

OSAWATOMIE CITY COUNCIL
AGENDA
March 28, 2019
6:30 p.m., **City Hall Conference Room**

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. March 28th Agenda
 - B. Special Event Permit - TriKo
6. Comments from the Public
 - Citizen participation will be limited to 5 minutes. Stand & be recognized by the Mayor.*
7. Presentations & Proclamations
8. Public Hearings
9. Unfinished Business
 - A. Request to Stop Condemnation – 409 5th Street
10. New Business
 - A. Appointments – Planning Commission
 - B. Consent Agreement with KDHE
11. Council Report
12. Mayor's Report
13. City Manager & Staff Reports
14. Executive Sessions
15. Other Discussion/Motions
16. Adjourn

NEXT REGULAR MEETING – April 11, 2019



City of Osawatomie
 439 Main Street; P.O. Box 37
 Osawatomie, KS 66064
 (913) 755-2146

SPECIAL EVENTS PERMIT APPLICATION

Department Use Only
Date Filed: _____
Event Deposit
Date Paid: _____
\$50 Permit Fee
Date Paid: _____
\$25 State Permit
Date Paid: _____

1. NAME OF APPLICANT AND/OR ORGANIZATION: <i>Tri-Ko, Inc.</i>	
2. CONTACT PHONE # AND EMAIL (OPTIONAL): <i>913-755-3025</i>	

3. TYPE OF SPECIAL EVENT APPLICANT IS APPLYING FOR:
Food Truck

4. MAILING ADDRESS OF APPLICANT/ORGANIZATION: <i>301 1st Street Osawatomie, KS 66064</i>	5. ADDRESS/LOCATION OF SPECIAL EVENT: <i>Same address</i>
---	--

6. DATE(S) AND TIME(S) FOR PERMIT, INCLUDING SET UP AND TEAR DOWN:
04/15/19 - 9:00 AM - 3:00 PM

7. ENTRY TO EVENT: FEE YES ___ NO <input checked="" type="checkbox"/> PUBLIC <input checked="" type="checkbox"/> OR PRIVATE ___	8. STREET CLOSURE: YES ___ NO <input checked="" type="checkbox"/> IF YES, TIME OF CLOSURE REQUIRED: _____	9. # OF EXPECTED ATTENDING: <i>100+</i>
--	--	---

10. WILL ALCOHOL OR CMB FOR PERSONAL CONSUMPTION BE ALLOWED AT THE EVENT? YES ___ NO
 WILL CMB BE SOLD AT THE EVENT? YES ___ NO
 WILL THERE BE AN ENTRY FEE TO THE AREA WHERE CMB IS PROVIDED BY A THRID PARTY? YES ___ NO
 IF YES TO ANY OF THE ABOVE, APPLICANT DATE OF BIRTH IS REQUIRED _____

11. IS THERE LIABILITY INSURANCE COVERAGE FOR THE EVENT: YES NO ___
 IF YES, NAME OF INSURANCE COMPANY, AGENT AND AMOUNT OF COVERAGE: *Philadelphia Insurance Companies \$1,000,000.00*

STATEMENT OF APPLICANT

I HAVE REVIEWED THIS APPLICION COMPLETELY AND EVERYTHING CONTAINED HEREIN IS TRUE AND CORRECT. I AGREE TO HOLD THE CITY OF OSAWATOMIE HARMLESS FROM AND AGAINST ANY LOSS, COST OR DAMAGE OF ANY NATURE ARISING OUT OF ANY ACTION OR CLAIM AGAINST THE CITY OF OSAWATOMIE OR ITS EMPLOYEES, IN CONNECTION WITH THE EVENT. I ACKNOWLEDGE THAT I HAVE RECEIVED A COPY OF ALL ORDINANCES AND ATTACHMENTS AND I FULLY UNDERSTAND THAT I WILL BE HELD RESPONSIBLE FOR ANY VIOLATIONS OF STATE LAWS, CITY OF OSAWATOMIE ORDINANCES, AND ANY RESTRICTIONS OR REQUIREMENTS ASSOCIATED WITH THIS PERMIT AT THE LOCATION AND TIME SPECIFIED ON THIS PERMIT.

SIGNATURE [REDACTED] DATE *03/31/2019*

PERMIT APPLICATION: APPROVED _____ DENIED _____
 DECISION BY: _____ DATE OF DECISION: _____

COMMENTS: _____



TRI-KO-INC

MSAMORA

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/20/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

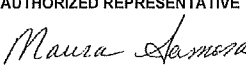
PRODUCER NDB - Independence 304 North Penn P O Box 547 Independence, KS 67301	CONTACT NAME: Maura Samora
	PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____
	E-MAIL ADDRESS: MAURA@NDB-INSURANCE.COM
	INSURER(S) AFFORDING COVERAGE NAIC #
	INSURER A : PHILADELPHIA INSURANCE COMPANIES 18058
INSURED Tri-Ko Inc. 301 First St. Osawatomie, KS 66064	INSURER B : Accident Fund
	INSURER C :
	INSURER D :
	INSURER E :
	INSURER F :

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			PHPK1923381	1/1/2019	1/1/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 1,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 ABUSE SUBLIMIT \$ 500,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			PHPK1923381	1/1/2019	1/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			PHUB659707	1/1/2019	1/1/2020	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	2000022979	1/1/2019	1/1/2020	PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER City of Osawatomie 439 Main St. Osawatomie, KS 66064	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
---	--

CITY OF OSAWATOMIE



STAFF AGENDA MEMORANDUM

DATE OF MEETING: March 28, 2019

AGENDA ITEM: **Planning and Zoning Board Members**

PRESENTER: Ed Beaudry, City Building Official

ISSUE SUMMARY: We need to officially reappoint members to the Planning Commission/Board of Zoning Appeals. The terms of three of our members have expired, some expiring almost over 2 years ago. We currently have the following membership, as members retain their position until they are replaced or officially resign. After speaking to Mike Gorman and Jim Mitzner, they would both like to be replaced. We received applications from the following individuals: Dale Samuels, Ted Hunter, Stewart Kasper. We also asked Tammy Filipin to consider her application for the Council seat as an application for the Planning Commission.

PLANNING COMMISSION/BOARD OF ZONING APPEALS

3-year term, 5 members

K.S.A. 12-7 41 et seq., City Code 16-101

<u>Name</u>	<u>Appointed</u>	<u>Term Ends</u>
Brian King	02/22/2017	12/31/2020
Jim Mitzner	02/09/2012*	12/31/2018
Mike Gorman	12/09/2010*	12/31/2016
Will Cutburth	03/26/2015*	12/31/2021
John Wastlund	3/01/2016	12/31/2019

* *reappointed*

COUNCIL ACTION NEEDED: Review recommended appointments.

STAFF RECOMMENDATION TO COUNCIL: With four very good applicants, staff recommends the following 2 appointments. **(1) Tammy Filipin to a term ending on 12/31/2021** and **(2) Dale Samuels to a term ending on 12/31/2020**. While we don't normally make recommendations, in this case we would like to at least provide some direction. We have been recruiting for a female member for several years, so we are happy to have a willing candidate and potential member. We would also recommend Dale Samuels because of his ability to bring an outside perspective to the planning commission.

Public Service Application

City of Osawatomie, KS

(one application per committee)

Name: Dale Samuels Maiden Name: _____
Address: 106 Rohrer Heights * SSN: [REDACTED]
Mailing Address (if different): _____ * DOB: [REDACTED]
City, State, Zip: Osawatomie KS Home Phone: [REDACTED]
Cell: [REDACTED] Work: _____ E-Mail: [REDACTED]
Place of Employment: Grace Community Church Position: Associate Pastor
Product or services rendered by employer: Religion
Brief description of job duties/responsibilities: Church planting pastor in residence

Spouse's place of employment: Trojan Elementary Position: Principal
Product or Service rendered by spouse's employer: Education

Committee, Board, Commission, Task Force or other position to which you wish to be appointed:
Planning and Zoning Committee

Why do you wish to serve in this position? Opportunity to serve and impact the community in which I live and want to be a part of Osawatomie

Have you served on any other board, committee, commission or in an elected position with the City? If yes, please state your experience as a member: No -

Do you or your spouse have any monetary interest, direct or indirect, in any pending or incomplete transaction or contract to which the City is, or is to be, a party? If yes, please explain: No

* It is the policy of the City of Osawatomie to conduct criminal background checks on all potential applicants for the PUBLIC SAFETY COMMITTEE. Appointment to the Committee is contingent on the results of such checks. In order to conduct the check, a birthdate and social security number are required. By signing below, I understand that the above information I have voluntarily provided is to be used solely for the purpose of the background check.

I do hereby affirm that I am a registered voter in the city of Osawatomie. I reside in Ward No. 2.

[REDACTED SIGNATURE]

3-8-2019
Date

PLEASE RETURN TO CITY CLERK

439 Main Street PO Box 37, Osawatomie, KS 66064 ozcity@osawatomieks.org

--- OFFICE USE ONLY ---		
Received: _____	Council Approval Date: _____	Letter of Approval: _____
Scanned: _____	Term Expiration Date: _____	Letter of Non-Approval: _____

5/15/2014

Public Service Application

City of Osawatomie, KS

(one application per committee)

Name: Tammy Filipin Maiden Name: Lyons
Address: 1138 4th St. * SSN: [REDACTED]
Mailing Address (if different): n/a * DOB: [REDACTED]
City, State, Zip: Osawatomie, KS 66064 Home Phone: n/a
Cell: [REDACTED] E-Mail: [REDACTED]
Place of Employment: Wal-mart DC Position: Human Resources
Product or services rendered by employer: Logistic Warehousing
Brief description of job duties/responsibilities: I am involved in the whole aspect of HR. Payroll, benefits, accountability, Hiring, and Finance.
Spouse's place of employment: Wal-mart DC Position: Shipping Errors Clerk
Product or Service rendered by spouse's employer: Logistic Warehousing

Committee, Board, Commission, Task Force or other position to which you wish to be appointed:

City Council

Why do you wish to serve in this position? This is an opportunity to learn more about how our city is ran and be a part of that process. I have a desire to invest in the growth and change our community.

Have you served on any other board, committee, commission or in an elected position with the City? If yes, please state your experience as a member: Needs. I am currently on the Library Board.

Do you or your spouse have any monetary interest, direct or indirect, in any pending or incomplete transaction or contract to which the City is, or is to be, a party? If yes, please explain: n/a

* It is the policy of the City of Osawatomie to conduct criminal background checks on all potential applicants for the PUBLIC SAFETY COMMITTEE. Appointment to the Committee is contingent on the results of such checks. In order to conduct the check, a birthdate and social security number are required. By signing below, I understand that the above information I have voluntarily provided is to be used solely for the purpose of the background check.

I do hereby affirm that I am currently a registered voter in the city of Osawatomie. I reside in Ward No. 4.

[REDACTED]

Signature

2/19/19

Date

PLEASE RETURN TO CITY CLERK

439 Main Street

PO Box 37, Osawatomie, KS 66064

ozcity@osawatomi.ks.org

Received: <u>02-19-19</u>	— OFFICE USE ONLY —	
Scanned: _____	Council Approval Date: _____	Letter of Approval: _____
	Term Expiration Date: _____	Letter of Non-Approval: _____

5/15/2014

Public Service Application

City of Osawatomie, KS

(one application per committee)

Name: Stewart Kasper Maiden Name: _____
Address: 520 Chestnut St * SSN: [REDACTED]
Mailing Address (if different): _____ * DOB: [REDACTED]
City, State, Zip: Osawatomie KS 66064 Home Phone: _____
Cell: [REDACTED] Work: _____ E-Mail: [REDACTED]
Place of Employment: Miami Co Wp 2 Position: Water Operator
Product or services rendered by employer: Drink Drinking Water
Brief description of job duties/responsibilities: Provide safe clean drinking water

Spouse's place of employment: Spring Hill Care & Rehab Position: CNA
Product or Service rendered by spouse's employer: Care for elderly

Committee, Board, Commission, Task Force or other position to which you wish to be appointed:
Planning & Zoning

Why do you wish to serve in this position? To serve my community

Have you served on any other board, committee, commission or in an elected position with the City? If yes, please state your experience as a member: No

Do you or your spouse have any monetary interest, direct or indirect, in any pending or incomplete transaction or contract to which the City is, or is to be, a party? If yes, please explain: No

* It is the policy of the City of Osawatomie to conduct criminal background checks on all potential applicants for the PUBLIC SAFETY COMMITTEE. Appointment to the Committee is contingent on the results of such checks. In order to conduct the check, a birthdate and social security number are required. By signing below, I understand that the above information I have voluntarily provided is to be used solely for the purpose of the background check.

I do hereby affirm that I am currently a registered voter in the city of Osawatomie. I reside in Ward No. 4.

[REDACTED] Signature _____ Date 3-11-19

PLEASE RETURN TO CITY CLERK

439 Main Street

PO Box 37, Osawatomie, KS 66064

ozcity@osawatomieks.org

OFFICE USE ONLY		
Received: _____	Council Approval Date: _____	Letter of Approval: _____
Scanned: _____	Term Expiration Date: _____	Letter of Non- Approval: _____

5/15/2014

Public Service Application

City of Osawatomie, KS

(one application per committee)

Name: Ted L. Hunter Maiden Name: _____
Address: 236 Brown Ave * SSN: _____
Mailing Address (if different): - * DOB: _____
City, State, Zip: Osawatomie, KI 66064 Home Phone: 913-755-4747
Cell: _____ Work: - E-Mail: _____
Place of Employment: Retired minister Position: Manager History Museum
Product or services rendered by employer: ASST. Funeral Director, Edly - Birchard F. H.*
Brief description of job duties/responsibilities: * Cosmetics/dressing/ costuming, etc.
Great visitors at museum, record documents, etc
Spouse's place of employment: Retired Position: House wife
Product or Service rendered by spouse's employer: _____

Committee, Board, Commission, Task Force or other position to which you wish to be appointed:

Planning & Zoning Commission

Why do you wish to serve in this position? To help promote orderly growth, to follow the zoning rules, promote fair and accurate growth & development. A long time resident of Osawatomie.

Have you served on any other board, committee, commission or in an elected position with the City? If yes, please state your experience as a member: 13 years on City Council, served on Tourism Committee, and Economic Development Committee.

Do you or your spouse have any monetary interest, direct or indirect, in any pending or incomplete transaction or contract to which the City is, or is to be, a party? If yes, please explain: NO

* It is the policy of the City of Osawatomie to conduct criminal background checks on all potential applicants for the PUBLIC SAFETY COMMITTEE. Appointment to the Committee is contingent on the results of such checks. In order to conduct the check, a birthdate and social security number are required. By signing below, I understand that the above information I have voluntarily provided is to be used solely for the purpose of the background check.

I do hereby affirm that I am currently a registered voter in the city of Osawatomie. I reside in Ward No. _____

Signature

Date

Feb 21, 2019

PLEASE RETURN TO CITY CLERK

439 Main Street

PO Box 37, Osawatomie, KS 66064

cityclerk@osawatomieks.org

--- OFFICE USE ONLY ---		
Received: <u>02-21-19</u>	Council Approval Date: _____	Letter of Approval: _____
Scanned: _____	Term Expiration Date: _____	Letter of Non- Approval: _____

[G: COUNCIL\ADVISORY BOARDS\Public Service App.yyyy.mm.dd]

5/15/2014

CITY OF OSAWATOMIE



STAFF AGENDA MEMORANDUM

DATE OF MEETING: March 28, 2019

AGENDA ITEM: Consent Agreement with KDHE

PRESENTER: Blake Madden, Director of Engineering and Utilities

ISSUE SUMMARY: On December 10, 2018, I received notice that the City had failed to perform emissions testing on the generator engines at the 7th Street substation. Federal regulations require that once the engines are determined operational and used for electric production, the City has 180 days to demonstrate that the emissions from those engines are below applicable emissions standards. The engines, which were used for emergency generation on May 15, 2018, were required to be emissions tested with documentation submitted to KDHE no later than November 11, 2018.

Also on December 10, 2018, the City received email correspondence from KDHE outlining the City's options in remedying the failed compliance. The first option was to enter into a consent agreement with KDHE in which the City would concede that emissions testing had not been performed. The second option was to refute the findings of KDHE that emissions testing had not been completed and be issued an administrative order by KDHE. After consultation with the City Manager and City Attorney, the City preliminarily agreed to work toward a consent agreement. That agreement is included with this memorandum.

Emissions testing on the 7th Street substation engines has since been conducted. The testing was performed on March 13 and 14, 2019. Documentation of the testing will be submitted to KDHE in the near future.

The engines at the 9th Street substation were determined operational March 15, 2019. Documentation of the emissions testing for these engines must be submitted to KDHE no later than September 11, 2019. Emissions testing for these engines has been scheduled for April 15 and 16, 2019.

COUNCIL ACTION NEEDED: Review the consent agreement and determine whether the City should enter into the agreement.

STAFF RECOMMENDATION TO COUNCIL: Staff recommends executing the agreement.

Office of Legal Services
Curtis State Office Building
1000 SW Jackson St., Suite 560
Topeka, KS 66612-1368



Phone: 785-296-5334
Fax: 785-559-4272
www.kdheks.gov

Lee A. Norman, M.D., Acting Secretary

Laura Kelly, Governor

March 8, 2019

Don Cawby
City of Osawatomie Power Plant
PO Box 37
Osawatomie, KS 66064

RE: City of Osawatomie Power Plant
KDHE #18-E-24 BOA

Dear Mr. Cawby:

Enclosed please find the Consent Agreement and Final Order of the Secretary in the above referenced matter. If the document meets your approval, please sign and date on page 8 and return the document to me in the enclosed self-addressed envelope by April 8, 2019. After signature by the Secretary, a copy of the document will be returned to you for your administrative files.

If you have any questions or require any additional information, please do not hesitate to contact Kate Gleeson at 785-296-1607.

Sincerely,

A handwritten signature in cursive script that reads "Brenda L. Sloop".

Brenda L. Sloop
Office Manager

/bls
enclosure

e/att: Connie Ellis
Allyson Prue
Cindy Moon
Kate Gleeson

STATE OF KANSAS
BEFORE THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

IN THE MATTER OF:

City of Osawatomi Power Plant
P.O. Box 37
Osawatomi, Kansas 66064

Case No. 18-E-24 BOA

Source ID No. 1210001

CONSENT AGREEMENT AND FINAL ORDER OF THE SECRETARY

The Parties hereto are the Kansas Department of Health and Environment (“KDHE”) and City of Osawatomi Power Plant (“City of Osawatomi”) (“the Parties”). City of Osawatomi operates the 7th Street Substation which is subject to Kansas air quality permits and approvals, described below in the Findings of Fact.

KDHE has made Findings of Fact and Conclusions of Law that are set forth below, based on KDHE’s position that City of Osawatomi failed to conduct emission performance testing timely which constitutes violations of applicable laws and regulations.

The Parties have met and exchanged information on these disputed facts, and in the interests of conserving resources and avoiding litigation, have agreed that it is in the best interests of the Parties and the public health and environment to resolve this matter by agreement.

The Parties recognize, and the Secretary of KDHE (“Secretary”) by entering into this Consent Agreement and Final Order (“CAO”) finds that this CAO has been negotiated by the Parties in good faith and avoids litigation between the Parties and this CAO is fair, reasonable, and in the public interest.

The Secretary, having information that City of Osawatomi violated laws governing air quality and pollution control in Kansas, K.S.A. 65-3001, *et seq.*, (the “Kansas Air Quality Act” or “KAQA”) and regulations promulgated thereunder, deems it in the public interest to dispose of the matter by agreement and on an informal non-adjudicatory basis.

NOW, THEREFORE, before taking any testimony, without the adjudication or admission of any fact or law except as provided in the Jurisdiction section below, and with the consent of the Parties, this CAO is entered into this ____ day of _____, 2019, (“Date of the CAO”) by and between KDHE and City of Osawatomi. Upon the Secretary’s signature, it will become the Final Order in this case.

Upon execution of this CAO by the Secretary, City of Osawatomie voluntarily and knowingly waives any and all rights conferred upon it by the Kansas Administrative Procedure Act (“KAPA”), K.S.A. 77-501, *et seq.*, and voluntarily and knowingly waives the right to an appeal and review of this CAO and matters leading up to the execution of this CAO under the Kansas Judicial Review Act, K.S.A. 77-601, *et seq.* KAPA authorizes KDHE to enter into an informal settlement of this matter without the necessity of proceeding to a formal hearing, K.S.A. 77-505.

By signing this voluntary CAO, City of Osawatomie accepts the terms and conditions contained herein.

JURISDICTION

1. The KDHE is a duly authorized agency of the State of Kansas created by an act of the legislature. K.S.A. 75-5601, *et seq.*
2. The Secretary of the KDHE has general jurisdiction over matters involving the environment and the public health and safety of the people of Kansas, K.S.A. 65-101 *et seq.*, including general jurisdiction of matters involving air quality pursuant to the Kansas Air Quality Act, K.S.A. 65-3001, *et seq.*
3. City of Osawatomie is organized under Kansas law and registered to do business in the State of Kansas as a “municipal energy agency” under K.S.A 12-885, *et seq.*
4. The Secretary has authority and jurisdiction to issue and enforce this CAO. In any action by KDHE to enforce the terms of this CAO, City of Osawatomie agrees not to contest the authority or jurisdiction of the Secretary of KDHE to issue this CAO. The terms of this CAO shall be construed in accordance with the laws of the State of Kansas.

STATEMENT OF PURPOSE

5. In entering into this CAO it is the mutual objective of KDHE and City of Osawatomie (1) to resolve all claims against City of Osawatomie for all identified violations of the Kansas Air Quality Act, K.S.A. 65-3001, *et seq.*, and regulations adopted thereunder, addressed in this CAO; (2) to establish a schedule by which City of Osawatomie will achieve regulatory compliance; and (3) to assess an appropriate penalty for these violations cited in the CAO.

PARTIES BOUND

6. This CAO shall apply to and be binding upon the Parties, their agents, successors, and assigns upon all persons, contractors, and consultants acting under or for either the KDHE, City of Osawatomie or both.
7. The Parties agree to undertake all actions required of them by the terms and conditions of this CAO.

8. Notwithstanding the terms of any contract, City of Osawatomie is responsible for compliance with this CAO and for ensuring that its contractors and agents comply with this CAO.
9. The Parties agree that the Secretary has jurisdiction to enter into this CAO and further agree to venue in the 3rd Judicial District, Shawnee County, Kansas, for any action to enforce this CAO.
10. The activities conducted under this CAO are subject to approval by KDHE. City of Osawatomie shall provide to KDHE, at its request, all necessary information consistent with this CAO.
11. City of Osawatomie and the Secretary specifically and expressly agree and acknowledge that this CAO is entered into freely and voluntarily and for the purposes of settling and resolving all identified claims and allegations, and for the purpose of avoiding the additional costs, efforts and delay associated with administrative proceedings, and to effect a conclusion of these matters in the most expedient manner. City of Osawatomie has had an opportunity to read and review this CAO and fully understands the terms and conditions contained herein.

LIABILITY

12. Nothing in this CAO shall be construed as an admission of any fact or an acknowledgment of any liability by any party. Nothing herein shall be legally binding or have any effect on the position of the Parties on any matter that may be included in any other agreements negotiated between them. Neither the State of Kansas, nor any agency thereof shall be held out as a party of any contract entered into by City of Osawatomie in carrying out activities pursuant to this CAO.

FINDINGS OF FACT

13. City of Osawatomie operates the 7th Street Substation located in Osawatomie, Kansas. This facility operates under Source ID 1210001.
14. On December 29, 2016, KDHE issued an Air Emission Source Construction permit (C-13578) to City of Osawatomie for the installation of three Caterpillar 3516B DITA diesel compression ignition (CI) stationary reciprocating internal combustion engines manufactured in 2005, each rated at 2,848 BHP (2000 kW). Each engine is equipped with a DCL Internal DC65-16 catalytic converter. The engines are designated as EU-C4 (S/N GZS00608), EU-C5 (S/N GZS00610), and EU-C6 (S/N GZS00612).
15. The permit indicated that City of Osawatomie is subject to 40 CFR Part 63, Subpart ZZZZ (MACT ZZZZ). In accordance with MACT ZZZZ, the owner or operator of affected facilities and/or equipment is required to conduct an initial performance test to demonstrate compliance with the applicable emission standards within 180 days after the compliance date.

16. On December 4, 2018, KDHE conducted an inspection of the facility. During the inspection, it was discovered that the 7th Street Substation began operation on May 15, 2018. Performance testing, as required in MACT ZZZZ, was to be conducted no later than November 11, 2018; testing was not completed prior to this deadline and is considered late.
17. On December 10, 2018, KDHE spoke with City of Osawatomie to discuss the late test as well as options for returning to compliance.
18. On December 10, 2018, KDHE received correspondence from City of Osawatomie expressing its willingness to work through a consent agreement to resolve the violation.
19. Based on the violations, KDHE staff calculated a penalty in the amount of \$6,000 using standard KDHE procedures for assessing penalties.

CONCLUSIONS OF LAW

20. City of Osawatomie is a person within the meaning of K.S.A. 65-3002(j).
21. The Secretary of KDHE is authorized to issue orders for compliance with air quality statutes and regulations as set forth in K.S.A. 65-3011.
22. Pursuant to K.S.A. 65-3018, the Secretary is authorized to impose civil penalties for violations of any provisions of K.S.A. 65-3025.
23. Pursuant to K.S.A. 65-3025, it is unlawful for any person to violate any provision of an approval or permit issued and any rule or regulation promulgated under the Kansas Air Quality Act.
24. Based on the above Findings of Fact and Conclusions of Law, the Secretary finds that City of Osawatomie has violated K.A.R. 28-19-720 and K.S.A. 65-3025, which authorizes the imposition of a penalty not to exceed \$10,000 per violation per day and constitutes an actual and substantial economic deterrent for the violations set forth in the Findings of Fact.
25. Based on the Findings of Fact and Conclusions of Law and as an actual and substantial economic deterrent, the Secretary concludes a civil penalty of \$6,000 should be assessed against City of Osawatomie.
26. KDHE and City of Osawatomie hereby agree to final resolution of all penalties and actions pursuant to the Terms of Settlement that follow.

TERMS OF SETTLEMENT

27. The Secretary has agreed to take no further action administrative or civil against City of Osawatomie based on the violations cited herein, however, reserving the right to consider

the foregoing violations in assessing any future penalties, in return for strict compliance with the following conditions.

SCHEDULE OF COMPLIANCE

28. The following SCHEDULE OF COMPLIANCE is now agreed to and adopted by the parties. It is mutually agreed to and ordered that City of Osawatomie shall:
- A. Submit a performance test protocol to KDHE no later than 60 days prior to the performance test date;
 - B. Conduct a MACT ZZZZ performance test for EU-C4, EU-C5, and EU-C6 within 90 days of the date of service of this CAO; and
 - C. Submit the performance test report and the Notification of Compliance Status to KDHE no later than 60 days after completion of the test.

ASSESSMENT OF A CIVIL PENALTY

29. Pursuant to K.S.A. 65-3018 and K.S.A. 65-3025, KDHE hereby assesses a civil penalty in this matter as set forth below for the violation of K.A.R. 28-19-720 and K.S.A. 65-3025. Subject to the conditions that follow, City of Osawatomie understands and agrees to a total penalty of \$6,000 as an actual and substantial economic deterrent for the violations cited above. City of Osawatomie shall remit to KDHE a check or money order in the amount of \$6,000 within 30 days of the date of service of this CAO. The civil penalty payment shall be made payable to the Kansas Department of Health and Environment, and submitted to:

Kansas Department of Health and Environment
Office of Legal Services, Suite 560
1000 SW Jackson
Topeka, Kansas 66612-1371

30. Failure or refusal to comply with this CAO, or any portion thereof, shall subject City of Osawatomie to the imposition of further civil penalties and court action to enforce the terms of the CAO. City of Osawatomie reserves the right to contest such penalties.

BEST PROFESSIONAL JUDGMENT

31. The requirements of this CAO represent the best professional judgment of KDHE at this time based on the available information. If circumstances change significantly so that data indicates an immediate threat of danger to the public health or safety, or the environment, or a significantly different threat other than the alleged deficiencies addressed herein, then KDHE reserves the right to modify dates or requirements herein as it deems reasonably necessary and City of Osawatomie reserves the right to appeal any such modifications or additional requirements.

FORCE MAJEURE, EXCUSABLE DELAY, MODIFICATION

32. The following shall constitute the governing terms for force majeure, excusable delay and modification of the CAO.
- A. City of Osawatomie shall perform the requirements under this CAO within the time limits set forth herein unless; the performance is prevented or delayed solely by events, which constitute force majeure. For purposes of this CAO, force majeure is defined as any event beyond the control of City of Osawatomie that could not be overcome by due diligence and delays or prevents performance by a date required by this CAO. Such events do not include increased costs of performance or changed economic circumstances. Any delay caused in whole or in part by action or inaction by state authorities shall be considered force majeure and shall not be deemed a violation of any obligations required by this CAO.
 - B. City of Osawatomie shall have the burden of proving all claims of force majeure. Failure to comply by reason of force majeure shall not be construed as a violation of this CAO.
 - C. City of Osawatomie shall notify KDHE in writing within seven days after becoming aware of an event that City of Osawatomie knew, or should have known, constituted force majeure. Such notice shall estimate the anticipated length of delay, its cause, measures to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this section shall constitute a waiver of City of Osawatomie right to assert a force majeure claim and shall be grounds for KDHE to deny City of Osawatomie an extension of time.
 - D. Within seven days of the receipt of written notice from City of Osawatomie of a force majeure event, KDHE shall notify City of Osawatomie of the extent to which modifications to this CAO are necessary. In the event that KDHE and City of Osawatomie cannot agree that a force majeure event has occurred, or if there is no agreement on the length of the extension, the dispute shall be resolved as set forth in paragraph 33, herein.
 - E. Any modifications to any provision of this CAO shall not alter the schedule for performance or completion of other tasks required by this CAO unless specifically agreed to by the Parties in writing and incorporated into this CAO.
 - F. This CAO may be amended by mutual agreement of KDHE and City of Osawatomie. Such amendments shall be in writing, shall have as their effective date the date on which they are signed by both Parties and shall be incorporated into this CAO.

DISPUTE RESOLUTION

33. The Parties recognize that a dispute may arise between them regarding implementation of the action to be taken as herein set forth or other terms or provisions of this CAO.

- A. If such dispute arises, the Parties will endeavor to settle it by informal negotiations between themselves. If the Parties cannot resolve the issue informally within a reasonable period of time, either of the Parties may notify the other in writing stating its position with regard to the dispute and the reasons therefore. A party receiving such a notice of dispute will respond in writing within five (5) business days stating its position. KDHE or City of Osawatomie shall then have an additional five (5) business days to respond. If the Parties are still unable to reach an agreement, the matter shall be referred to the KDHE Director of Environment, who shall decide the matter and provide a written statement of his decision, which shall be incorporated into the CAO. The Parties agree that any such action shall be deemed a final action subject to judicial review under the Kansas Administrative Procedures Act and the Kansas Act for Judicial Review of Agency Actions.
- B. This dispute resolution procedure shall not preclude any party from having direct recourse to court if otherwise available by applicable law.

OTHER CLAIMS AND PARTIES

34. Nothing in this CAO shall constitute or be construed as a release for any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this CAO for any liability it may have arising out of or relating in any way to the subject violations alleged in this CAO.

EFFECTIVE DATE, TERMINATION

35. This CAO shall become effective when signed by the Secretary of the Department of Health and Environment.
36. This CAO will be terminated upon written notice by KDHE to City of Osawatomie that all provisions of the CAO have been completed. Such notice shall not be unreasonably withheld.

AUTHORIZATION OF SIGNATORIES TO EXECUTE THE CONSENT ORDER AND BIND THE PARTIES

37. The Parties hereto have affixed their signatures on the dates inserted below to acknowledge their agreement to this CAO. The signatories to this CAO certify that they are authorized to execute and legally bind the Parties they represent to this CAO.

IT IS THEREFORE ORDERED AND AGREED that this CAO, when signed by all the Parties hereto, shall become a Final Order of the Secretary of KDHE.

IT IS SO ORDERED.

Lee A. Norman, M.D.
Acting Secretary
Kansas Department of Health & Environment

Don Cawby
City Manager
City of Osawatomie

Date

Date

CERTIFICATE OF SERVICE

I do hereby certify that on this _____ day of _____, 2019, a true and correct copy of the foregoing CONSENT AGREEMENT AND FINAL ORDER was deposited in the United States mail, postage paid, and addressed to:

Don Cawby
City of Osawatomie Power Plant
P.O. Box 37
Osawatomie, Kansas 66064

KDHE Staff Member