



**** AGENDA ****

City Commission Study Session

Wednesday, May 18, 2022

CONFERENCE ROOM 1AB

516 Mechanic Street

Following the Commission Meeting

- Discuss Request to Purchase Carnegie Building.
- Discuss Updating the Floodplain Management Regulations.
- Discuss KDOT Grant for Runway Extension.
- Review Water Demand, Supply & rates Evaluation.
- Discuss HR Policy.

**If you need accommodations due to a disability to participate in this event, meeting, or activity, or alternative format of written materials contact Jeff Lynch, City of Emporia ADA Coordinator at least 48hours before the event at 620-343-4275 or jlynch@emporia-kansas.gov*

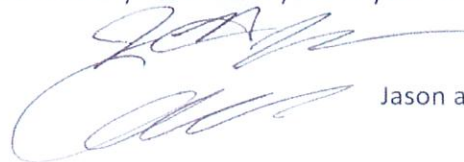
5/11/2022

Dear Mr. Cocking,

My wife Cassie and I would like to formally express our interest in the Carnegie building located at 118 E. 6th avenue, previously home of the Lyon County Historical Museum. Our plan for the building is to repurpose it as an entertainment venue for all ages by providing multiple group activities such as virtual reality activities, themed escape rooms, and areas for tabletop role playing games. As our children approached their teenage years we recognized the need for additional activities for the age group as well as young adults and preteens, activities that bring them together and give them common goals. We contacted Mainstreet several years ago (pre pandemic) and have worked with them as well as the Kansas Small Business Development Center at ESU to develop a solid business plan that is prepared to partner with other local entities to further develop entertainment opportunities, organizations such as EHS and ESU theatres troops as well as the technology department at the college. Our business model is based on a combination of similar venues we've researched and our own experiences in business which indicate a great potential.

To share a little about us, I have always lived in Lyon County and while my wife was raised in Burlington she has become a reliable supporter of just about every Emporia organization she can get her hands on. I have been employed by Wolf Creek Nuclear Operating Corporation for 14 years and my wife and I have owned and operated the Xan-A-Do Salon and Day Spa for 15 years. During this time we have invested significant time and money in the renovation and remodel of 3 different properties, the latest being a building we purchased in the 700 block of Commercial. We have 3 children ages 20 (Hunter), 13 (Atlyn), and 12 (Brynn) who attend the Emporia schools and are active in theatre, 4-H, traveling sports, and scouts. As our children grow in this community we recognize that activities that encompass a wide variety of age groups and interests are limited in the area and as we are involved in the community and often volunteer our time, efforts, and finances in every opportunity to make this community better and teach our children to help when they can.

We are interested in the Carnegie Library for several reasons including location, size and configuration, but probably the most important being the historical significance of the building the architecture from the early 1900 construction. We have looked at several properties in the downtown area and hadn't found anything suitable until we saw the building. We toured the property with our two youngest children in attendance and instantly fell in love, immediately agreeing it was the perfect location and fit for our needs. We hope to bring new and exciting opportunities to Emporia's entertainment industry. We thank you for your time and the opportunity to introduce ourselves.



Jason and Cassie Heffron

To: Mayor and City Commission
From: Justin Givens, Planning & Zoning Administrator
Re: Ordinance Amending and Updating the Floodplain Management Ordinance

BACKGROUND:

In 2017, the Kansas Department of Water Resources (DWR) and FEMA began the process of updating flood insurance studies and maps for Emporia and Lyon County, and in doing so identified new areas within the community that would be included in the floodplain and identified areas that would be removed from special flood hazard zones.

In August 2019, an open house was held and members of the public, including those whose property would be affected by inclusion into flood hazard areas, were invited to attend. Representative from the city, KWR, and FEMA provided information on the new Flood Insurance Studies and Flood Insurance Rate Maps.

The Emporia Planning Commission/Board of Zoning Appeals held the required public hearing on the adoption of new floodplain management regulations at their April 19, 2022 meeting. They voted unanimously to recommend approval of the regulations.

DISCUSSION:

Prior to the new maps becoming effective on June 15, 2022 the city is required to adopt updated and amended floodplain management regulations by ordinance. The new model ordinance, provided by DWR and FEMA, has changed to reflect the new effective date of our FIS and FIRMs as well as minor text changes within the body of the ordinance.

DWR provides a basic ordinance that can be modified to include stricter regulations. The city has previously adopted stricter regulations and the proposed ordinance continues that tradition.

The attached map shows areas that were included in the new flood insurance rate maps (red), areas that have been removed (green), and areas that remain the same (yellow).

OTHER CONSIDERATIONS:

If the city fails to adopt a new floodplain management ordinance, it risks suspension from the FEMA Flood Insurance program, and those residents whose property sits within the floodplain risk higher flood insurance premiums or no coverage at all.

ATTACHMENTS:

- Summary of Changes
- Map of Proposed Changes in Special Flood Hazard Areas
- Amended and Updated Floodplain Management Ordinance

Summary of Changes

- Updated References to FIS Effective Date of June 15, 2022, throughout.
- Removed Section 5.b. Storage, Material & Equipment to match model code.
 - Storage of other material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning.
- Revised and included additional regulations on Agricultural Structures Article 4 Section 7 to match model code:
 - Any permit granted for an agricultural structure shall be decided individually based on a case-by-case analysis of the building's unique circumstances.
 - In order to minimize flood damages during the 100-year flood and the threat to public health and safety, the following conditions shall be included for any permit issued for agricultural structures that are constructed at grade and wet-floodproofed:
 - A. All proposed agricultural structures shall demonstrate that no other alternate location outside of the special flood hazard area exists for the agricultural structure. Residential structures, such as farmhouses, cannot be considered agricultural structures.
 - B. Use of the structures must be limited to agricultural purposes in any special flood hazard area only as identified on the community's Flood Insurance Rate Map (FIRM).
 - C. For any new or substantially damaged agricultural structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with Article 4, Section A (4)(b) of this ordinance.
 - D. The agricultural structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structures in accordance with Article 4, Section A (4)(a) of this ordinance. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
 - E. Any mechanical, electrical, or other utility equipment must be located (1) one foot above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with Article 4, Section A (4)(d) of this ordinance. The elevation shall be certified by a licensed land surveyor or professional engineer.

- F. The agricultural structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of flood waters in accordance with Article 4, Section B(1)(c) of this ordinance.
 - G. The agricultural structures must comply with the floodplain management floodway encroachment provisions of Article 4, Section E(2) of this ordinance. No permits may be issued for agricultural structures within any designated floodway, if any increase in flood levels would result during the one percent annual chance flood event, also referred to as the 100-year flood.
 - H. Major equipment, machinery, or other contents must be protected from any flood damage.
 - I. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the agricultural structures.
 - J. Wet-floodproofing construction techniques must be reviewed and approved by the community. The community may request approval by a registered professional engineer or architect prior to the issuance of any floodplain development permit for construction. Cost for any required professional certification to be paid by the developer.
- Increased Accessory Structure Size from 400 to 600 square feet to match FEMA and DWR increased allowance in size.
- Revised and included additional language in Article 4. Section 8. Accessory Structures to match model code;
 - Any permit granted for an accessory structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Permits shall meet the following conditions.
 - In order to minimize flood damages during the one percent annual chance flood event, also referred to as the 100-year flood and the threat to public health and safety, the following conditions shall be required for any permit issued for accessory structures that are constructed at-grade and wet-floodproofed:
 - A. Use of the accessory structures must be solely for parking and limited storage purposes in any special flood hazard area as identified on the community's Flood Insurance Rate Map (FIRM).
 - B. For any new or substantially damaged accessory structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with Article 4, Section A (4)(b) of this ordinance.

- C. The accessory structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure in accordance with Article 4, Section A (4)(a) of this ordinance. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
 - D. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with Article 4, Section A (4)(d) of this ordinance.
 - E. The accessory structures must meet all NFIP opening requirements. The NFIP requires that enclosure or foundation walls, subject to the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of flood waters in accordance with Article 4, Section B (1)(c) of this ordinance.
 - F. The accessory structures must comply with the floodplain management floodway encroachment provisions of Article 4, Section E (2) of this ordinance. No permits may be issued for accessory structures within any designated floodway, if any increase in flood levels would result during the 100-year flood.
 - G. Equipment, machinery, or other contents must be protected from any flood damage.
 - H. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the accessory structures.
 - I. Wet-floodproofing construction techniques must be reviewed and approved by the community. The community may request approval by a registered professional engineer or architect prior to the issuance of any floodplain development permit for construction. Cost for any required professional certification to be paid by the developer.
- Section B. Specific Standards
 - Added Mechanical and HVAC equipment servicing building must be elevated or flood protected to same level as the lowest floor in Residential, Non Residential Construction Standards.

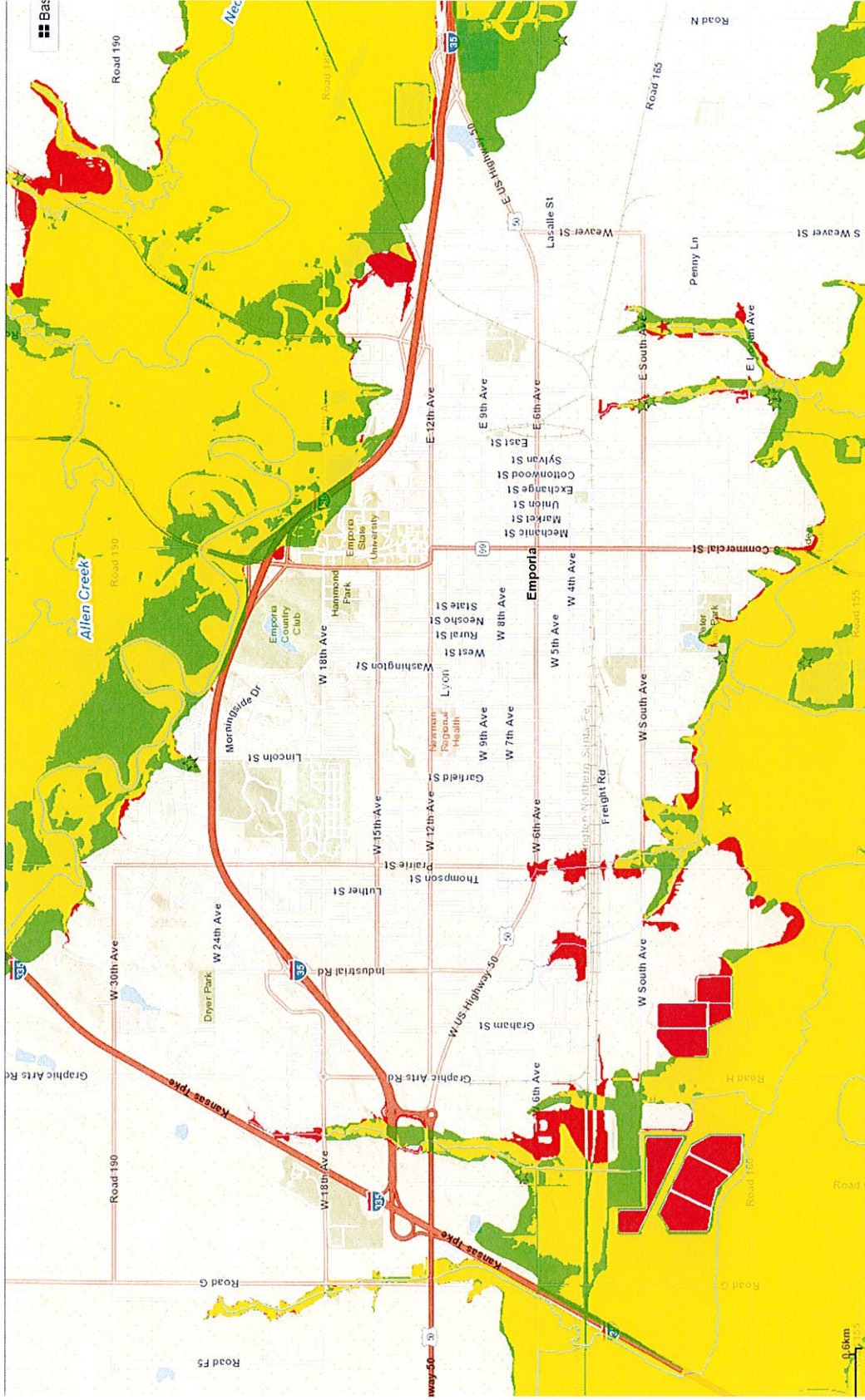
- Section C. Manufactured or Mobile Homes.
 - Added Mechanical and HVAC equipment servicing building must be elevated or flood protected to same level as the lowest floor.
 - Matched Model Code by removing Section C.3.b that required the manufactured home chassis to be supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six inches in height above grade and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- Section E. Floodway
 - Added the following to match model code: A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision, fulfills the requirements for such revisions as established under the provisions of 44 CFR 65.12, and receives the approval of FEMA.
- Article 5. Section E. Conditions for Approving Floodplain Management Variances
 - E.2 – added and the variance is the minimum necessary to preserve the historic character and design of the structure to match model code.
 - E.7 - A community shall maintain a record of all variance actions, including justification for their issuance.
 - E.8 - Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of items 1 through 5 of this section are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- Removed Variance Sections for Agricultural Buildings and Accessory Structures and that language has been included in the permitting process for these types of structures. This matches the model code and is no longer needed in this section.
- Revised Article 6 – Violations to include additional information on process for violations within the floodplain. This language is similar to other sections in the zoning code for inspections, investigations and providing notices for violations.
 - 1. The floodplain administrator may make reasonable entry upon any lands and waters in the City of Emporia and the designated Urban Growth Area for the purpose of making an investigation, inspection or survey to verify compliance with these regulations. The floodplain administrator shall provide notice of entry by mail, electronic mail, phone call, or personal delivery to the owner, owner’s agent, lessee, or lessee’s agent whose

lands will be entered. If none of these persons can be found, the floodplain administrator shall affix a copy of the notice to one or more conspicuous places on the property a minimum of five (5) days prior to entry.

- 2. A structure or other development without a floodplain development permit or other evidence of compliance is presumed to be in violation until such documentation is provided.
- 3. The floodplain administrator shall provide written notice of a violation of this ordinance to the owner, the owner's agent, lessee, or lessee's agent by personal service or by certified mail, return receipt requested. The written notice shall include instructions and a deadline to request a hearing before the appeals board, and if no hearing is requested, a deadline by which the violation must be corrected.
- 4. Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of variances) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues, shall be considered a separate offense. Nothing herein contained shall prevent the City of Emporia or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.
- 5. Notwithstanding any criminal prosecutions or in lieu of any criminal prosecutions, if the owner, occupant or agent in charge of the property has neither alleviated the conditions causing the alleged violation nor requested a hearing within the period specified, the public officer or an authorized assistant shall abate or remove the conditions causing the violation.
- 6. If the public officer or an authorized assistant abates or removes the nuisance pursuant to this section, notice shall be provided to the owner, the owner's agent, lessee, or lessee's agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred. The notice shall also state that the payment is due within 30 days following receipt of the notice. The cost of providing notice, including any postage, required by this section may also be recovered.
- 7. The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance

was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full. (K.S.A. 12-1617f).

FLOODPLAIN MAP EFFECTIVE JUNE 15, 2022



Red – Areas Added to Floodplain
Green – Areas Removed from Floodplain
Yellow – Areas Unchanged

FLOODPLAIN MANAGEMENT ORDINANCE
Pursuant to 44 CFR § 60.3 (d) - Regulatory Floodway Identified,
K.S.A. 12-766, and K.A.R. 5-44-1 through 5-44-7

ORDINANCE No. _____

ARTICLE 1 STATUTORY AUTHORIZATION, FINDINGS OF FACT, AND PURPOSES

SECTION A. STATUTORY AUTHORIZATION

1. Approval of Draft Ordinance by Kansas Chief Engineer Prior to Adoption

The following floodplain management regulations, as written, were approved in draft form by the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture on 02 March, 2022.

2. Kansas Statutory Authorization

The Legislature of the State of Kansas has in K.S.A. 12-741 *et seq.*, and specifically in K.S.A. 12-766, delegated the responsibility to local governmental units to adopt floodplain management regulations designed to protect the health, safety, and general welfare of the public. Therefore, the City Commission of Emporia, Kansas, ordains as follows:

SECTION B. FINDINGS OF FACT

1. Flood Losses Resulting from Periodic Inundation

The special flood hazard areas of Emporia, Kansas, are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.

2. General Causes of the Flood Losses

These flood losses are caused by (1) the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated, or otherwise unprotected from flood damages.

3. Methods Used To Analyze Flood Hazards

The Flood Insurance Study (FIS) that is the basis of this ordinance uses a standard engineering method of analyzing flood hazards, which consist of a series of interrelated steps.

- a. Selection of a base flood that is based upon engineering calculations, which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood selected for this ordinance is representative of large floods, which are characteristic of what can be expected to occur on the particular streams subject to this ordinance. The base flood is the flood that is estimated to have a one percent chance of being equaled or exceeded in any one year as delineated on the Federal Insurance Administrator's FIS, and illustrative materials dated June 15, 2022 as amended, and any future revisions thereto.
- b. Calculation of water surface profiles that are based on a standard hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the regulatory flood.
- c. Computation of a floodway required to convey this flood without increasing flood heights more than one (1) foot at any point.
- d. Delineation of floodway encroachment lines within which no development is permitted that would cause **any** increase in flood height.
- e. Delineation of flood fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood.

SECTION C. STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety, and general welfare of the public; to minimize those losses described in Article 1, Section B(1); to establish or maintain the community's eligibility for participation in the National Flood Insurance Program (NFIP) as defined in 44 Code of Federal Regulations (CFR) § 59.22(a)(3); and to meet the requirements of 44 CFR § 60.3(d) and K.A.R. 5-44-4 by applying the provisions of this ordinance to:

1. Restrict or prohibit uses that are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;
2. Require uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction; and
3. Protect individuals from buying lands that are unsuited for the intended development purposes due to the flood hazard.

ARTICLE 2 GENERAL PROVISIONS

SECTION A. LANDS TO WHICH ORDINANCE APPLIES

This ordinance shall apply to all lands within the jurisdiction of the City of Emporia, Kansas identified as numbered and unnumbered A Zones, AE, AO and AH Zones on the Flood Insurance Rate Map (FIRM) panels referenced on the associated FIRM Index dated June 15, 2022 as amended, and any future revisions thereto. In all areas covered by this ordinance, no development shall be permitted except through the issuance of a floodplain development permit, granted by City Commission or its duly

designated representative under such safeguards and restrictions as the City Commission or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community, and as specifically noted in Article 4.

SECTION B. COMPLIANCE

No development located within the special flood hazard areas of this community shall be located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

SECTION C. ABROGATION AND GREATER RESTRICTIONS

It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

SECTION D. INTERPRETATION

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, shall be liberally construed in favor of the governing body, and shall not be deemed a limitation or repeal of any other powers granted by Kansas statutes.

SECTION E. WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside the floodway and flood fringe or land uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create a liability on the part of the City of Emporia, any officer or employee thereof, for any flood damages that may result from reliance on this ordinance or any administrative decision lawfully made there under.

SECTION F. SEVERABILITY

If any section; clause; provision; or portion of this ordinance is adjudged unconstitutional or invalid by a court of appropriate jurisdiction, the remainder of this ordinance shall not be affected thereby.

ARTICLE 3 ADMINISTRATION

SECTION A. FLOODPLAIN DEVELOPMENT PERMIT

A floodplain development permit shall be required for all proposed construction or other development, including the placement of manufactured or mobile homes, in the areas described in Article 2, Section A. No person, firm, corporation, or unit of government shall initiate any development or substantial-

improvement or cause the same to be done without first obtaining a separate floodplain development permit for each structure or other development.

SECTION B. DESIGNATION OF FLOODPLAIN ADMINISTRATOR

The Planning and Zoning Administrator is hereby appointed to administer and implement the provisions of this ordinance.

SECTION C. DUTIES AND RESPONSIBILITIES OF FLOODPLAIN ADMINISTRATOR

Duties of the Floodplain Administrator shall include, but not be limited to:

1. Review of all applications for floodplain development permits to assure that sites are reasonably safe from flooding and that the floodplain development permit requirements of this ordinance have been satisfied;
2. Review of all applications for floodplain development permits for proposed development to assure that all necessary permits have been obtained from Federal, State, or local governmental agencies from which prior approval is required by Federal, State, or local law;
3. Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding;
4. Issue floodplain development permits for all approved applications;
5. Notify adjacent communities and the Division of Water Resources, Kansas Department of Agriculture, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);
6. Assure that the flood-carrying capacity is not diminished and shall be maintained within the altered or relocated portion of any watercourse; and
7. Verify and maintain a record of the actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures;
8. Verify and maintain a record of the actual elevation (in relation to mean sea level) that the new or substantially improved non-residential structures have been floodproofed;
9. When floodproofing techniques are utilized for a particular non-residential structure, the floodplain administrator shall require certification from a registered professional engineer or architect.

SECTION D. APPLICATION FOR FLOODPLAIN DEVELOPMENT PERMIT

To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every floodplain development permit application shall:

1. Describe the land on which the proposed work is to be done by lot, block and tract, house and street address, or similar description that will readily identify and specifically locate the proposed structure or work;
2. Identify and describe the work to be covered by the floodplain development permit;
3. Indicate the use or occupancy for which the proposed work is intended;
4. Indicate the assessed value of the structure and the fair market value of the improvement;
5. Specify whether development is located in designated flood fringe or floodway;
6. Identify the existing base flood elevation and the elevation of the proposed development;
7. Give such other information as reasonably may be required by the floodplain administrator;
8. Be accompanied by plans and specifications for proposed construction; and
9. Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.

ARTICLE 4 PROVISIONS FOR FLOOD HAZARD REDUCTION

SECTION A. GENERAL STANDARDS

1. No permit for floodplain development shall be granted for new construction, substantial-improvements, and other improvements, including the placement of manufactured or mobile homes, within any numbered or unnumbered A zones, AE, AO, and AH zones, unless the conditions of this section are satisfied.
2. All areas identified as unnumbered A zones on the FIRM are subject to inundation of the one percent annual chance or 100-year flood; however, the base flood elevation is not provided. Development within unnumbered A zones is subject to all provisions of this ordinance. If Flood Insurance Study data is not available, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources.
3. Until a floodway is designated, no new construction, substantial improvements, or other development, including fill, shall be permitted within any unnumbered or numbered A zones, or AE zones on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
4. All new construction, subdivision proposals, substantial-improvements, prefabricated structures, placement of manufactured or mobile homes, and other developments shall require:

- a. Design or adequate anchorage to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- b. Construction with materials resistant to flood damage;
- c. Utilization of methods and practices that minimize flood damages;
- d. All electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- e. New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination; and
- f. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, located within special flood hazard areas are required to assure that:
 - (1) All such proposals are consistent with the need to minimize flood damage;
 - (2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
 - (3) Adequate drainage is provided so as to reduce exposure to flood hazards; and
 - (4) All proposals for development, including proposals for manufactured home parks and subdivisions, of greater than five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals base flood elevation data.

5. *Storage, Material, and Equipment*

- a. Storage of material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning.

6. *Nonconforming Use*

A structure, or the use of a structure or premises that was lawful before the passage or amendment of the ordinance, but which is not in conformity with the provisions of this ordinance, may be continued subject to the following conditions:

- a. If such structure, use, or utility service has been or is discontinued for 12 consecutive months, any future use of the building shall conform to this ordinance.

- b. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the pre-damaged market value of the structure. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, safety codes, regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination.

7. *Agricultural Structures*

Structures used solely for agricultural purposes in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including the raising of livestock, may be constructed at-grade and wet-floodproofed provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; there is no permanent retail, wholesale, or manufacturing use included in the structure; the structure meets the following floodplain management requirements; and a floodplain development permit has been issued.

Any permit granted for an agricultural structure shall be decided individually based on a case by case analysis of the building's unique circumstances.

In order to minimize flood damages during the 100-year flood and the threat to public health and safety, the following conditions shall be included for any permit issued for agricultural structures that are constructed at-grade and wet-floodproofed:

- a. All proposed agricultural structures shall demonstrate that no other alternate location outside of the special flood hazard area exists for the agricultural structure. Residential structures, such as farm houses, cannot be considered agricultural structures.
- b. Use of the structures must be limited to agricultural purposes in any special flood hazard area only as identified on the community's Flood Insurance Rate Map (FIRM).
- c. For any new or substantially damaged agricultural structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with Article 4, Section A (4)(b) of this ordinance.
- d. The agricultural structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structures in accordance with Article 4, Section A (4)(a) of this ordinance. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
- e. Any mechanical, electrical, or other utility equipment must be located (1) one foot above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with Article 4, Section A (4)(d) of this ordinance. The elevation shall be certified by a licensed land surveyor or professional engineer.
- f. The agricultural structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to

the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of flood waters in accordance with Article 4, Section B (1)(c) of this ordinance.

- g. The agricultural structures must comply with the floodplain management floodway encroachment provisions of Article 4, Section E(2) of this ordinance. No permits may be issued for agricultural structures within any designated floodway, if any increase in flood levels would result during the one percent annual chance flood event, also referred to as the 100-year flood.
- h. Major equipment, machinery, or other contents must be protected from any flood damage.
- i. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the agricultural structures.
- j. Wet-floodproofing construction techniques must be reviewed and approved by the community. The community may request approval by a registered professional engineer or architect prior to the issuance of any floodplain development permit for construction. Cost for any required professional certification to be paid by the developer.

8. *Accessory Structures*

Structures used solely for parking and limited storage purposes, not attached to any other structure on the site, of limited investment value, and not larger than 600 square feet, may be constructed at-grade and wet-floodproofed provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; the accessory structure meets the following floodplain management requirements; and a floodplain development permit has been issued. Wet-floodproofing is only allowed for small low cost structures.

Any permit granted for an accessory structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Permits shall meet the following conditions.

In order to minimize flood damages during the one percent annual chance flood event, also referred to as the 100-year flood and the threat to public health and safety, the following conditions shall be required for any permit issued for accessory structures that are constructed at-grade and wet-floodproofed:

- a. Use of the accessory structures must be solely for parking and limited storage purposes in any special flood hazard area as identified on the community's Flood Insurance Rate Map (FIRM).
- b. For any new or substantially damaged accessory structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with Article 4, Section A (4)(b) of this ordinance.
- c. The accessory structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure in accordance with Article 4, Section A (4)(a) of this

ordinance. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.

- d. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with Article 4, Section A (4)(d) of this ordinance.
- e. The accessory structures must meet all NFIP opening requirements. The NFIP requires that enclosure or foundation walls, subject to the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of flood waters in accordance with Article 4, Section B (1)(c) of this ordinance.
- f. The accessory structures must comply with the floodplain management floodway encroachment provisions of Article 4, Section E (2) of this ordinance. No permits may be issued for accessory structures within any designated floodway, if any increase in flood levels would result during the 100-year flood.
- g. Equipment, machinery, or other contents must be protected from any flood damage.
- h. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the accessory structures.
- i. Wet-floodproofing construction techniques must be reviewed and approved by the community. The community may request approval by a registered professional engineer or architect prior to the issuance of any floodplain development permit for construction. Cost for any required professional certification to be paid by the developer.

9. *Critical Facilities*

- a. All new or substantially improved critical nonresidential facilities including, but not limited, to governmental buildings, police stations, fire stations, hospitals, orphanages, penal institutions, communication centers, water and sewer pumping stations, water and sewer treatment facilities, transportation maintenance facilities, places of public assembly, emergency aviation facilities, and schools shall be elevated at least one (1) foot above the .2 percent annual chance flood event, also referred to as the 500-year flood level or together with attendant utility and sanitary facilities, be floodproofed so that below a minimum of one (1) foot above the 500-year flood level the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall verify that the standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in Article 3, Section C(7)(8)(9).

- b. All critical facilities shall have access routes that are above the elevation of the 500-year flood.
- c. No critical facilities shall be constructed in any designated floodway.

10. *Hazardous Materials*

All hazardous material storage and handling sites shall be located out of the special flood hazard area.

11. *Cumulative Improvement*

A structure may be improved (remodeled or enlarged) without conforming to current requirements for elevation so long as the cumulative value of all work done within the last five calendar years does not exceed fifty (50) percent of the structure's current market value. If the cumulative value of the improvement exceeds fifty (50) percent of the structure's current market value, the structure must be brought into compliance with Article 4, Section B(1) which requires elevation of residential structures to one (1) foot above the base flood elevation or the elevation/floodproofing of non-residential structures to one (1) foot above the base flood elevation.

SECTION B. SPECIFIC STANDARDS

- 1. In all areas identified as numbered and unnumbered A zones, AE, and AH Zones, where base flood elevation data have been provided, as set forth in Article 4, Section A(2), the following provisions are required:

- a. *Residential Construction*

New construction or substantial-improvement of any residential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above base flood elevation. Mechanical and HVAC equipment servicing the building must be elevated or flood protected to same level as the lowest floor. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

- b. *Non-Residential Construction*

New construction or substantial-improvement of any commercial, industrial, or other non-residential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below one foot above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Mechanical and HVAC equipment servicing the building must be elevated or flood

protected to same level as the lowest floor. A registered professional engineer or architect shall verify that the standards of this subsection are satisfied. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer. Such certification shall be provided to the floodplain administrator as set forth in Article 3, Section C(7)(8)(9).

c. *Enclosures Below Lowest Floor*

Require, for all new construction and substantial-improvements, that fully enclosed areas below lowest floor used solely for parking of vehicles, building access, or storage in an area other than a basement and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- (1) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided; and
- (2) The bottom of all opening shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

SECTION C. MANUFACTURED or MOBILE HOMES

1. All manufactured or mobile homes to be placed within all unnumbered and numbered A zones, AE, and AH zones, on the community's FIRM shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured or mobile homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
2. Require manufactured or mobile homes that are placed or substantially improved within unnumbered or numbered A zones, AE, and AH zones, on the community's FIRM on sites:
 - a. Outside of a manufactured home park or subdivision;
 - b. In a new manufactured home park or subdivision;
 - c. In an expansion to an existing manufactured home park or subdivision; or
 - d. In an existing manufactured home park or subdivision on which a manufactured or mobile home has incurred substantial-damage as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated a minimum of one (1) foot above the base flood elevation and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. Mechanical and HVAC equipment servicing the building must be elevated or flood

protected to same level as the lowest floor. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

3. Require that manufactured or mobile homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within all unnumbered and numbered A zones, AE and AH zones, on the community's FIRM, that are not subject to the provisions of Article 4, Section C(2) of this ordinance, be elevated so that:
 - a. The lowest floor of the manufactured or mobile home is a minimum of one (1) foot above the base flood level. Mechanical and HVAC equipment servicing the building must be elevated or flood protected to same level as the lowest floor. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

SECTION D. AREAS OF SHALLOW FLOODING (AO and AH zones)

Located within the areas of special flood hazard as described in Article 2, Section A are areas designated as AO zones. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions apply:

1. *AO Zones*

- a. All new construction and substantial-improvements of residential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified).
- b. All new construction and substantial-improvements of any commercial, industrial, or other non-residential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community FIRM (at least two (2) feet if no depth number is specified) or together with attendant utilities and sanitary facilities be completely floodproofed to that so that the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- c. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

2. *AH Zones*

- a. The specific standards for all areas of special flood hazard where base flood elevation has been provided shall be required as set forth in Article 4, Section B.
- b. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

SECTION E. FLOODWAY

Located within areas of special flood hazard established in Article 2, Section A, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris and potential projectiles, the following provisions shall apply:

1. The community shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than one (1) foot at any point.
2. The community shall prohibit any encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in **any** increase in flood levels within the community during the occurrence of the base flood discharge.
3. A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision, fulfills the requirements for such revisions as established under the provisions of 44 CFR 65.12, and receives the approval of FEMA.
4. If Article 4, Section E(2), is satisfied, all new construction and substantial-improvements shall comply with all applicable flood hazard reduction provisions of Article 4.
5. In unnumbered A zones, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources as set forth in Article 4, Section A(2).

SECTION F. RECREATIONAL VEHICLES

Require that recreational vehicles placed on sites within all unnumbered and numbered A Zones, AE, AH, and AO Zones on the community's FIRM either:

1. Be on the site for fewer than 180 consecutive days, *or*
2. Be fully licensed and ready for highway use*; *or*
3. Meet the permitting, elevation, and anchoring requirements for manufactured homes of this ordinance.

*A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

ARTICLE 5 FLOODPLAIN MANAGEMENT VARIANCE PROCEDURES

SECTION A. ESTABLISHMENT OF APPEAL BOARD

The Emporia Metropolitan Area Planning Commission shall act as the Appeal Board as established by the City of Emporia, Kansas and shall hear and decide appeals and requests for variances from the floodplain management requirements of this ordinance.

SECTION B. RESPONSIBILITY OF APPEAL BOARD

Where an application for a floodplain development permit is denied by the Floodplain Administrator, the applicant may apply for such floodplain development permit directly to the Appeal Board, as defined in Article 5, Section A.

The Appeal Board shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

SECTION C. FURTHER APPEALS

Any person aggrieved by the decision of the Appeal Board or any taxpayer may appeal such decision to the District Court as provided in K.S.A. 12-759 and 12-760.

SECTION D. FLOODPLAIN MANAGEMENT VARIANCE CRITERIA

In passing upon such applications for variances, the Appeal Board shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this ordinance, and the following criteria:

1. Danger to life and property due to flood damage;
2. Danger that materials may be swept onto other lands to the injury of others;
3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. Importance of the services provided by the proposed facility to the community;
5. Necessity to the facility of a waterfront location, where applicable;
6. Availability of alternative locations, not subject to flood damage, for the proposed use;
7. Compatibility of the proposed use with existing and anticipated development;
8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. Safety of access to the property in times of flood for ordinary and emergency vehicles;
10. Expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and,
11. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems; streets; and bridges.

SECTION E. CONDITIONS FOR APPROVING FLOODPLAIN MANAGEMENT VARIANCES

1. Generally, variances may be issued for new construction and substantial-improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, providing items two (2) through six (6) below have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
2. Variances may be issued for the reconstruction, repair, or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination, provide the proposed activity will not preclude the structure's continued historic designation and the variance is the minimum necessary to preserve the historic character and design of the structure.

3. Variances shall not be issued within any designated floodway if any significant increase in flood discharge or base flood elevation would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued upon: (a) showing of good and sufficient cause, (b) determination that failure to grant the variance would result in exceptional hardship to the applicant, and (c) determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
6. A community shall notify the applicant in writing over the signature of a community official that: (a) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (b) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.
7. A community shall maintain a record of all variance actions, including justification for their issuance.
8. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of items 1 through 5 of this section are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

ARTICLE 6 VIOLATIONS

1. The floodplain administrator may make reasonable entry upon any lands and waters in the City of Emporia and the designated Urban Growth Area for the purpose of making an investigation, inspection or survey to verify compliance with these regulations. The floodplain administrator shall provide notice of entry by mail, electronic mail, phone call, or personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered. If none of these persons can be found, the floodplain administrator shall affix a copy of the notice to one or more conspicuous places on the property a minimum of five (5) days prior to entry.
2. A structure or other development without a floodplain development permit or other evidence of compliance is presumed to be in violation until such documentation is provided.
3. The floodplain administrator shall provide written notice of a violation of this ordinance to the owner, the owner's agent, lessee, or lessee's agent by personal service or by certified mail, return receipt requested. The written notice shall include instructions and a deadline to request a hearing before the appeals board, and if no hearing is requested, a deadline by which the violation must be corrected.

4. Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of variances) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500, and in addition, shall pay all costs and expenses involved in the case.. Each day such violation continues, shall be considered a separate offense. Nothing herein contained shall prevent the City of Emporia or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

5. Notwithstanding any criminal prosecutions or in lieu of any criminal prosecutions, if the owner, occupant or agent in charge of the property has neither alleviated the conditions causing the alleged violation nor requested a hearing within the period specified, the public officer or an authorized assistant shall abate or remove the conditions causing the violation.

6. If the public officer or an authorized assistant abates or removes the nuisance pursuant to this section, notice shall be provided to the owner, the owner's agent, lessee, or lessee's agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred. The notice shall also state that the payment is due within 30 days following receipt of the notice. The cost of providing notice, including any postage, required by this section may also be recovered.

7. The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full. (K.S.A. 12-1617f).

ARTICLE 7 AMENDMENTS

The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or repealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties of interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the City of Emporia. At least twenty (20) days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the FEMA Region VII office. The regulations of this ordinance are in compliance with the NFIP regulations.

ARTICLE 8 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the same meaning they have in common usage and to give this ordinance its most reasonable application.

"100-year Flood" *see "base flood."*

"Accessory Structure" means the same as *"appurtenant structure."*

"Actuarial Rates" *see "risk premium rates."*

"Administrator" means the Federal Insurance Administrator.

"Agency" means the Federal Emergency Management Agency (FEMA).

"Agricultural Commodities" means agricultural products and livestock.

"Agricultural Structure" means any structure used exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities.

"Appeal" means a request for review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

"Appurtenant Structure" means a structure that is on the same parcel of property as the principle structure to be insured and the use of which is incidental to the use of the principal structure.

"Area of Shallow Flooding" means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of Special Flood Hazard" is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

"Base Flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

"Base Flood Elevation" means the elevation of the surface of the water during a one percent annual chance flood event.

"Basement" means any area of the structure having its floor subgrade (below ground level) on all sides.

"Building" *see "structure."*

"Chief Engineer" means the chief engineer of the division of water resources, Kansas Department Of Agriculture.

"Chief Executive Officer" or "Chief Elected Official" means the official of the community who is charged with the authority to implement and administer laws, ordinances, and regulations for that community.

"Community" means any State or area or political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

"Elevated Building" means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

"Eligible Community" or "Participating Community" means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program (NFIP).

"Existing Construction" means for the purposes of determining rates, structures for which the *"start of construction"* commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. *"existing construction"* may also be referred to as *"existing structures."*

"Existing Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

"Expansion to an Existing Manufactured Home Park or Subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland waters; (2) the unusual and rapid accumulation or runoff of surface waters from any source; and (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined above in item (1).

"Flood Boundary and Floodway Map (FBFM)" means an official map of a community on which the Administrator has delineated both special flood hazard areas and the designated regulatory floodway.

"Flood Elevation Determination" means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

"Flood Elevation Study" means an examination, evaluation and determination of flood hazards.

"Flood Fringe" means the area outside the floodway encroachment lines, but still subject to inundation by the regulatory flood.

"Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by the Administrator, where the boundaries of the flood areas having special flood hazards have been designated as (unnumbered or numbered) A zones.

"Flood Hazard Map" means the document adopted by the governing body showing the limits of: (1) the floodplain; (2) the floodway; (3) streets; (4) stream channel; and (5) other geographic features.

"Flood Insurance Rate Map (FIRM)" means an official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

"Flood Insurance Study (FIS)" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

"Floodplain" or "Flood-prone Area" means any land area susceptible to being inundated by water from any source (*see "flooding"*).

"Floodplain Management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

"Floodplain Management Regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain and grading ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, or structures and their contents.

"Floodway" or "Regulatory Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Floodway Encroachment Lines" means the lines marking the limits of floodways on Federal, State and local floodplain maps.

"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. *"Freeboard"* tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.

"Functionally Dependent Use" means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities and facilities that are necessary for the loading and unloading of cargo or passengers, but does not include long-term storage or related manufacturing facilities.

"Highest Adjacent Grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic Structure" means any structure that is (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either (1) by an approved state program as determined by the Secretary of the Interior or (2) directly by the Secretary of the Interior in states without approved programs.

"Lowest Floor" means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, **provided** that such enclosure is not built so as to render the structure in violation of the applicable floodproofing design requirements of this ordinance.

"Manufactured Home" means a structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term *"manufactured home"* does include mobile homes manufactured prior to 1976 but **does not include** a *"recreational vehicle."*

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Map" means the Flood Hazard Boundary Map (FHBM), Flood Insurance Rate Map (FIRM), or the Flood Boundary and Floodway Map (FBFM) for a community issued by the Federal Emergency Management Agency (FEMA).

"Market Value" or "Fair Market Value" means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

"Mean Sea Level" means, for purposes of the National Flood Insurance Program (NFIP), the National American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.

"New Construction" means, for the purposes of determining insurance rates, structures for which the *"start of construction"* commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *"new construction"* means structures for which the *"start of*

construction" commenced on or after the effective date of the floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

"New Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

"(NFIP)" means the National Flood Insurance Program (NFIP).

"Numbered A Zone" means a special flood hazard area where the Flood Insurance Rate Map shows the Base Flood Elevation.

"One percent annual chance flood" *see "base flood."*

"Participating Community" also known as an *"eligible community,"* means a community in which the Administrator has authorized the sale of flood insurance.

"Permit" means a signed document from a designated community official authorizing development in a floodplain, including all necessary supporting documentation such as: (1) the site plan; (2) an elevation certificate; and (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities.

"Person" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including Federal, State, and local governments and agencies.

"Principally Above Ground" means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

"Reasonably Safe From Flooding" means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

"Recreational Vehicle" means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently able to be towed by a light-duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Remedy A Violation" means to bring the structure or other development into compliance with Federal, State, or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

"Risk Premium Rates" means those rates established by the Administrator pursuant to individual community studies and investigations, which are undertaken to provide flood insurance in accordance with Section 1307 of the National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. *"Risk premium rates"* include provisions for operating costs and allowances.

"Special Flood Hazard Area" *see "area of special flood hazard."*

"Special Hazard Area" means an area having special flood hazards and shown on an FHBM, FIRM or FBFM as zones (unnumbered or numbered) A, AO, AE, or AH.

"Start of Construction" includes substantial-improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements were within 180 days of the permit date. The *actual start* means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, the installation of streets and/or walkways, excavation for a basement, footings, piers, foundations, the erection of temporary forms, nor installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial-improvement, the *actual start of construction* means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"State Coordinating Agency" means the Division of Water Resources, Kansas Department of Agriculture, or other office designated by the governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program (NFIP) in that state.

"Structure" means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. *"Structure"* for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

"Substantial-Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial-Improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before *"start of construction"* of the improvement. This term includes structures, which have incurred *"substantial-damage,"* regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a *"historic structure,"* provided that the alteration will not preclude the structure's continued designation as a *"historic structure."*

"Unnumbered A Zone" means a special flood hazard area shown on either a flood hazard boundary map or flood insurance rate map where the base flood elevation is not determined.

"Variance" means a grant of relief by the community from the terms of a floodplain management regulation. Flood insurance requirements remain in place for any varied use or structure and cannot be varied by the community.

"Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this ordinance is presumed to be in violation until such time as that documentation is provided.

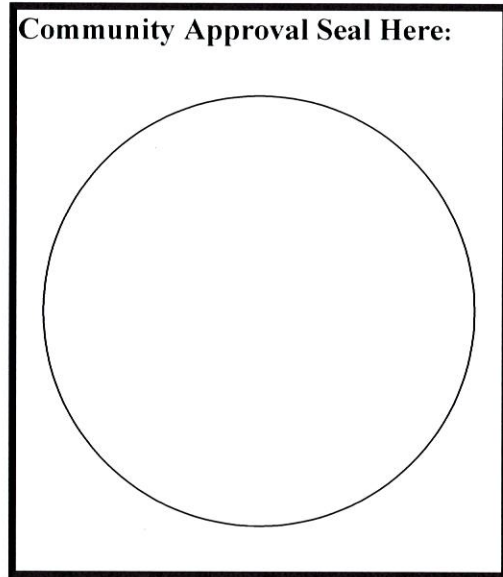
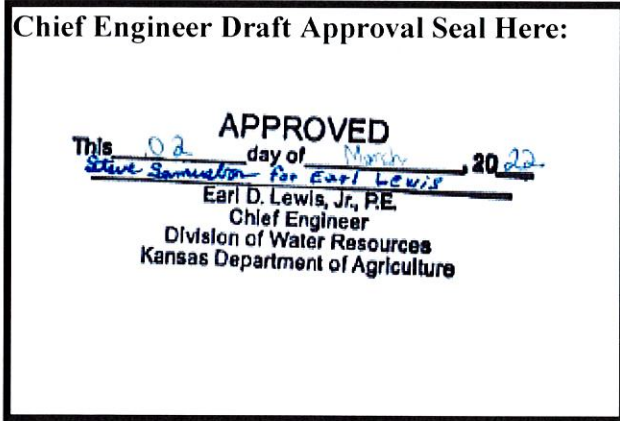
"Water Surface Elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplains of riverine areas.

ARTICLE 9 CERTIFICATE OF ADOPTION

This Floodplain Management Ordinance for the community of Emporia, Kansas.

PASSED AND ADOPTED by the Governing Body of Emporia, Kansas.

This _____ day of _____, 20____.



APPROVED:

Signature of Chief Executive Officer/Chief Elected Official Date

Chief Executive Officer/Chief Elected Official Name (Typed/printed) Title

ATTEST:

Signature of Recording Clerk Date

Kerry Sull, City Clerk

Published in official news publication: The Emporia Gazette

Memo

TO: City Commission

FROM: Dean Grant, Director of Public Works

CC: Department Heads

DATE: May 11, 2022

SUBJECT: Water System Demand, Supply, and Rate Evaluation

Staff would like to engage Burns & McDonnell to complete an evaluation to project water demand, our water supply availability, and our rates and rate structures. The last water supply evaluation the city conducted was in 2010. Since that time our city has seen a growth in industrial water users which were not projected in the previous evaluation. Staff recommends getting an updated evaluation in order to make more informed decisions on the purchase of future water supplies.

The demands evaluation will look at the current and future water usage by our customers (residential, commercial, industrial, and wholesale). Burns & McDonnell will evaluate our historical usage, wholesale contracts, current usage, and prepare water demand projections.

The supply evaluation will look at the city's raw water supplies as they relate to the demands on our water system. They will evaluate the city's surface water rights, our Water Marketing Program contract, storage rights in Lake Kahola, and how the Water Assurance District's operations plan meets our needs. Burns & McDonnell will also look at supply capacities in other reservoirs and the viability of utilizing them for additional water supplies.

The water rate study will help develop a 5 to 10-year financial plan for the utility system, classify customers and sales volumes, forecast operation, and maintenance expenses and other debt, evaluate the revenues under the existing rate structure to meet future system needs and provide guidance for the water rate structure and water rate moving forward. Burns & McDonnell will also evaluate the city's current cost to produce water.

The cost for the Water Supply and Demand Study is \$38,020.00. The cost for the Rate Study is \$30,250.00. The total cost for both studies is \$68,270.00. The cost would be paid for by the Water Fund.

Attachment: Burns & McDonnell Proposal

**EXHIBIT A
SCOPE OF SERVICES**

**CITY OF EMPORIA, KANSAS
WATER DEMAND, SUPPLY & RATES EVALUATION**

1. Water Demand and Supply
 - 1.1. Water Demands
 - 1.1.1. Evaluate historical trending of average day and maximum day water demands, water sales, nonrevenue water, water usage, seasonal demand patterns, and dry-year assessment with precipitation and temperature norms.
 - 1.1.2. Evaluate existing wholesale water sales contracts.
 - 1.1.3. Evaluate monthly data (number of customers and water use) for residential, commercial, industrial and wholesale customer classes from 2011 through 2021 as data is available.
 - 1.1.4. Prepare low, moderate, and high average day and maximum day water demand projections through the planning period consistent with the CLIENT's Water Purchase Contract with the Water Marketing Program.
 - 1.2. Water Supply
 - 1.2.1. Quantify the surface water rights owned by the CLIENT to include water right status, average quantity, and peak rate.
 - 1.2.2. Quantify the storage rights owned by the CLIENT associated with the Cottonwood/Neosho River Water Assurance District (Assurance District).
 - 1.2.3. Review CLIENT's Water Purchase Contract associated with the Water Marketing Program.
 - 1.2.4. Quantify the storage rights owned by the CLIENT in Lake Kahola, and review the bathymetric survey completed in 2013.
 - 1.2.5. Review the Operations Plan of the Assurance District as it applies to the CLIENTs water supply needs.
 - 1.2.6. Review water supply capacities in John Redmond Reservoir, Marion Lake, Melvern Lake, and Council Grove Lake.
 - 1.2.7. Consult with the Division of Water Resources to quantify the consumptive use of wastewater effluent for the CLIENT's beneficial use.
 - 1.3. Water Needs
 - 1.3.1. Compare the results of Task 1 – Water Demands and Task 2 – Water Supply Audit to estimate when additional raw water supply may be required.
 - 1.3.2. Determine the process for renewing the CLIENT's Water Marketing Program contract and advise the CLIENT on the needed quantity and projected costs.
 - 1.3.3. Evaluate the availability of additional surface water rights and storage rights in the Assurance District.
 - 1.4. Deliverable – provide a draft technical memorandum to the CLIENT, for review and comment, summarizing Tasks 1.1 thru 1.3. Incorporate CLIENT comments into a final memorandum. This technical memorandum shall include:
 - 1.4.1. Water demand projections.
 - 1.4.2. Quantification of existing surface water rights.
 - 1.4.3. Quantification of existing storage rights.
 - 1.4.4. Quantification of wastewater effluent available for beneficial use by the CLIENT.

- 1.4.5. Quantification and availability of new surface and storage rights.
- 1.4.6. Provide water supply recommendations to meet current and future demands of the CLIENT.

2. Water Rate Study

2.1. Financial Planning

- 2.1.1. Develop a 5- to 10-year financial plan for the utility system that adequately funds the operating and capital requirements, complies with applicable financial management policies and bond covenants, and provides a defensible and implementable plan for the utility to move forward.
- 2.1.2. Summarize customer class accounts and water sales volume, and forecast future billing determinants enabling the forecast to reflect changes in key revenue drivers.
- 2.1.3. Forecast operation and maintenance expense (O&M) based on the City's current budget at a line-by-line level of detail, plus allowances for inflation or anticipated operational changes. Existing debt obligations will reflect the loan amortizations for each outstanding issue. Other revenue requirements may include revenue-financed capital, deposits to reserves, or transfers if applicable.
- 2.1.4. Examine the sufficiency of revenues under existing rates to meet future operating and capital requirements, as well as any financial policy targets such as reserves or debt service coverage levels.
- 2.1.5. Provide scenario analysis to test sensitivity to key variables such as inflation, interest rates, capital improvement program changes, changes in account growth or use per account, or other variables can be examined for sensitivity.
- 2.1.6. Conduct Teams meeting to reach consensus on the preferred funding plan for use in cost of service analysis and rate design

2.2. Cost of Service Analysis

- 2.2.1. Using industry accepted techniques, assign cost responsibility to customer classes in accordance with their use of the water system.
- 2.2.2. Compare cost by class to class revenues, which provides perspective on the equity of existing rates.

2.3. Proposed Rate Design

- 2.3.1. Using the existing rate structure, develop proposed rates to (1) fund operating and capital costs identified in the financial plan, (2) provide for reasonably equitable cost recovery by class and (3) achieve the City's goals for rates (such as simplicity of design, revenue stability, etc.).
- 2.3.2. Forecast impact to Emporia water customer bills (residential, commercial, industrial) resulting from proposed rates over the study period.
- 2.3.3. Compare residential water bills to up to 10 regional peer utilities.

- 2.4. Deliverable – provide a draft Report to the CLIENT, for review and comment, summarizing Tasks 2.1 thru 2.3. Incorporate CLIENT comments into a final Report.

3. Meetings

- 3.1. Virtual meetings with the CLIENT will be utilized for project kickoff, to provide periodic updates on project status, and review deliverables.

RESPONSIBILITIES OF OWNER

1. Assistance by placing at CONSULTANT's disposal all available information pertinent to the assignment, including previous reports, equipment lists, instrumentation lists, water demands, and other data relative thereto. CONSULTANT shall rely on information made available by the CLIENT as accurate without independent verification.

Memo

TO: City Commission

FROM: Dean Grant

CC: Department Heads

DATE: May 10, 2022

SUBJECT: KDOT Grant Acceptance for 5.5' Extension

Last year staff applied for a grant to pay for the construction of a 51-foot runway extension that would make the runway 5,050 feet in length. Unfortunately, KDOT did not award us the \$500,000.00 grant. However, KDOT understands the necessity to extend the runway to a length greater than 5,000 feet, so they awarded the city a \$75,000.00 grant to add 5.5 feet to the existing runway. This extension will bring the total runway length to 5,003 feet. The city is responsible for 10% of the costs associated with the extension project.



Dwight D. Eisenhower State Office Building
700 S.W. Harrison Street
Topeka, KS 66603-3745

Phone: 785-296-2553
kdot#publicinfo@ks.gov
<http://www.ksdot.org>
Laura Kelly, Governor

Julie L. Lorenz, Secretary of
Transportation
Robert W. Brock, Director

March 4, 2022

Mr. Dean Grant
Emporia Municipal Airport
1220 Hatcher Street
Emporia, KS 66801

RE: KDOT Grant Offer – Project Number AV-2023-36

Dear Mr. Grant,

Congratulations, you have been approved for FY 2021 Kansas Airport Improvement Program (KAIP) funding to assist you in your project to Paving materials to extend runway no less than 5002 feet.

To complete this process, I have included the following documents for your action:

1. Grant Payee Information sheet (please complete)
2. Airport Project Agreement specific to your project (two copies, review and sign both)

KDOT requires you to return the 2 signed hard-copy agreements and completed grant payee sheet within 120 days of the date on this letter. This grant offer will expire on June 3rd, 2022. This grant is for the state fiscal year 2023. No work will be reimbursed that begins before the start of FY 2023, which begins July 1, 2022.

Please email a scanned copy of the signed contract directly to the KDOT Office of Chief Counsel's Contracts team at KDOT#OCC.Contracts@ks.gov to speed up the approval stamp/signature process.

Please ensure proper coordination with the FAA prior to starting this project. Such work may include but is not limited to updating of ALPs, filing construction reports such as 7460 or 7480, or environmental or obstacle determinations.

An original copy of the signed agreement will be returned to you upon completion.

If you have questions or concerns, please don't hesitate to contact us directly at (785) 296-2553. We look forward to working with you for the growth of Kansas aviation.

Sincerely,

A handwritten signature in black ink, appearing to be "R. Brock", written over a light blue horizontal line.

Robert W. Brock
Director

AIRPORT MODERNIZATION AGREEMENT

This Agreement is between the **Secretary of Transportation of the State of Kansas**, Kansas Department of Transportation (KDOT) (the “Secretary”) and the **City of Emporia, Kansas** (the “Sponsor”), **collectively**, the “Parties.”

RECITALS:

- A. The Sponsor has applied for, and the Secretary has approved an Airport Geometric Improvement Project to: procure paving materials to extend runway length to no less than 5,002 feet for the Emporia Municipal Airport.
- B. The Secretary has approved the use of Kansas Airport Improvement Program (KAIP) funds from the State’s General Aviation Airport Development Fund for this purpose, limited to the scope of the Project, as further described below.
- C. The Secretary and the Sponsor are empowered by the laws of Kansas to enter into agreements for the construction, planning, and maintenance of the Airport.
- D. The Secretary and the Sponsor desire to enter into this Agreement to participate in the cost of the Project by use of State funds.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I

DEFINITIONS:

As used in this Agreement, the capitalized terms below have the following meanings:

1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
2. **“Airport”** means Emporia Municipal Airport, a Public Use General Aviation Airport, located at 1005 Road 120, Emporia, KS 66801.
3. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving, or demolishing any structure, building or pavement; any drainage, dredging, excavation, grading, or similar work upon real property.

4. **“Construction Contingency Items”** means unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
5. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project.
6. **“Construction Engineering”** or **“CE”** means inspection services material testing, engineering consultation and other reengineering activities required during Construction of the Project.
7. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor or the Sponsor with respect to the Project.
8. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement and as approved by FAA.
9. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
10. **“Expiration Date”** means one hundred twenty (120) days after the date the grant offer letter is mailed by the Secretary.
11. **“FAA”** means the Federal Aviation Administration, a federal agency of the United States.
12. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261, *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280, *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. § 65-3430, *et seq.*, Hazardous Waste.
13. **“KAIP”** means the Kansas Airport Improvement Program, administered by KDOT’s Division of Aviation.

14. **“KDOT”** means the Kansas Department of Transportation, an agency of the State of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
15. **“Letting” or “Let”** means the process of receiving bids prior to an award of a Construction contract for any portion of the Project.
16. **“National Plan of Integrated Airport Systems (NPIAS) Airport”** as defined and designated by the FAA; the current list of which may be found at https://www.faa.gov/airports/planning_capacity/npias/current/.
17. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, reasonably determines are not Participating Costs.
18. **“Participating Costs”** means expenditures for items or services which are an integral part of the Project, as reasonably determined by the Secretary.
19. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the Sponsor.
20. **“Preliminary Engineering” or “PE”** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm, that takes place before Letting.
21. **“Project”** means all phases and aspects of the endeavor to be undertaken by the Sponsor, being as follows: **procure paving materials to extend runway length to no less than 5,002 feet for the Emporia Municipal Airport in Emporia, Kansas**, and is the subject of this Agreement.
22. **“Project Limits”** means that area of the Project, including all areas between and within the Right of Way boundaries as shown on the final Design Plans.
23. **“Public Use General Aviation Airport”** means any airport available for use by the general public for the landing and taking off of aircraft but shall not include any airport classified as a primary airport by the Federal Aviation Administration (FAA), as defined in K.S.A. § 75-5061(e) or other applicable statute.
24. **“Right of Way”** means the real property and interests therein necessary for construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the final Design Plans.
25. **“Secretary”** means the Secretary of Transportation of the State of Kansas, and his or her successors and assigns.

- 26. **“Sponsor”** means the City of Emporia, Kansas, with its place of business at 1220 Hatcher, Emporia, KS 66801.
- 27. **“Useful Life Period”** means a sufficient period of time, as specifically designated in this Agreement in Article IV, paragraphs 21 and 22, to secure the investment of KAIP funds in the Project based on the nature and magnitude of Project costs and generally accepted economic or useful life cycle norms for the type of Construction involved in the Project.

ARTICLE II

FUNDING:

1. **Funding.** The table below reflects the funding commitments of each Party. The Participating Costs of Construction include all Construction Contingency Items. The Parties agree costs and contributions reflected below are for encumbrance purposes and may be subject to change.

Party	Responsibility	Total Projected Contributions (\$)
Secretary	90% of Participating Costs of Construction and Construction Engineering (CE), not to exceed \$75,000.00.	75,000.00
Sponsor	10% of Participating Costs of Construction and CE until Secretary’s funding limit is reached; 100% of Participating Costs of Construction and CE after Secretary’s funding limit is reached; 100% of Costs of Preliminary Engineering, Right of Way, Utility Adjustments, and Non-Participating Costs.	8,333.34
Total Estimated Project Cost		83,333.34

ARTICLE III

SECRETARY RESPONSIBILITIES:

1. **Reimbursement Payments.** The Secretary agrees to make such payment to the Sponsor as soon as reasonably possible after Construction of the Project is completed and after receipt of proper billing and certification by the Sponsor that the Project was constructed within substantial compliance of the approved Design Plans. The Secretary reserves the right to retain up to five percent (5%) of the Secretary’s maximum participation until the Sponsor completes its obligations under this Agreement to the satisfaction of the Secretary.

2. **Verification of Project Start.** The Secretary shall not reimburse the Sponsor until the Secretary receives verification from the Sponsor that the Project is underway. Verification for the Project may consist of evidence of Construction, proof of hiring Consultant or Contractor for the Project, or other method deemed acceptable by the Secretary's authorized representative. Failure to submit verification that the Project has been started within two (2) years of the effective date shall result in the Secretary cancelling the Project. Permission to delay the Project start must be approved by the Secretary and evidenced by a supplemental agreement executed by both Parties.

ARTICLE IV

SPONSOR RESPONSIBILITIES:

1. **Project Administration.** The Sponsor shall be responsible for undertaking the Project including, but not limited to, Design, Letting, administration, inspection, and completion of the Project. Immediately after the Project is Let, the Sponsor shall notify KDOT's Division of Aviation of the Letting date, the total contract amount, and any other requested information related to the Project.

2. **Design and Specifications.** The Sponsor will prepare, or contract to have prepared, Design Plans for the Project, Let the contract, construct the Project in accordance with the final Design Plans, inspect the Construction, and administer both the Project and the payments due the Contractor, including the portion of cost borne by the Secretary. The Sponsor shall separate and list apart the Participating Cost bid items from Non-Participating Cost bid items on both the final Design Plans and the bid documents.

3. **Conformity with Federal Requirements.** The Sponsor shall design the Project, or contract to have it designed, in conformity with the current Federal Aviation Administration (FAA) airport design standards and the rules and regulations of the FAA pertaining thereto. The Sponsor agrees that all airport planning and environmental activities associated with this grant shall be conducted in accordance with FAA written policy or policies governing the Sponsor's airport projects and the sequence thereof, including those that govern projects for a National Plan of Integrated Airport Systems (NPIAS) airport, where applicable.

4. **Submission of Design Plans to Secretary.** If requested, the Sponsor will furnish to KDOT's Division of Aviation one (1) set of final Design Plans.

5. **Consultant Contract Language.** The Sponsor shall include language requiring conformity with Article IV, paragraph 3 above, in all contracts between the Sponsor and any Consultant with whom the Sponsor has contracted to perform services for the Project. In addition, any contract between the Sponsor and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article IV, paragraph 3 above. In addition, any contract between the Sponsor and any Consultant with whom the Sponsor has contracted to prepare

and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

- a. Completion of Design. Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the Consultant's control.
- b. Progress Reports. Language requiring the Consultant to submit to the Sponsor (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.
- c. Third Party Beneficiary. Language making the Secretary a third-party beneficiary in the agreement between the Sponsor and the Consultant. Such language shall read:

"Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third-party beneficiary to this agreement between the Sponsor and the Consultant. This third-party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the Sponsor or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant's negligent acts, errors, or omissions. Nothing in this provision precludes the Sponsor from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary's right to payment or reimbursement."

6. **Responsibility for Adequacy of Design**. The Sponsor shall be responsible for, and require any Consultant retained by it to be responsible for, the adequacy and accuracy of the Design Plans for the Project. Any review of these items performed by the Secretary or the Secretary's representatives is not intended to and shall not be construed to be an undertaking of the Sponsor's and its Consultant's duty to provide adequate and accurate Design Plans for the Project. Reviews by the Secretary are not done for the benefit of the Consultant, the construction Contractor, the Sponsor, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Consultant or the Sponsor.

7. **Performance Bond**. The Sponsor has the discretion to require the Contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

8. **Preventive Maintenance**. The Sponsor agrees to implement, or work with the Airport to implement, an airport pavement management program which assures preventive maintenance for construction, reconstruction, replacement, and maintenance for projects which utilize KAIP funds.

9. **Final Acceptance.** The Sponsor shall obtain final acceptance and certification of the Project through KDOT's Division of Aviation.

10. **Prevailing Wages.** The Sponsor will require the Contractor to pay prevailing wages. The Sponsor will incorporate into the Construction contract the current general wage decision for the county in which the Project is being constructed. The Sponsor can obtain the current wage decision from KDOT's Bureau of Construction and Materials website.

11. **Utilities.** The Sponsor will move or adjust, or cause to be moved or adjusted, all Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing Utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the KDOT Utility Accommodation Policy (UAP), as amended or supplemented. The expense of such removal or adjustment shall be borne by the owner or the Sponsor.

12. **Hazardous Waste.** The Sponsor agrees to the following with regard to Hazardous Waste:

- (a) **Removal of Hazardous Waste.** The Sponsor shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The Sponsor shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The Sponsor will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency (EPA), State of Kansas environmental laws and regulations, and local agency standards where the Hazardous Waste is located.
- (b) **Responsibility for Hazardous Waste Remediation Costs.** The Sponsor shall be responsible for all damages, fines or penalties, expenses, fees, claims and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.
- (c) **Hazardous Waste Indemnification.** To the extent permitted by law and subject to the Kansas Tort Claims Act (K.S.A. § 75-6101, *et seq.*) as applicable, the Sponsor shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under state or federal laws arising out of or related to any act of omission by the Sponsor in undertaking cleanup or remediation for any Hazardous Waste.
- (d) **No Waiver.** By signing this Agreement, the Sponsor has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the

Project limits. The Sponsor reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project limits.

13. **General Indemnification.** To the extent permitted by law and subject to the Kansas Tort Claims Act (K.S.A. § 75-6101, *et seq.*) as applicable, the Sponsor will defend, indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the Sponsor, the Sponsor's employees, agents, subcontractors, or consultants. The Sponsor shall not be required to defend, indemnify, or hold the Secretary harmless for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

14. **Indemnification by Contractors.** The Sponsor agrees to require the Contractor to indemnify, hold harmless, and save the Secretary and the Sponsor from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors, or suppliers. If the Secretary or the Sponsor defends a third party's claim, the Contractor shall indemnify the Secretary and the Sponsor for damages paid to the third party and all related expenses either the Secretary or the Sponsor or both incur in defending the claim.

15. **Inspection of Records.** During Project execution, representatives of the Secretary may make periodic inspection of the Project and the records of the Sponsor as may be deemed necessary or desirable. The Sponsor will direct or cause its Contractor to accomplish any corrective action or work required by the Secretary's representative as necessary to the performance of this Agreement.

16. **Audit.** The Sponsor will participate and cooperate with the Secretary in an annual audit of the Project. The Sponsor shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments that have been made with state funds by the Sponsor for items considered Non-Participating Costs, the Sponsor shall promptly reimburse the Secretary for such items upon notification by the Secretary.

17. **Accounting.** Upon request by the Secretary, the Sponsor will provide the Secretary an accounting of all actual Non-Participating Costs associated with the Project which are paid directly by the Sponsor to any party outside of the Secretary and costs incurred by the Sponsor not to be reimbursed by the Secretary. This will enable the Secretary to report all costs of the Project to the legislature.

18. **Legal Authority.** By signature on this Agreement, the signatory certifies that he or she has legal and actual authority as representative and agent for the Sponsor to enter into this Agreement on its behalf. The Sponsor agrees to take any administrative and/or legal steps as may be required to give full effect to the terms of this Agreement.

19. **Maintenance.** When the Project is completed and final acceptance is issued the Sponsor will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. If notified by KDOT's Division of Aviation of any unsatisfactory maintenance condition, the Sponsor will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is completed to the Secretary's satisfaction.

20. **Project Modification.** Any the following Project changes require the Sponsor to send a formal notice to the Secretary for approval:

- a. Fiscal year the Project is to be Let
- b. Project description
- c. Project scope

During Construction, the Sponsor shall notify the Secretary of any changes in the plans and specifications, which will require the written approval of the Secretary.

21. **Assurance Clause.** At any time that the public is not allowed access to the Airport, the Sponsor agrees to reimburse the Secretary a prorated amount based on a ten (10) year Useful Life of the Project. This assurance clause will be valid and enforceable for ten (10) years from the date that the final payment is authorized. This provision is only applicable to closure for non-airport purposes.

22. **Useful Life.**

(a) **Useful Life Period.** The Parties agree the Useful Life Period of the Project is ten (10) years, commencing on the date the Secretary gives notice of final acceptance of the Project.

(b) **Change in Public Use.** After the Project is completed and during the entire Useful Life Period, the Airport shall remain open for public use. Any change in the public use of the real property for the Project will require written approval from the Secretary.

(c) **Recapture of State Investment.**

(i) During the first five (5) years of the Useful Life Period, if the Project is not used for the purpose set forth in this Agreement or other use approved by the Secretary under subparagraph (b) above, then the Sponsor shall pay to the Secretary 100% of the funds invested in the Project.

(ii) Following the first five (5) years of the Useful Life Period and until the Useful Life Period expires, if the Project is not used for the purpose set forth in this Agreement or other use approved by the Secretary under subparagraph (b) above, then the Sponsor shall pay to the Secretary as

recapture of funds invested in the Project an amount, which will be determined according to the following formula:

$$\frac{\text{Total Amount of State and/or Federal Funds Invested in the Project}}{\text{Entire Useful Life Period for the Project}} \times \frac{\text{Number of Full Years Remaining in the Useful Life Period at the time of unauthorized change in use}}{\text{Recapture Amount}} = \text{Recapture Amount}$$

(iii) Any payments due to the Secretary pursuant to this subparagraph (c) shall be made within ninety (90) days after receipt of billing from the Secretary's Chief of Fiscal Services unless an extension is granted by the Secretary.

ARTICLE V

GENERAL PROVISIONS:

1. **Project Limits.** It is mutually agreed the Project will be constructed within the limits of the Airport.
2. **Incorporation of Design Plans.** The final Design Plans for the Project are by this reference made a part of this Agreement.
3. **Compliance with Federal and State Laws.** The Parties agree to comply with all appropriate state and federal laws and regulations applicable to the Project.
4. **Offer Expiration.** The Secretary's offer to fund the Project, subject to the terms of this Agreement, is contingent upon the Sponsor executing this Agreement on or before the Expiration Date. In the event the Sponsor fails to execute this Agreement on or before the Expiration Date, the Secretary will not be obligated to fund the Project and the Secretary may cancel the Project. If the Sponsor wishes to extend the Expiration Date, the Sponsor must submit a written extension request to the Secretary at least forty-five (45) days prior to the Expiration Date. After receiving the request, the Secretary may extend the Expiration Date by providing written notice to the Sponsor.
5. **Civil Rights Act.** The "Special Attachment No. 1, Rev. 09.20.17" pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.
6. **Contractual Provisions.** The provisions found in the current version of the Contractual Provisions Attachment (Form DA-146a), which is attached hereto, are incorporated into and made a part of this Agreement.

7. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not deemed to control or affect the meaning or construction or the provisions herein.

8. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the Sponsor and their successors in office.

9. **No Third-Party Beneficiaries.** No third-party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

10. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

11. **Severability.** If any provision of this Agreement is held invalid, the invalidity does not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of this Agreement are severable.

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:

THE CITY OF EMPORIA, KANSAS

Kerry Sull, City Clerk (Date)

Becky Smith, Mayor (Date)

(SEAL)

Agreement No. 81-22
Project No. AV-2023-36
Division of Aviation

KANSAS DEPARTMENT OF TRANSPORTATION

Julie L. Lorenz, (date)
Secretary of Transportation

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to

comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

6. **Acceptance of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority to Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility for Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, *et seq.*
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

PREAMBLE

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and other nondiscrimination requirements and the Regulations, hereby notifies all contracting parties that it will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, color, national origin, sex, age, disability, income-level or Limited English Proficiency ("LEP").

CLARIFICATION

Where the term "contractor" appears in the following "Nondiscrimination Clauses", the term "contractor" is understood to include all parties to contracts or agreements with the Secretary of Transportation, Kansas Department of Transportation. This Special Attachment shall govern should this Special Attachment conflict with provisions of the Document to which it is attached.

ASSURANCE APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in its Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration (FHWA), the Federal Transit Administration ("FTA") or the Federal Aviation Administration ("FAA") as they may be amended from time to time which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, Including Procurements of Material and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, Federal Transit Administration ("FTA"), or Federal Aviation Administration ("FAA") to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or, the FHWA, FTA, or FAA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA, FTA, or FAA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any

subcontract or procurement as the Recipient or the FHWA, FTA, or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

ASSURANCE APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Federal Aid Highway Act of 1973 (23 U.S.C. § 324 et. seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et. seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL No. 100-259), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)

GRANT PAYEE INFORMATION

Payee: _____

Address: _____

Federal Identification Number (FEIN) _____

Phone Number: _____

Point of Contact: _____

E-mail Address: _____

If you prefer electronic transfer of funds **and** you are already on file with KDOT Fiscal, please indicate with an "X" in this box.

Please return this form with the signed grant agreement.

AIRPORT MODERNIZATION AGREEMENT

This Agreement is between the **Secretary of Transportation of the State of Kansas**, Kansas Department of Transportation (KDOT) (the “Secretary”) and the **City of Emporia, Kansas** (the “Sponsor”), **collectively**, the “Parties.”

RECITALS:

- A. The Sponsor has applied for, and the Secretary has approved an Airport Geometric Improvement Project to: procure paving materials to extend runway length to no less than 5,002 feet for the Emporia Municipal Airport.
- B. The Secretary has approved the use of Kansas Airport Improvement Program (KAIP) funds from the State’s General Aviation Airport Development Fund for this purpose, limited to the scope of the Project, as further described below.
- C. The Secretary and the Sponsor are empowered by the laws of Kansas to enter into agreements for the construction, planning, and maintenance of the Airport.
- D. The Secretary and the Sponsor desire to enter into this Agreement to participate in the cost of the Project by use of State funds.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I

DEFINITIONS:

As used in this Agreement, the capitalized terms below have the following meanings:

1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
2. **“Airport”** means Emporia Municipal Airport, a Public Use General Aviation Airport, located at 1005 Road 120, Emporia, KS 66801.
3. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving, or demolishing any structure, building or pavement; any drainage, dredging, excavation, grading, or similar work upon real property.

4. **“Construction Contingency Items”** means unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
5. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project.
6. **“Construction Engineering” or “CE”** means inspection services material testing, engineering consultation and other reengineering activities required during Construction of the Project.
7. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor or the Sponsor with respect to the Project.
8. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement and as approved by FAA.
9. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
10. **“Expiration Date”** means one hundred twenty (120) days after the date the grant offer letter is mailed by the Secretary.
11. **“FAA”** means the Federal Aviation Administration, a federal agency of the United States.
12. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261, *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280, *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. § 65-3430, *et seq.*, Hazardous Waste.
13. **“KAIP”** means the Kansas Airport Improvement Program, administered by KDOT’s Division of Aviation.

14. **“KDOT”** means the Kansas Department of Transportation, an agency of the State of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
15. **“Letting” or “Let”** means the process of receiving bids prior to an award of a Construction contract for any portion of the Project.
16. **“National Plan of Integrated Airport Systems (NPIAS) Airport”** as defined and designated by the FAA; the current list of which may be found at https://www.faa.gov/airports/planning_capacity/npias/current/.
17. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, reasonably determines are not Participating Costs.
18. **“Participating Costs”** means expenditures for items or services which are an integral part of the Project, as reasonably determined by the Secretary.
19. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the Sponsor.
20. **“Preliminary Engineering” or “PE”** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm, that takes place before Letting.
21. **“Project”** means all phases and aspects of the endeavor to be undertaken by the Sponsor, being as follows: **procure paving materials to extend runway length to no less than 5,002 feet for the Emporia Municipal Airport in Emporia, Kansas**, and is the subject of this Agreement.
22. **“Project Limits”** means that area of the Project, including all areas between and within the Right of Way boundaries as shown on the final Design Plans.
23. **“Public Use General Aviation Airport”** means any airport available for use by the general public for the landing and taking off of aircraft but shall not include any airport classified as a primary airport by the Federal Aviation Administration (FAA), as defined in K.S.A. § 75-5061(e) or other applicable statute.
24. **“Right of Way”** means the real property and interests therein necessary for construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the final Design Plans.
25. **“Secretary”** means the Secretary of Transportation of the State of Kansas, and his or her successors and assigns.

- 26. **“Sponsor”** means the City of Emporia, Kansas, with its place of business at 1220 Hatcher, Emporia, KS 66801.
- 27. **“Useful Life Period”** means a sufficient period of time, as specifically designated in this Agreement in Article IV, paragraphs 21 and 22, to secure the investment of KAIP funds in the Project based on the nature and magnitude of Project costs and generally accepted economic or useful life cycle norms for the type of Construction involved in the Project.

ARTICLE II

FUNDING:

1. **Funding.** The table below reflects the funding commitments of each Party. The Participating Costs of Construction include all Construction Contingency Items. The Parties agree costs and contributions reflected below are for encumbrance purposes and may be subject to change.

Party	Responsibility	Total Projected Contributions (\$)
Secretary	90% of Participating Costs of Construction and Construction Engineering (CE), not to exceed \$75,000.00.	75,000.00
Sponsor	10% of Participating Costs of Construction and CE until Secretary’s funding limit is reached; 100% of Participating Costs of Construction and CE after Secretary’s funding limit is reached; 100% of Costs of Preliminary Engineering, Right of Way, Utility Adjustments, and Non-Participating Costs.	8,333.34
Total Estimated Project Cost		83,333.34

ARTICLE III

SECRETARY RESPONSIBILITIES:

1. **Reimbursement Payments.** The Secretary agrees to make such payment to the Sponsor as soon as reasonably possible after Construction of the Project is completed and after receipt of proper billing and certification by the Sponsor that the Project was constructed within substantial compliance of the approved Design Plans. The Secretary reserves the right to retain up to five percent (5%) of the Secretary’s maximum participation until the Sponsor completes its obligations under this Agreement to the satisfaction of the Secretary.

2. **Verification of Project Start.** The Secretary shall not reimburse the Sponsor until the Secretary receives verification from the Sponsor that the Project is underway. Verification for the Project may consist of evidence of Construction, proof of hiring Consultant or Contractor for the Project, or other method deemed acceptable by the Secretary's authorized representative. Failure to submit verification that the Project has been started within two (2) years of the effective date shall result in the Secretary cancelling the Project. Permission to delay the Project start must be approved by the Secretary and evidenced by a supplemental agreement executed by both Parties.

ARTICLE IV

SPONSOR RESPONSIBILITIES:

1. **Project Administration.** The Sponsor shall be responsible for undertaking the Project including, but not limited to, Design, Letting, administration, inspection, and completion of the Project. Immediately after the Project is Let, the Sponsor shall notify KDOT's Division of Aviation of the Letting date, the total contract amount, and any other requested information related to the Project.

2. **Design and Specifications.** The Sponsor will prepare, or contract to have prepared, Design Plans for the Project, Let the contract, construct the Project in accordance with the final Design Plans, inspect the Construction, and administer both the Project and the payments due the Contractor, including the portion of cost borne by the Secretary. The Sponsor shall separate and list apart the Participating Cost bid items from Non-Participating Cost bid items on both the final Design Plans and the bid documents.

3. **Conformity with Federal Requirements.** The Sponsor shall design the Project, or contract to have it designed, in conformity with the current Federal Aviation Administration (FAA) airport design standards and the rules and regulations of the FAA pertaining thereto. The Sponsor agrees that all airport planning and environmental activities associated with this grant shall be conducted in accordance with FAA written policy or policies governing the Sponsor's airport projects and the sequence thereof, including those that govern projects for a National Plan of Integrated Airport Systems (NPIAS) airport, where applicable.

4. **Submission of Design Plans to Secretary.** If requested, the Sponsor will furnish to KDOT's Division of Aviation one (1) set of final Design Plans.

5. **Consultant Contract Language.** The Sponsor shall include language requiring conformity with Article IV, paragraph 3 above, in all contracts between the Sponsor and any Consultant with whom the Sponsor has contracted to perform services for the Project. In addition, any contract between the Sponsor and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article IV, paragraph 3 above. In addition, any contract between the Sponsor and any Consultant with whom the Sponsor has contracted to prepare

and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

- a. **Completion of Design.** Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the Consultant's control.
- b. **Progress Reports.** Language requiring the Consultant to submit to the Sponsor (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.
- c. **Third Party Beneficiary.** Language making the Secretary a third-party beneficiary in the agreement between the Sponsor and the Consultant. Such language shall read:

"Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third-party beneficiary to this agreement between the Sponsor and the Consultant. This third-party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the Sponsor or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant's negligent acts, errors, or omissions. Nothing in this provision precludes the Sponsor from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary's right to payment or reimbursement."

6. **Responsibility for Adequacy of Design.** The Sponsor shall be responsible for, and require any Consultant retained by it to be responsible for, the adequacy and accuracy of the Design Plans for the Project. Any review of these items performed by the Secretary or the Secretary's representatives is not intended to and shall not be construed to be an undertaking of the Sponsor's and its Consultant's duty to provide adequate and accurate Design Plans for the Project. Reviews by the Secretary are not done for the benefit of the Consultant, the construction Contractor, the Sponsor, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Consultant or the Sponsor.

7. **Performance Bond.** The Sponsor has the discretion to require the Contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

8. **Preventive Maintenance.** The Sponsor agrees to implement, or work with the Airport to implement, an airport pavement management program which assures preventive maintenance for construction, reconstruction, replacement, and maintenance for projects which utilize KAIP funds.

9. **Final Acceptance.** The Sponsor shall obtain final acceptance and certification of the Project through KDOT's Division of Aviation.

10. **Prevailing Wages.** The Sponsor will require the Contractor to pay prevailing wages. The Sponsor will incorporate into the Construction contract the current general wage decision for the county in which the Project is being constructed. The Sponsor can obtain the current wage decision from KDOT's Bureau of Construction and Materials website.

11. **Utilities.** The Sponsor will move or adjust, or cause to be moved or adjusted, all Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing Utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the KDOT Utility Accommodation Policy (UAP), as amended or supplemented. The expense of such removal or adjustment shall be borne by the owner or the Sponsor.

12. **Hazardous Waste.** The Sponsor agrees to the following with regard to Hazardous Waste:

- (a) **Removal of Hazardous Waste.** The Sponsor shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The Sponsor shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The Sponsor will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency (EPA), State of Kansas environmental laws and regulations, and local agency standards where the Hazardous Waste is located.
- (b) **Responsibility for Hazardous Waste Remediation Costs.** The Sponsor shall be responsible for all damages, fines or penalties, expenses, fees, claims and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.
- (c) **Hazardous Waste Indemnification.** To the extent permitted by law and subject to the Kansas Tort Claims Act (K.S.A. § 75-6101, *et seq.*) as applicable, the Sponsor shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under state or federal laws arising out of or related to any act of omission by the Sponsor in undertaking cleanup or remediation for any Hazardous Waste.
- (d) **No Waiver.** By signing this Agreement, the Sponsor has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the

Project limits. The Sponsor reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project limits.

13. **General Indemnification.** To the extent permitted by law and subject to the Kansas Tort Claims Act (K.S.A. § 75-6101, *et seq.*) as applicable, the Sponsor will defend, indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the Sponsor, the Sponsor's employees, agents, subcontractors, or consultants. The Sponsor shall not be required to defend, indemnify, or hold the Secretary harmless for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

14. **Indemnification by Contractors.** The Sponsor agrees to require the Contractor to indemnify, hold harmless, and save the Secretary and the Sponsor from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors, or suppliers. If the Secretary or the Sponsor defends a third party's claim, the Contractor shall indemnify the Secretary and the Sponsor for damages paid to the third party and all related expenses either the Secretary or the Sponsor or both incur in defending the claim.

15. **Inspection of Records.** During Project execution, representatives of the Secretary may make periodic inspection of the Project and the records of the Sponsor as may be deemed necessary or desirable. The Sponsor will direct or cause its Contractor to accomplish any corrective action or work required by the Secretary's representative as necessary to the performance of this Agreement.

16. **Audit.** The Sponsor will participate and cooperate with the Secretary in an annual audit of the Project. The Sponsor shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments that have been made with state funds by the Sponsor for items considered Non-Participating Costs, the Sponsor shall promptly reimburse the Secretary for such items upon notification by the Secretary.

17. **Accounting.** Upon request by the Secretary, the Sponsor will provide the Secretary an accounting of all actual Non-Participating Costs associated with the Project which are paid directly by the Sponsor to any party outside of the Secretary and costs incurred by the Sponsor not to be reimbursed by the Secretary. This will enable the Secretary to report all costs of the Project to the legislature.

18. **Legal Authority.** By signature on this Agreement, the signatory certifies that he or she has legal and actual authority as representative and agent for the Sponsor to enter into this Agreement on its behalf. The Sponsor agrees to take any administrative and/or legal steps as may be required to give full effect to the terms of this Agreement.

19. **Maintenance.** When the Project is completed and final acceptance is issued the Sponsor will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. If notified by KDOT's Division of Aviation of any unsatisfactory maintenance condition, the Sponsor will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is completed to the Secretary's satisfaction.

20. **Project Modification.** Any the following Project changes require the Sponsor to send a formal notice to the Secretary for approval:

- a. Fiscal year the Project is to be Let
- b. Project description
- c. Project scope

During Construction, the Sponsor shall notify the Secretary of any changes in the plans and specifications, which will require the written approval of the Secretary.

21. **Assurance Clause.** At any time that the public is not allowed access to the Airport, the Sponsor agrees to reimburse the Secretary a prorated amount based on a ten (10) year Useful Life of the Project. This assurance clause will be valid and enforceable for ten (10) years from the date that the final payment is authorized. This provision is only applicable to closure for non-airport purposes.

22. **Useful Life.**

(a) **Useful Life Period.** The Parties agree the Useful Life Period of the Project is ten (10) years, commencing on the date the Secretary gives notice of final acceptance of the Project.

(b) **Change in Public Use.** After the Project is completed and during the entire Useful Life Period, the Airport shall remain open for public use. Any change in the public use of the real property for the Project will require written approval from the Secretary.

(c) **Recapture of State Investment.**

(i) During the first five (5) years of the Useful Life Period, if the Project is not used for the purpose set forth in this Agreement or other use approved by the Secretary under subparagraph (b) above, then the Sponsor shall pay to the Secretary 100% of the funds invested in the Project.

(ii) Following the first five (5) years of the Useful Life Period and until the Useful Life Period expires, if the Project is not used for the purpose set forth in this Agreement or other use approved by the Secretary under subparagraph (b) above, then the Sponsor shall pay to the Secretary as

recapture of funds invested in the Project an amount, which will be determined according to the following formula:

$$\frac{\text{Total Amount of State and/or Federal Funds Invested in the Project}}{\text{Entire Useful Life Period for the Project}} \times \text{Number of Full Years Remaining in the Useful Life Period at the time of unauthorized change in use} = \text{Recapture Amount}$$

(iii) Any payments due to the Secretary pursuant to this subparagraph (c) shall be made within ninety (90) days after receipt of billing from the Secretary’s Chief of Fiscal Services unless an extension is granted by the Secretary.

ARTICLE V

GENERAL PROVISIONS:

1. **Project Limits.** It is mutually agreed the Project will be constructed within the limits of the Airport.
2. **Incorporation of Design Plans.** The final Design Plans for the Project are by this reference made a part of this Agreement.
3. **Compliance with Federal and State Laws.** The Parties agree to comply with all appropriate state and federal laws and regulations applicable to the Project.
4. **Offer Expiration.** The Secretary’s offer to fund the Project, subject to the terms of this Agreement, is contingent upon the Sponsor executing this Agreement on or before the Expiration Date. In the event the Sponsor fails to execute this Agreement on or before the Expiration Date, the Secretary will not be obligated to fund the Project and the Secretary may cancel the Project. If the Sponsor wishes to extend the Expiration Date, the Sponsor must submit a written extension request to the Secretary at least forty-five (45) days prior to the Expiration Date. After receiving the request, the Secretary may extend the Expiration Date by providing written notice to the Sponsor.
5. **Civil Rights Act.** The “Special Attachment No. 1, Rev. 09.20.17” pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.
6. **Contractual Provisions.** The provisions found in the current version of the Contractual Provisions Attachment (Form DA-146a), which is attached hereto, are incorporated into and made a part of this Agreement.

7. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not deemed to control or affect the meaning or construction or the provisions herein.

8. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the Sponsor and their successors in office.

9. **No Third-Party Beneficiaries.** No third-party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

10. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

11. **Severability.** If any provision of this Agreement is held invalid, the invalidity does not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of this Agreement are severable.

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:

THE CITY OF EMPORIA, KANSAS

Kerry Sull, City Clerk (Date)

Becky Smith, Mayor (Date)

(SEAL)

KANSAS DEPARTMENT OF TRANSPORTATION

Julie L. Lorenz, (date)
Secretary of Transportation

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to

comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

6. **Acceptance of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority to Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility for Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, *et seq.*
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

PREAMBLE

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and other nondiscrimination requirements and the Regulations, hereby notifies all contracting parties that it will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, color, national origin, sex, age, disability, income-level or Limited English Proficiency ("LEP").

CLARIFICATION

Where the term "contractor" appears in the following "Nondiscrimination Clauses", the term "contractor" is understood to include all parties to contracts or agreements with the Secretary of Transportation, Kansas Department of Transportation. This Special Attachment shall govern should this Special Attachment conflict with provisions of the Document to which it is attached.

ASSURANCE APPENDIX A

During the performance of this contract, the contractor, for itself, it's assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in its Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration (FHWA), the Federal Transit Administration ("FTA") or the Federal Aviation Administration ("FAA") as they may be amended from time to time which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, Including Procurements of Material and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, Federal Transit Administration ("FTA"), or Federal Aviation Administration ("FAA") to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or, the FHWA, FTA, or FAA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA, FTA, or FAA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any

subcontract or procurement as the Recipient or the FHWA, FTA, or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

ASSURANCE APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Federal Aid Highway Act of 1973 (23 U.S.C. § 324 et. seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et. seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL No. 100-259), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)

Memo

TO: City Commission

FROM: City Manager's Office

CC: Department Heads

DATE: May 18, 2022

SUBJECT: Personnel Policy Changes

We are in the process of revising the City Personnel Policy Manual, and City Staff is recommending some policy changes. Staff believes these changes along with modifications to salary and benefits will be necessary over the next year to allow us to retain and recruit team members.

1. Addition of paid family leave:
 - a. *The City recognizes the importance of supporting employees' need to care for their families and to bond with their newborn or newly placed children. In support of our families, the City will offer paid family leave of up to six (6) weeks in a 24-month period.*
2. Vacation:
 - a. *Vacation has been modified to increase leave and carryover. These changes will better align our city with our peer organizations and make us more competitive in the labor market.*
 - b. *Proposed Changes:*

Regular

LENGTH OF SERVICE	FULL-TIME EMPLOYEES	VACATION HOURS ACCRUED PER YEAR	MAXIMUM ACCRUAL
0-4 years	10.67 hrs. per month	128	192
5-9 years	12.67 hrs. per month	152	228
10-14 years	14.67 hrs. per month	176	264
15+ years	16.67 hrs. per month	200	300

Firefighters

LENGTH OF SERVICE	FULL-TIME EMPLOYEES	VACATION HOURS ACCRUED PER YEAR	MAXIMUM ACCRUAL
0-4 years	14.17 hrs. per month	170	255
5-9 years	16.83 hrs. per month	202	303
10-14 years	19.42 hrs. per month	233	350
15+ years	22.08 hrs. per month	265	398

Current Vacation Policy:

LENGTH OF SERVICE	FULL-TIME EMPLOYEES	VACATION HOURS ACCRUED PER YEAR	MAXIMUM CARRYOVER
0-10 years	8 hrs. per month	96	120
11-15 years	10 hrs. per month	144	120
16-25 years	12 hrs. per month	168	120
25+ years	14 hrs. per month	192	120

Firefighters

LENGTH OF SERVICE	FULL-TIME EMPLOYEES	VACATION HOURS ACCRUED PER YEAR	MAXIMUM CARRYOVER
0-10 years	12 hrs. per month	144	180
11-15 years	15 hrs. per month	216	180
16-25 years	18 hrs. per month	252	180
25+ years	21 hrs. per month	288	180

3. Residency:

a. New Policy

Additional information is attached for your review.

b. Current Policy

Employees are required to live within Lyon County or adjacent Counties. Department heads must reside within Lyon County.

4. Holidays:

a. *Adopt Federal Holidays with the following adjustments;*

i. *Washington's birthday – Will be taken as ½ day on Christmas Eve.*

ii. *Columbus Day – Changed to the day after Thanksgiving.*

6.3 Holiday Time Off and Pay Policy

The City will grant paid holiday time off to all eligible employees on the designated federal holidays listed below. The City Manager may designate any other day as an official holiday and may grant a day off with pay for city employees.

- New Year's Day, January 1
- Martin Luther King Day, third Monday in January
- Memorial Day, last Monday in May
- Juneteenth, June 19th
- Independence Day, July 4
- Labor Day, first Monday in September
- Veteran's Day, November 11
- Thanksgiving, fourth Thursday in November
- Friday following Thanksgiving (traded for Columbus Day)
- Christmas Eve ½ day, workday prior to observed Christmas holiday (Traded for Washington's Birthday)
- Christmas, December 25

All full-time employees are eligible for paid holiday time off. Employees shall be paid for the time off from work on a holiday at a rate that is equal to the wages they would have earned for the number of hours they would have been scheduled to work on that day, up to the maximum holiday hours allowed. The holiday is defined as the day the City officially observes the holiday and/or the actual holiday, but not both. Standard holiday pay is further defined as up to eight (8) hours and will be paid on a standard eight (8) hour day. In no case is the employee eligible for more than eight (8) hours of holiday pay per holiday.

Firefighters on a 27-day cycle will be paid an equivalent value of holiday hours spread over each pay period.

If the holiday falls on a Saturday, the City will observe the holiday on Friday, if the holiday falls on a Sunday, the City will observe the holiday on Monday. Holiday pay will be paid on the day that the City observes the holiday, except as specifically noted for Christmas Eve.

Part-time, temporary, and seasonal employees are not eligible for holiday pay. Part-time, temporary, and seasonal employees required to work on a designated holiday shall be paid for the total number of hours worked that day at their regular rate.

City-designated holidays which occur during an employee's pre-scheduled paid time off shall not be counted against the employee's accrued vacation paid time off. Employees should refer to the City's FMLA policy to determine if the holiday counts against the employee's FMLA entitlement.

1.1. Personal Holiday

Employees will be awarded one personal holiday each January 1st, which must be used by December 31st of each year and can NOT be carried over from year to year. This personal day may be used at any time during the year with supervisor approval and must be used as a full day. A full day is defined as eight (8) hours for standard employees and twelve (12) hours for Firefighters. Employees are eligible to use their Personal Holiday after six (6) months of service.

6.11 Paid Family Leave

The City recognizes the importance of supporting employees' need to care for their families and to bond with their newborn or newly placed children. In support of our families, the City will offer paid family leave of up to six (6) weeks in a 24-month period.

Eligibility: any regular, benefit-eligible employee who has been continuously employed with the City for a minimum of 12 months immediately preceding the qualifying event. A qualifying event is any leave that is covered by the Family & Medical Leave Act (FMLA).

Benefit: Paid family leave shall be 100% of the eligible employee's regular rate of pay for up to a maximum of 6 calendar weeks. Benefit will commence following a 1 calendar week qualifying period, during which the employee may utilize other paid time off or take leave without pay. Employee will continue to accrue vacation and sick leave as well as all other benefits in accordance with City policy.

Paid family leave taken for the birth or placement of a child must be taken within the 12 weeks immediately beginning 30 days in advance of an FMLA qualifying event, upon an FMLA qualifying event, or date of placement for adoption or fostering of a child.

If both parents are employees eligible for paid family leave, and both intend to take paid family leave, the paid family leave may be taken concurrently, consecutively, 30 days in advance for FMLA qualifying events, or at different times within the 12-week period immediately following the qualifying event.

Intermittent paid family leave or leave taken with a reduced schedule is subject to departmental needs and must be approved in advance by the Department Head. Additional leave may be permitted with the use of employee's other leave accrual balances. Paid family leave will be counted toward an employee's FMLA leave entitlement.

