subject to approval of the legislative body by majority vote. An appointed member shall not hold another municipal office, except that one (1) appointed member may be a member of the zoning board of appeals. The term of the ex officio member shall be determined by the legislative body and shall be stated in the resolution selecting the ex officio member, but the terms shall not exceed the member's term of office as a member of the legislative body. The term of each appointed member shall be three (3) years or until his or her successor takes office.

After a public hearing, a member other than the member selected by the legislative body may be removed by the mayor for inefficiency, neglect of duty, or malfeasance in office. The legislative body may for like cause remove the member selected by the legislative body. All ex officio members appointed under this subsection shall have full voting rights.

There shall be no compensation for a member of the planning commission, except that reasonable expenses may be allowed in case of necessity with prior approval of the city council.

ARTICLE IV. Officers

Section 4.1 A Chairperson, Vice-Chairperson and Secretary shall be elected by the Commissioners from their members at the first meeting of the commission for each fiscal year which begins July 1. A nominating committee may be appointed by the Chairperson at the last meeting of each fiscal year for the purpose of proposing a new slate of officers for the next year. The Committee will contact, for acceptance of their nomination, each proposed nominee. Nominations from the floor are also in order.

Section 4.2 If a vacancy shall occur for the Vice-Chairperson or Secretary, Planning Commissioners shall nominate and elect a member of the Commission to serve the remainder of the term of office.

Section 4.3 The Chairperson shall preside at all meetings of the Planning Commission and shall appoint all committees.

Section 4.4 The Vice-Chairperson shall assume the duties and authority of the Chairperson in his absence or incapacity. If the Chairperson resigns or is removed from the Planning Commission, the Vice-Chairperson shall assume the position of the Chairperson for the remainder of the Chairperson's term of office.

Section 4.5 The Secretary shall keep the minutes and records, conduct correspondence and perform such other duties as may be assigned by the Chairperson.

ARTICLE V. Meetings

Section 5.1 The Planning Commission shall hold its regular monthly meetings in the City Council Chambers, located at 301 W. Main St., Owosso, Michigan on the fourth

Monday of each month. All meetings shall begin at 7:00 p.m. and must end at 9:00 p.m., unless adjournment is postponed by action of the majority of the Commissioners present. Additional meetings may be scheduled on the city's annual calendar to reflect additional planning needs or conflicts with holidays and other meetings.

Section 5.2 Special meetings may be called by the Chairperson with prior notice to each Commissioner of the meeting's purpose and date; such notice must be made at least five (5) days in advance of the meeting.

Section 5.3 An agenda for each meeting shall be prepared at the direction of the Chairperson or his/her designee and sent to each Commissioner to be delivered in a predetermined format not later than four (4) days before the meeting. This agenda shall indicate any parcels of land for which any action of the Commission is contemplated.

Section 5.4 A quorum of five (5) Commissioners must be present to officially transact business at any regular or Special Meeting of the Commission. A simple majority of Commissioners present and constituting a quorum, shall decide all issues.

Section 5.5 Commissioner's attendance records shall be reviewed as needed with no less than one review completed in each calendar year. The Chairman or his/her designees shall prepare a report, said report to be submitted to the Mayor and Commissioners. Action may be taken in accordance with state statute if attendance or duty becomes an issue of concern for the Chairman or the Mayor and City Council.

Section 5.6 Parliamentary procedure at all meetings of the Commission shall generally be in accordance with the Robert's Rules of Order.

Section 5.7 Order of Business. The secretary or his designate shall prepare an agenda for each meeting and the order of business therein shall be as follows:

- A. Call to order.
- B. Roll call.
- C. Approval of agenda.
- D. Approval of minutes from previous meeting.
- E. Election of officers, if necessary.
- F. Public comments (not related to an agenda item).
- G. Public hearings. The Chairman will declare a public hearing open and state its purpose.
 - 1) The Chairman shall summarize, provide copies, or conspicuously post the procedure for public hearing as outlined in Sections 5.7 and 5.8 of these Bylaws for any members of the public in attendance.
 - 2) Case Number _____ (numbered by year and sequence).
 - i) The Planning Director presents the petitioner's request and factual information concerning the general location area of the case and section of the zoning ordinance that pertain to the petition for rezoning.
 - ii) The applicant, through himself or his agent, may present his case, including presenting witnesses on his behalf. No time limit will be imposed on the petitioner.
 - iii) The Chairman will then open the floor to public comments or questions. Based on nature of the hearing or number of those in attendance, the Chairman may allow comments freely or direct an orderly approach through any means that expands the ability of all who are interested in expressing their opinion or asking questions.
 - iv) Comments Out of Order. The Chairman shall rule out of order: any irrelevant remarks, which are personal about another's race, religion, sex, physical condition, ethnic background, beliefs, or similar topics; profanity; or any other remarks which are not pertinent to the petition.
 - v) Rebuttal. Anyone may ask the Chairman questions on presentations or information given at this hearing. The Chairman will seek an answer to this question. No discussion shall take place between any two or more people except between the Chairman and the individual who has the floor.
 - vi) Close the public hearing. At this point all public participation on the issue ends.
 - vii) Members of the Planning Commission may question or request clarification with any interested party on any matter related to the case.

H. Business section of case

- 1) Discussion: Commissioners review facts based on all information presented. Discussion continues until a member is confident enough to propose a motion that includes a “finding of fact” with those conclusions that are reached. The findings of fact, at a minimum shall answer the following questions as they may pertain to the petition:
 - i) What, if any, identifiable conditions related to the petition have changed which justify the petitioned change in zoning?
 - ii) What are the precedents and the possible effects of such precedent which might result from the approval or denial of the petition?
 - iii) What is the impact of the amendment on the ability of the City and other agencies to provide adequate public services and facilities that might reasonably be required in the future if the petition is approved?
 - iv) Does the petitioned zoning change adversely affect the environmental conditions or value of the surrounding property?
 - v) Does the petitioned zoning change generally comply with adopted Future Master Plan for the City of Owosso?
- 2) Motion is proposed on the findings of facts. (Recess option – see Section 5.8) Support of the motion is required.
- 3) Discussion on the motion.
- 4) Action on the motion.

I. Site plan reviews. The Planning Commission shall consider site plan reviews after all public hearings and associated actions on those hearings. If members of the public other than the applicant for the site plan review are in attendance, those persons may approach the Commission as provided for in the public hearing format. The Commission and Planning Director shall also follow their respective roles to maintain order during the meeting. The motion to pass on a site plan review must make a finding of conformance to all city ordinances and may attach conditions as provided for in the zoning ordinance. A site plan review may be postponed for cause without the necessity of public posting as required in a public hearing format.

J. Items of business. This section of the meeting shall consider all items unrelated to elections, rezoning petitions, and site plan reviews.

K. Commissioner/Citizen comments.

L. Adjournment.

Section 5.8 Recesses. The Members, through a motion and support may recess a public hearing or a decision on an action of a petition for the lack of sufficient information, insufficient time to consider all viewpoints on a petition, the necessity for a site visit, or elapsed time of the meeting (see Section 5.1). For a recess to be in order, the time, day, month, date, year and location to reconvene shall be stated as part of the action to recess. If a meeting and/or public hearing reconvenes over 36 hours after the action to recess, the reconvened meeting shall be posted at least 18 hours before the time of the reconvened meeting. Upon reconvening a roll call shall be taken as the first order of business.

ARTICLE VI. General Provisions

Section 6.1 Ethical Principles for Public Planning Officials: The following statement of ethics applies to the practices of Owosso public planning officials.

1. Serve the Public Interest. The primary obligation of planners and public planning officials is to serve the public interest.
2. Support Citizen Participation in Planning. Because the definition of the public interest is continuously modified, the planner and public planning official must recognize the right of citizens to influence planning decisions that affect their well being. They should advocate a forum for meaningful citizen participation and expression in the planning process and assist in the clarification of community goals, objectives, and policies in plan-making.
3. Recognize the Comprehensive and Long-range Nature of Planning Decisions. The planner and public planning official must recognize and have special concern for the comprehensive and long-range nature of planning decisions. The planner and official must balance and integrate physical (including historical, cultural, and natural), economic, and social characteristics of the community or area affected by those decisions. The planner and official must continuously gather and consider all relevant facts, alternatives, and means of accomplishing

them. The planner and official should explicitly evaluate all consequences before making a recommendation or decision.

4. Expand Choice and Opportunity for All Persons. The planner and public planning official must strive to expand choice and opportunity for all persons, recognize a special responsibility to plan for the needs of disadvantaged people, and urge changing policies, institutions, and decisions that restrict their choices and opportunities.
5. Facilitate Coordination Through the Planning Process. The planner and public planning official must facilitate coordination. The planning process should enable all those concerned with an issue to learn what other participants are doing, thus permitting coordination of activities and efforts and accommodation of interest. The planner and official must ensure that individuals and public and private agencies possibly affected by a prospective planning decision receive adequate information far enough in advance of the decision.
6. Avoid Conflict of Interest. To avoid conflict of interest and even the appearance of impropriety, the public planning official who may receive some private benefit from a public planning decision must not participate in that decision. The private benefit may be direct or indirect, create a material personal gain, or provide an advantage to relations, friends, groups, or associations that hold a significant share of the official's loyalty. An official with a conflict of interest must make that interest public, abstain from voting on the matter, and leave any chamber in which such deliberations are to take place. The official must not discuss the matter privately with any other official voting on the matter.
7. Render Thorough and Diligent Planning Service. The planner and public planning official must render thorough and diligent planning service. Should the planner or official believe s/he can no longer render such service in a thorough and diligent manner, s/he should resign from the position. If the official has not sufficiently reviewed relevant facts and advice affecting a public planning decision, the official must not participate in that decision.
8. Not Seek or Offer Favors. The public sector planner and public planning official must seek no favor. The planner and official must not directly or indirectly solicit any gift or accept or receive any gift (whether in money, services, loans, travel, entertainment, hospitality, promises, or in some other form) under circumstances in which it could be reasonably inferred that the gift was intended or could reasonably be of their duties or was intended as a reward for any recommendation or decision on their part.
9. Not Disclose or Improperly Use Confidential Information for Financial Gain. The planner and public planning official must not disclose or improperly use confidential information for financial gain. The planner and official must not disclose to others confidential information acquired in the course of their duties or use it to further a personal interest. Exceptions to this requirement of non-disclosure may be made only when (a) required by process of law, or (b) required to prevent a clear violation of law, or (c) required to prevent substantial injury to the public. Disclosure pursuant to (b) and (c) must not be made until after the planner or official has verified the facts and issues involved, has exhausted efforts to obtain reconsideration of the matter and has sought separate opinions on the issue from other planners or officials.
10. Ensure Access to Public Planning Reports and Studies on an Equal Basis. The public planning official must ensure that reports and records of the public planning body are open equally to all members of the public. All non-confidential information available to the official must be made available in the same form to the public in a timely manner at reasonable or no cost.
11. Ensure Full Disclosure at Public Hearings. The public planning official must ensure that the presentation of information on behalf of any party to a planning question occurs only at the scheduled public hearing on the question, not in private, unofficially, or with other interested parties absent. The official must make partisan information regarding the question received in the mail or by telephone or other communication part of the public record.
12. Maintain Public Confidence. The public planning official must conduct himself/herself publicly so as to maintain public confidence in the public planning body, the official's unit of government, and the official's performance of the public trust.
13. Respect Professional Codes of Ethics and Conduct. The planner and public planning official must respect the professional codes of ethics and conduct established by the American Institute of Certified Planners (AICP) Commission

and by several professions related to the practice of planning. Professional codes commonly establish standards of professional conduct and include provisions that protect the integrity of professional judgment and describe and professional's responsibility to the public, clients, employers, and colleagues.

ARTICLE VII. Adoption and Amendments

Section 7.1 These Bylaws are to be adopted by a simple majority of a quorum of the Commission at a regularly scheduled meeting of the Commission. The proposed Bylaws must be presented to the full membership at least five (5) days prior to the meeting when adoption is scheduled on the agenda. Amendments of the original Bylaws may take place at the meeting(s) of their original adoption; thereafter amendments must follow the procedures outlined in Section 7.2 herein.

Section 7.2 These Bylaws must be amended by a majority affirmative vote of the quorum of Commissioners present at a regular or special meeting of the Commission. Proposed amendments must be mailed to all Commission members to be delivered at their address not later than five (5) days before the meeting of the Commission.

Motion supported by Councilperson Cook.

Roll Call Vote.

AYES: Councilpersons Cook, Eveleth, Erfourth, Mayor Pro-Tem Popovitch, Councilpersons Martenis, Forster, and Mayor Frederick.

NAYS: None.

WATER DISTRICT AGREEMENT

Utilities Director Gary M. Burk introduced the delegation from Owosso Charter Township including Township Supervisor Danny Miller, Trustees Diane Krajcovic, and Gary Schultz as well as former State Representative Dr. Richard Ball.

The Council thanked everyone involved in the effort over the years and indicated they hoped this was the first of many cooperative efforts.

Motion by Councilperson Erfourth to approve the water district agreement with Owosso Charter Township as follows:

RESOLUTION NO. 22-2011

**AUTHORIZING THE EXECUTION OF
AN INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF OWOSSO AND OWOSSO CHARTER TOWNSHIP**

WHEREAS, the city of Owosso owns and operates a water treatment and distribution system;

WHEREAS, Owosso Charter Township wishes to obtain water from the city of Owosso; and

WHEREAS, an agreement has been prepared for the city of Owosso to provide water to the township of Owosso;

NOW THEREFORE BE IT RESOLVED by the city council of the city of Owosso, Shiawassee County, Michigan that:

FIRST: the city of Owosso has heretofore determined that it is advisable, necessary and in the public interest to enter into an intergovernmental agreement with Owosso Charter Township.

SECOND: the mayor, city manager and other city officials are instructed and authorized to execute for and on behalf of the city of Owosso an agreement substantially in the form the attached Exhibit, Water Agreement.

THIRD: the city clerk is authorized and directed to attest to the signature of the mayor, city manager and other city officials on said agreement and retain in the city clerk's office a fully executed original of said agreement for public inspection.

WATER AGREEMENT

This agreement made this _____ day of _____, A.D., 2011, by and between the City of Owosso, a municipal corporation organized under the laws of the State of Michigan, party

of the first part hereinafter called "City"; and Owosso Charter Township, hereinafter called "Township", a Public Body Corporate organized under the enabling laws of the State of Michigan; party of the second part.

Witnesseth:

Whereas, City maintains and operates a water supply system, and is authorized by law to make the facilities and services of said water system available to other legal entities; and

Whereas, Township has the authority to contract with City for the purpose of securing extensions of water mains throughout adjacent portions of the Township and to provide water service by the continued operation of such mains by City; and

Whereas, it is necessary for the public health, welfare, and safety and desirable to provide for water supply for portions of Township; and

Whereas, City and Township are authorized by P.A. 35 of 1951, as amended, and P.A. 34 of 1917, as amended, to enter into contracts for the provision of municipal services, including water supply and transmission;

Now, therefore, in consideration of the premises and the mutual undertakings of the parties hereto, it is agreed:

1. City agrees to sell and deliver water to customers in the Township that are served by the Township wastewater collection system subject to conditions stated herein.
2. Township shall be responsible for providing information to the City relative to the proposed Township service area as required to meet the State of Michigan rules and regulations for General Plan and Reliability Study requirements for community water supplies, including 5 and 20 year planning projections for service area extensions and water demands. City shall review the Township provided information and advise Township relative to availability of water system capacity to meet said projected demands. Under this agreement the Township is not contracting for any defined portion of the City's available water system capacity and the City is not guaranteeing the adequacy of its water system capacity to meet future demands in the Township. If available water system capacity is not adequate to meet future projected demands, the parties agree to negotiate in good faith to address such capacity limitations. The 2003 Project Plan by Prein and Newhof provides the baseline service area projections for the Township. Township agrees to review and submit updates as appropriate to the service area projections at least once every five years following the date of this agreement.
3. Township agrees to construct, at no capital expense to City, the water distribution system and appurtenances, including storage and replacement of existing water lines and appurtenances, as needed within the Township service area. Township shall own the water distribution system and appurtenances it constructs or replaces in the Township. Certain water mains, facilities and appurtenances, as listed under Attachment A to this agreement, though in the Township, are integral to the City water system and will remain under the control and ownership of the City. That ownership includes responsibility for future replacement by the City water utility.
4. City and Township agree that the existing Township Industrial Park shall be part of the Township service area to be supplied water service by the City. City and Township will cooperate to provide a minimum 12 inch connection between the existing City water system and existing Township Industrial Park water system. Township agrees to pay the actual material costs for the connection and the City will provide the labor and equipment to install the connection. Township agrees to disconnect its wells and elevated storage tank from the water distribution system. Township shall be responsible for all costs associated with disconnection and abandonment of its well supply and storage facilities. City will provide labor and water for flushing and testing the existing Township distribution system and customer lines for the transition to City water supply. City shall inspect all existing customer meters and will be responsible for the cost of any necessary meter change out or replacement. Township agrees to provide City with all available information on its existing water system relative to size and location of existing water lines, valves, service connections and shut-off valves, and meters.
5. City, to the best of its ability, shall deliver water to customers within the Township service area at such rates of flow as may be required to meet ordinary needs, and as may be required to meet peak hour and fire flow demands to the same extent that peak hour and fire flow demands are met within the boundaries of the City and as may be provided through the Township water distribution system.
6. After the distribution system, or portion thereof, has been installed and accepted by Township and City, City will operate said system, furnishing water to the water customer within the Township service area in the same manner used in furnishing water to the water customers within the city boundaries except as hereinafter provided. All water furnished shall be measured by meters located on the premises of each customer in the same manner as is required by the Code of Ordinances and rules and regulations of City for measurement of water used by water

customers in the city. Water meters shall be furnished, maintained and replaced by City. The initial meter cost shall be included in the customer connection charge.

7. City agrees as part of its operation to keep the water distribution system in said districts in good repair, including maintenance of fire hydrants, valves, mains, other appurtenances and the repair of leaks and items of similar nature usually associated with the routine maintenance and operation of a public water supply system; except, that Township shall reimburse City for the costs of all changes in or damages to the distribution system and service connections as may be incurred by highway or street redevelopment or grading programs, sewer constructions, or other public works or public utility activities other than damage caused by the activities of City or its contractors.

8. Township agrees to adopt ordinances conforming to City's water utility ordinances to enforce utility operation within the districts in compliance with City's Water Ordinances, Water Bond Ordinances and sound public health and engineering practice.

9. Township agrees that City shall have full access to all of its streets, rights-of-way and utility easements within and without said water service area for the purposes of repairs and maintenance to the water system. City shall give reasonable notice to Township for any projects in which streets will be closed for repairs to water system.

10. Township may extend or expand the water distribution system within the Township service area at the expense of Township or through applicable special assessment procedures established by law. All water main sizes and arrangements, valve locations, and reserve storage shall be established by mutual consent of the parties, subject however, to a master plan meeting good engineering precepts for equalization of supply and pressure throughout the total distribution system.

11. All specifications, construction methods and installations of water mains, taps, service connectors, fittings, meters, and other appurtenances of the water distribution system in the Township service area shall comply with all City standards, specifications, and rules and regulations from time to time in effect for the distribution system in the city; and all rules and regulations of City pertaining to the control of, or restriction of, the use of water taken from City's water system shall apply in the Township service area; and all rules of the Michigan State Plumbing Code and Michigan Department of Environmental Quality pertaining to water systems shall apply in the Township service area.

12. Township agrees that no extensions or additions of water mains shall be made and no pumping, regulating, storage, or other facilities shall be installed in the water system in the Township until clear and complete plans and specifications for such work shall have been submitted to and approved by City. Such approval shall not be unreasonably withheld but may be withheld if such extensions or additions might render the City unable to meet its obligations under the provisions of paragraph 5 above. When it appears that approval might be withheld, City agrees to notify Township and to meet and confer with Township officials to discuss the reasons for such action and to consider potential remedies.

13. It is understood and agreed that City shall have the right through its City Manager, or his appointed agent, to inspect all water pipes, taps, service connections, fittings, meters, and appurtenances, during installation, installed, or intended for use in the system, during the continuance of this contract, for the purpose of insuring a uniform standard of construction for all areas served by City's water supply system, and to avoid any damage to City's system as a whole, arising from inferior material or workmanship in the component parts.

14. Township shall carefully guard against all forms of contamination. If at any time contamination should occur, the area or areas affected shall immediately be shut off and isolated and remain so until such conditions shall have been abated and the water declared again safe and fit for human consumption by the properly constituted governmental health agencies having jurisdiction of the areas affected. Further, it is provided that if it appears that an area within the supply system of a district is contaminated and Township fails to timely act to isolate said contamination, then City shall have the right to shut off and terminate water service or isolate the same as City shall deem necessary for the protection of the general health, safety, and welfare of the public.

15. City expressly reserves the right to discontinue temporarily the supply of water to any of the pipes laid or to be laid by any district and to discontinue temporarily the entire water supply to the district whenever in the judgment of City it is necessary to do so to insure the public health, safety and welfare and/or to maintain or repair the water system. No claims for damages for such discontinuance shall be made by Township against City, its agents, servants or employees.

16. It is understood and agreed that Township will not, under any circumstances, permit water from any other source or supply to be introduced into a district's water system, nor any part thereof, to be mixed or mingled with the water from the water system of City, without prior written approval of City.

17. City will use reasonable diligence to provide and maintain regular uninterrupted service, but it does not guarantee uninterrupted service, and shall not be liable for damages caused by accident, repairs, or other causes.

18. This Agreement shall be in full force and effect for twenty (20) years from the date of the agreement; provided, however, that it may be extended by mutual agreement or it may be terminated as follows:

- A. By mutual agreement of both parties.
- B. After twenty (20) years, at the option of either party upon one year's prior written notice thereof to the other party, and then only with the consent and approval of the Michigan Department of Environmental Quality, provided such approval or consent is then required.
- C. At the option of either party for any breach of this Agreement continuing after sixty (60) days written notice to the breaching party demanding conformance.
- D. Upon the implementation of provisions of an agreement between City and Township pursuant to which City would provide water to Township on a wholesale basis.

Prior to termination of this Agreement, City and Township shall meet to discuss the manner in which water service to existing customers in Township is to be maintained.

19. It is hereby agreed that no failure or delay in performance shall be deemed to be a breach hereof when such failure or delay is occasioned by or due to any Act of God, Strike, Lockout, War, Riot, Epidemic, Explosion, Sabotage, Breakage, or Accident to Machinery or Lines of Pipe, the Binding Order of any Court or Governmental Authority, or any other cause whether of the kind herein enumerated or otherwise not within the control of the party against whom a breach is alleged, provided that no cause or contingency shall relieve the Township residents of their obligation to make payment for services rendered.

20. Township specifically agrees that the performance by City of all terms and conditions herein found shall be considered to be in lieu of any franchise fees or charges which the Township might otherwise levy or impose.

21. Rates to retail customers in the Township

The rates for water supplied by City shall be such as City may establish from time to time, it being mutually understood that such rates shall always be reasonable in relation to costs incurred by City for the supply of water. Retail water charges by City directly to customers in Township shall be two times the rates charged directly to customers in City.

22. Owosso Charter Township Water Reserve Fund

City shall quarterly transfer to Township, for deposit into a separate Township account entitled "Owosso Charter Township Water Reserve Fund", twenty-five percent (25%) of the revenue from the retail sale of water in the Township service area. This fund shall be used solely for making replacements and improvements to the distribution system in the Township service area, including extensions and provision of system storage. The need for replacements and improvements, and the priority and means of their accomplishment, shall be determined by Township after consideration of and response to any input from City. An annual report detailing expenditures from this fund shall be made by Township to City upon request of City. Records of water sales in Township shall be made available by City upon request of Township.

23. Collection of Water Service Charges

Water service charges to customers in the Township shall be collected by City. It is hereby agreed that City shall have the power to effect direct collection of the charges set forth herein, which remain due and unpaid more than 30 days, by any means permitted by law. The rates and charges as established herein shall constitute a lien on the respective property in the Township receiving water services of the same type and character as provided for water and sewer charges by the provisions of Sec. 21, Act 94, Public Acts of Michigan, 1933, as amended, and it is agreed that said lien may be enforced in the same manner that mechanic's liens are enforced under the provisions of the laws of the State of Michigan.

Any bad debt expense experienced by City in the sale of water to customers in Township, after customary collection methods other than creating a lien on the property have proven unsuccessful, may be deducted from the quarterly transfer of revenue to Township pursuant to paragraph 22. City will then cooperate with Township in establishing and enforcing liens for collection of said bad debt expense. Funds recovered through this collection method are to then be deposited in the Owosso Charter Township Water Reserve Fund.

24. Connection Charges

City and Township may each, from time to time, establish water service connection charges. Such water service connection charges shall be collected by City upon applications for connection to the water system. City will notify Township of accepted applications for new service connections from customers in the Township service area prior to beginning work

on such connections. Township connection charges billed and collected by City shall be transferred on a quarterly basis to Township. At the time of each transfer, City shall deliver to Township a report detailing the Township connection charge receipts, showing for each property address to which a water service connection has been made the amount of the Township connection charge collected.

25. Hydrant Service Charges

City shall annually invoice Township for fire hydrant service charges for each fire hydrant in the Township service area; not to include those in City right of ways or property, or those that are part of a customer's fire sprinkler system. City shall provide a list of hydrants, identified by location, in support of the annual invoicing. Township agrees to pay the invoiced costs within 30 days of invoicing. The charge is to cover routine hydrant maintenance costs, water used for hydrant and line flushing, fire fighting or training, and a portion of the overall water system capital costs attributed to meeting fire flow demands, but does not include hydrant depreciation or replacement costs. City and Township agree to work together to assure there is no unauthorized or wasteful use of water from hydrants in the Township service area. Township agrees to notify the City water plant operator by phone or via central dispatch when hydrants are operated for fire fighting purposes

At the effective date of this agreement the annual charge is \$144 per hydrant to be billed in March for the calendar year. Changes to this charge shall be in proportion to changes in the City demand charge for fire sprinkler service, except that no annual adjustment shall exceed an adjustment by the Consumer Price Index for the previous calendar year.

26. Amendments

This agreement may be amended from time to time by mutual consent of the parties. Such amendments may only be made in writing.

27. Dispute Resolution

If a dispute should arise regarding the meaning or application of the terms of this agreement, or if the parties are unable to reach agreement when the provisions of this agreement require it, City and Township agree to submit such matters to mediation by a Mediator that is approved by the Shiawassee County Circuit Court. If mediation fails, either party may seek its appropriate remedies in Shiawassee County Circuit Court.

28. Assignment

This agreement shall inure to the benefit of and be binding upon the respective parties hereto, their successors and assigns.

29. Notice

Whenever this agreement requires the provision of written notice, that notice shall be deemed to have been given when a letter is sent via first class mail addressed to the following:

- | | |
|--|---|
| A. For Township:
Owosso Charter Township Supervisor
2998 W. M-21
Owosso, MI 48867 | B. For City:
Owosso City Manager
301 West Main Street
Owosso, MI 48867 |
|--|---|

Copies of such notices shall also be delivered to the respective Clerk for the party being notified.

30. Effective Date

This agreement shall be effective upon signing except that the implementation of Paragraph 22, providing for the quarterly transfer of 25% of the retail service revenue to the Township, shall commence with the quarter following the connection of the City and Township water systems pursuant to paragraph 4 above.

ATTACHMENT A

Certain water mains and facilities, though in the Township, are integral to the City water transmission and distribution system and will remain under the control and ownership of the City. That ownership includes responsibility for future replacement by the City water utility. Such existing lines and facilities include:

- the 600,000 gallon West Side elevated storage tank and related piping off Dowling Drive
- 16 and 12 inch water main from Delaney on Dowling Drive as extended to S. Chestnut Street

- 12-inch water main on S. Delaney as required to serve 210 S. Delaney (Woodard, Inc.)
- 12-inch water main on S- M52 south of South Street to Collamer (Hopkins Lake) Park
- 16-inch water main between Palmer Street and Cook Rd. on the south side of Owosso
- 12-inch water main on N. Chipman between North St. and Chipman Lane
- 12-inch water main on Chipman Lane
- 12-inch water main on Chippewa Trail, on N. Shiawassee from Chippewa Trail to the north of 1464 N M-52 (Kiwanis Village), along the north border of Kiwanis Village to N. Water St., and on North Water Street

In addition water mains on boundary streets between the City and Township shall remain under the control and replacement responsibility of the City water utility.

Motion supported by Councilperson Eveleth.

Roll Call Vote.

AYES: Councilpersons Martenis, Eveleth, Cook, Mayor Pro-Tem Popovitch, Councilpersons Erfourth, Forster, and Mayor Frederick.

NAYS: None.

COMMUNICATIONS

Ronald G. Baker, Utilities, Engineering, & Public Services Director. Street Condition Report.

Gary Palmer, Building Official. December 2010 Building Department Report.

Gary Palmer, Building Official. December 2010 Code Violations Report.

Michael T. Compeau, Public Safety Director. December 2010 Police Department Report.

Michael T. Compeau, Public Safety Director. December 2010 Fire Department Report.

Parks & Recreation Commission. Minutes of Meeting of December 20, 2010.

CITIZEN COMMENTS AND QUESTIONS

Former State Representative Dr. Richard Ball congratulated Council for helping the water agreement with Owosso Charter Township come to fruition. He said it was a priority for him during his term and seeing it completed was rewarding. He also thanked George Hoddy for all of his work over the years to encourage regional cooperation.

Mayor Frederick thanked Representative Ball for his years of service to the community on the occasion of the end of his term with the State House of Representatives.

Kay Spitler, 115 West Washington Street, Vernon, commented that farmers market vendors rely on customers and are not self serving in their actions.

Justin Horvath, President of the SEDP, congratulated everyone involved with the Owosso Charter Township water agreement saying it would greatly support economic development efforts in the area.

Former Mayor Michael Bruff indicated that many, many people had been involved in the effort to reach a water agreement over the years but none had worked harder than City Utilities Director Gary Burk.

Burton Fox, 216 East Oliver Street, stated the water agreement was encouraging as the Planning Commission starts the master planning process saying the City will need the cooperation and support of the other local communities to ensure they develop the best plan possible.

Mayor Pro-Tem Popovitch indicated she would like regular updates from the Council subcommittees. She also noted that she is organizing the Taste of Shiawassee event to benefit the local Red Cross chapter. Tickets are available at local eateries and the Red Cross.

Mayor Frederick encouraged Council to bring forward any issues they would like to discuss at the 5th Monday meeting on the 31st.

Councilperson Martenis gave an update from the latest SATA meeting noting they had instituted a pay freeze.

Councilperson Cook encouraged the public to attend the Chamber Awards Banquet.

NEXT MEETING

Monday, January 31, 2011 – 5th Monday

Monday, February 7, 2011 – Regular

BOARDS AND COMMISSIONS OPENINGS

Cable Access Advisory Commission, term expires 06-30-2011

ADJOURNMENT

Motion by Councilperson Eveleth for adjournment at 8:38 p.m.

Motion supported by Councilperson Erfourth and concurred in by unanimous vote.

Benjamin R. Frederick, Mayor

Amy K. Kirkland, City Clerk