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ORDINANCE NO. 19625

AN ORDINANCE introduced by Daniel R. Stanley, Acting City Manager, creating Chapter 13.35 concerning stormwater management and amending § 13.15.010 through § 13.15.040 and § 13.15.110 through § 13.15.150.

BE IT ORDAINED BY THE GOVERNING BODY THE CITY OF TOPEKA:

Section 1. That section 13.15.010, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Definitions.

The following terms, phrases and abbreviations when used in this chapter and Chapters 13.20, 13.25, ~~and 13.30~~ and 13.35 TMC shall have the meanings ascribed to them in this section unless specifically stated otherwise:

"Accelerated erosion" means erosion caused by development activities that exceeds the natural processes by which the surface of the land is worn away by the action of water, wind, or chemical action.

"Applicant" means a person who has requested approval of a subdivision or site plan.

"Appraisal district" means the office of the county appraiser.

"Approval authority" means the Environmental Protection Agency (EPA) or, if the pretreatment program has been formally delegated to the state Department of Health and Environment (KDHE), it shall mean the Director of the Division of Environment of KDHE.

"Authorized representative" means:

29 (1) A principal executive officer of at least the level of vice-president, if
30 the industrial user is a corporation;

31 (2) A general partner or proprietor, if the industrial user is a partnership
32 or proprietorship, respectively;

33 (3) A duly authorized representative of the individual designated
34 above, if such representative is responsible for the overall operation of the
35 facilities from which the indirect discharge originates; or

36 (4) A duly authorized representative responsible for the operation of a
37 facility owned and/or operated by the state, federal or local government.

38 “Beneficial uses” means uses of the waters of the state that may be protected
39 against quality degradation which include, but are not necessarily limited to, domestic,
40 municipal, agricultural and industrial supply, power generation, recreation, aesthetic
41 enjoyment, navigation and the preservation and enhancement of fish, wildlife and other
42 aquatic resources or reserves, and other uses, both tangible or intangible, as specified
43 by federal or state law.

44 “Best management practices (BMPs)” means the schedules of activities,
45 practices, and maintenance procedures which prevent or reduce the discharge of
46 pollutants directly or indirectly to the MS4 and to the waters of the United States. BMPs
47 can be structural or nonstructural, and also include treatment facilities and
48 requirements, operating and maintenance procedures, and practices to control plant
49 and construction site runoff, spillage or leaks, sludge or waste disposal, or drainage
50 from raw material storage, and such other provisions as the superintendent determines
51 appropriate for the control of pollutants.

52 “Biochemical oxygen demand (BOD)” means the quantity of oxygen utilized in
53 the biochemical oxidation of organic matter under standard laboratory procedures in five
54 days at 20 degrees Celsius, expressed in milligrams per liter.

55 “Bonds” means revenue bonds, general obligation bonds, notes, loans or any
56 other debt obligations issued or incurred to finance the costs of construction.

57 “Building” means any structure, either temporary or permanent, having walls and
58 a roof, designed for the shelter of any person, animal, or property, and occupying more
59 than 150 square feet of area.

60 “Channel” means a natural or artificial watercourse with a definite bed and banks
61 that conducts continuously or periodically flowing water.

62 “City” means the city of Topeka, Kansas, ~~represented by the superintendent.~~

63 “Clean Water Act” or “the Act” means the federal Water Pollution Control Act (33
64 U.S.C. Section 1251 et seq.), and any subsequent amendments thereto.

65 “Clearing” means any activity that removes the vegetative surface cover.

66 “Composite sample” means a combination of individual samples of water or
67 wastewater taken at selected intervals (generally hourly or some similar specified
68 period) to minimize the effect of the variability of the individual sample. Individual
69 samples may have equal volume or may be roughly proportional to the flow at time of
70 sampling.

71 “Construction activity” means activities subject to NPDES construction permits.
72 These include construction projects resulting in land disturbance of one acre or more.
73 Such activities include but are not limited to clearing and grubbing, grading, excavating,
74 and demolition.

75 “Contamination” means an impairment of the quality of the waters of the state by
76 waste to a degree which creates a hazard to the public health. “Contamination” shall
77 include any equivalent effect resulting from the disposal of wastewater, whether or not
78 waters of the state are affected.

79 “Cooling water” means the water discharged from any use such as air
80 conditioning, cooling or refrigeration or to which the only pollutant added is heat.

81 “Costs of construction” means costs reasonably incurred in connection with
82 providing capital improvements to the system or any portion thereof, including but not
83 limited to the costs of:

84 (1) Acquisition of all property, real or personal, and all interests in
85 connection therewith including all rights-of-way and easements therefor;

86 (2) Physical construction, installation and testing, including the costs of
87 labor, services, materials, supplies and utility services used in connection
88 therewith;

89 (3) Architectural, engineering, legal and other professional services;

90 (4) Insurance premiums taken out and maintained during construction,
91 to the extent not paid for by a contractor for construction and installations;

92 (5) Any taxes or other charges which become due during construction;

93 (6) Expenses incurred by the city or on its behalf with its approval in
94 seeking to enforce any remedy against any contractor or subcontractor in respect
95 of any default under a contract relating to construction;

96 (7) Principal of and interest of any bonds, temporary notes or loans;
97 and

(8) Miscellaneous expenses incidental thereto.

“Debt service” means, with respect to any particular fiscal year and any particular series of bonds, an amount equal to the sum of all interest payable on such bonds during such fiscal year, plus any principal installments of such bonds during such fiscal year.

“Dedication” means the deliberate appropriation of property by its owner for general public use.

“Detention” means the temporary storage of storm runoff in a stormwater management practice with the goals of controlling peak discharge rates and providing gravity settling of pollutants.

“Detention facility” means a detention basin or alternative structure designed for the purpose of temporary storage of stream flow or surface runoff and gradual release of stored water at controlled rates.

“Department” means the public works department of the city.

“Developed property” means real property other than undisturbed property.

“Developer” means a person who undertakes land disturbance activities.

“Direct discharge” means the discharge of treated or untreated wastewater directly to the waters of the state.

“Director” means the director of the department of public works or his or her designee.

“Discharge” means the addition or introduction of any pollutant, stormwater, or any other substance into the municipal separate storm sewer system (MS4) or into waters of the United States.

“Documented waste strength” means the average concentration of the analytes BOD, TSS, and TKN of a set of 12 samples collected, at random, in a two-year period. Twelve samples for liquid waste class 2 and 12 samples for liquid waste class 3 will be tested every two years and the results will be averaged to determine the waste strength for billing purposes.

“Domestic septage” means the liquid or solid material removed from a septic tank, cesspool, portable toilet, type III marine sanitation device, or similar system that receives only liquid domestic waste (household, noncommercial, nonindustrial sewage) as defined by the Federal Part 503 regulation.

“Domestic sewage” means sewage originating from residential uses or activities including, but not limited to, kitchen, bathroom, laundry sources, dishwashing, toilets, baths, showers, sinks, garbage units and food preparation.

“Drainage easement” means a legal right granted by a landowner to a grantee allowing the use of private land for stormwater management purposes.

“Drainage fee” means a fee authorized by state law and the ordinance which is established to pay operations and maintenance, extension and replacement and debt service.

“Drainage way” means any channel that conveys surface runoff throughout the site.

“Dwelling unit” means a single unit or apartment providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

“Environmental Protection Agency (EPA)” means the U.S. Environmental Protection Agency, or, where appropriate, the term may also be used as a designation for the administrator or other duly authorized official of such agency.

“Equivalent residential unit (ERU)” means the average impervious area of residential developed property per dwelling unit located within the city and as established by ordinance as provided in this chapter.

“Erosion and sediment control plan” means a document which describes the BMPs and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems and/or receiving waters to the maximum extent practicable.

“ERU rate” means a drainage fee charged on each ERU as established by council ordinance as provided in Chapter 13.05 TMC.

“Exempt property” means public rights-of-way, public streets, alleys, sidewalks and drainage structures.

“Fee in lieu” means a payment of money in place of meeting all or part of the storm water performance standards required by Chapter 13.35.

“Final stabilization” means the condition when all soil disturbing activities at a site have been completed, and a uniform, perennial vegetative cover with a density of 70 percent of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures such as the use of riprap, gabions, or geotextiles have been employed.

“Fiscal year” means a 12-month period commencing on January 1st of any year.

“Foundation drain” means a perforated pipe or a pipe with open joints or porous material installed either outside exterior foundation walls or inside exterior foundation walls or beneath a basement floor for the purpose of preventing the buildup of water pressure and water capillarity beneath the floor.

“Grab sample” means a sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of time.

“Hazardous substance” means any substance listed in Table 302.4 of 40 CFR Part 302.

“Hazardous waste” means any substance identified or listed as a hazardous waste by the United States Environmental Protection Agency pursuant to 40 CFR Part 261.

“Hazardous waste treatment, disposal, and recovery facility” means all land and physical structures, other appurtenances and improvements on the land used for the treatment, disposal, or recovery of hazardous waste.

“Holding tank waste” means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.

“Hydrologic Soil Group (HSG)” means a Natural Resource Conservation Service classification system in which soils are categorized into four runoff potential groups. The groups range from A soils, with high permeability and little runoff production, to D soils, which have low permeability rates and produce much more runoff.

187 “Illicit connection” means any pipe, conduit, drain or other means of transmitting
188 any substance or waste into the MS4 or municipal sanitary sewer system which is not
189 specifically authorized under Chapters 13.20, 13.25 and 13.30 TMC.

190 “Illicit discharge” means any direct or indirect discharge to the MS4 or municipal
191 sanitary sewer system, except as specifically permitted under Chapter 13.20, 13.25 or
192 13.30 TMC.

193 “Impervious area” means the number of square feet of hard surfaced areas which
194 either prevent or retard the entry of water into the soil mantle, as it entered under
195 natural conditions as undisturbed property, and/or causes water to run off the surface in
196 greater quantities or at an increased rate of flow from that present under natural
197 conditions as undisturbed property, including, but not limited to, roofs, roof extensions,
198 patios, porches, driveways, sidewalks, pavement, graveled areas and athletic courts.

199 “Indirect discharge” means the discharge or the introduction of nondomestic
200 pollutants from any source regulated under Section 307(b) or (c) of the Act (33 U.S.C.
201 1317) into the POTW (including holding tank waste discharged into the system).

202 “Industrial activity” means activities subject to NPDES industrial permits as
203 defined in 40 CFR Section 122.26(b)(14).

204 “Industrial user” means any user contributing industrial waste to the municipal
205 sewer system.

206 “Infiltration” means the process of percolating stormwater into the subsoil.

207 “Interference” means a discharge which, alone or in conjunction with a discharge
208 or discharges from other sources, both:

(1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(2) Is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with statutory provisions and regulations or permits issued thereunder by the state or federal government.

"Jurisdictional Wetland" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

"KDHE" means the Kansas Department of Health and Environment.

"Land disturbance activity" means any activity that changes the physical conditions of landform, vegetation or hydrology, creates bare soil, or otherwise may cause erosion or sedimentation. Such activities include, but are not limited to, clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging and storing of materials.

"Landowner" means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

"Liquid waste" means waste which will not pass the paint filter test, is biologically compatible with the wastewater treatment process, and will not pass through or interfere

with the wastewater treatment process. Liquid waste meeting the above criteria is further defined by the following categories:

“Class 1 liquid waste” means a domestic septage which originates from storage devices (holding tanks) that are typically pumped at frequent intervals (less than every 30 days) as these devices are nondischarging storage structures for sanitary waste which have no connection to a lateral field or discharge point. Class 1 liquid waste is biologically characterized as being only partially stabilized and having low TSS, BOD5, and TKN content.

“Class 2 liquid waste” means a domestic septage which originates from treatment devices (septic tanks) that are typically pumped at long intervals (more than every 30 days) and having a connection to a lateral field or discharge point. Class 2 liquid waste is biologically characterized as being well stabilized and having high TSS, BOD5, and TKN.

“Class 3 liquid waste” means a domestic septage which originates from storage devices (portable toilets, type III marine sanitation devices) that are typically pumped at frequent intervals (less than every 30 days) as these devices are nondischarging storage structures for sanitary waste which have no connection to a lateral field or discharge point. Class 3 liquid waste differs from the other classes of septage as it is chemically stabilized when generated. This liquid waste is typically characterized as having high TSS, BOD5, and TKN.

“Class 4 liquid waste” means a liquid waste which is composed primarily of fatty matter from animal or vegetable sources and originates from residential or commercial grease interceptors. Class 4 liquid waste is typically characterized

as containing two to five percent FOG, five to 30 percent solids and very high organic content.

“Class 5 liquid waste” means a liquid waste not defined in the first four categories above. This liquid waste includes liquid waste of industrial, commercial, or other origin including, but not limited to, landfill leachate, wastewater residuals and tanning waste.

“Liquid waste hauler” means any person, persons, partnership or corporation which transports liquid, nonhazardous waste.

“Maintenance agreement” means a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of storm water management practices.

“Mass emission rate” means the weight of material discharged to the sewer system during a given time interval, which, unless otherwise specified, is measured in pounds per day of a particular constituent or combination of constituents.

“Municipal combined sewer” means a sewer owned and operated by the city or other public agency which receives or carries the combination of surface runoff, wastewater, sewage and/or industrial wastes to the POTW.

“Municipal sanitary sewer” means a sewer owned and operated by the city or other public agency which carries wastewater, sewage and/or industrial wastes, either directly or indirectly, to a POTW and to which storm, surface and ground waters are not intentionally admitted.

“Municipal sanitary sewer system” means sanitary sewers, pumping stations, sewage treatment plants, main sewers, interceptor sewers, outfall sewers, and works

for the collection, transportation, pumping and treating of wastewater, sewage or industrial waste owned and operated by the city.

“Municipal separate storm sewer system (MS4)” or “municipal stormwater system” means a system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, natural channels or streams, or storm drains maintained by the city and designed for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.

“National categorical pretreatment standard” or “pretreatment standard” means any regulation which establishes or sets pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act (33 U.S.C. 1317), which applies to a specific category of industrial users.

“National prohibitive discharge standard” or “prohibitive discharge standard” means any regulation developed under the authority of Section 307(b) of the Act.

“New source” means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act, which will be applicable to such source if such standards are thereafter promulgated in accordance with that section; provided, that such building, structure, facility or installation meets the criteria outlined by 40 CFR 403.3(k) of the general pretreatment regulations.

“Nonhazardous liquid waste” means a waste not listed under 40 CFR Part 261.

“Nonhazardous waste” means waste not listed under 40 CFR Part 261.

299 "Nonpoint source pollution" means pollution from any source other than from any
300 discernible, confined, and discrete conveyances, and shall include, but not be limited to,
301 pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and
302 urban runoff sources.

303 "Nonresidential developed property" means developed property that is classified
304 by the county appraisal for the commercial, industrial or other nonresidential uses.

305 "Notice of intent (NOI)" means the application supplied by KDHE to apply for a
306 permit to discharge stormwater from either a construction site or industrial site.

307 "Notice of termination (NOT)" means the application supplied by KDHE submitted
308 by either the construction or industrial site permittee to either designate completion of a
309 project or the termination of permitted stormwater discharges from a site.

310 "NPDES" means the National Pollutant Discharge Elimination System.

311 "NPDES construction activity permit for discharges of runoff from construction
312 activities" means the NPDES permit issued to an individual or entity by KDHE for all
313 construction sites which disturb a cumulative total of one acre of land or greater.

314 "NPDES industrial general permit for stormwater discharges associated with
315 industrial activity" or "NPDES industrial general permit" means the industrial general
316 permit including any amendments thereto issued by KDHE which regulates the
317 discharge of stormwater runoff from certain types of industrial activity.

318 "Offset fee" means a monetary compensation paid to the City of Topeka for
319 failure to meet pollutant load reduction targets.

320 "Off-site facility" means a stormwater management measure located outside the
321 subject property boundary described in the application for subdivision or site plan
322 approval.

323 "Owner" or "operator" means the party or parties that either individually or taken
324 together meet the following three criteria: (1) they own the facility; (2) they have
325 operational control over the facility; (3) they have the day-to-day operational control of
326 those activities at the facility necessary to ensure compliance.

327 "Pass-through" means a discharge which exits the POTW into waters of the
328 United States in quantities or concentrations which alone or in conjunction with a
329 discharge or discharges from other sources is a cause of a violation of any requirement
330 of the POTW's NPDES permit (including an increase in the magnitude or duration of a
331 violation).

332 "Person" means any individual, partnership, copartnership, firm, company,
333 corporation, association, joint stock company, trust, estate, governmental entity or any
334 other legal entity or other legal representatives, agents or assignees.

335 "pH" means the negative logarithm of the reciprocal concentration of hydrogen
336 ions measured in grams per liter of solution.

337 "Pollutant" means anything which causes or contributes to pollution including, but
338 not limited to, paints, varnishes, and solvents; oil and other automotive fluids;
339 nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter,
340 or other discarded or abandoned objects, articles, and accumulations, so that same
341 may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers;
342 hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved

and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure (including but not limited to sediments, slurries, and concrete rinsates); and noxious or offensive matter of any kind.

“Pollution” means the human-made or human-induced alteration of the quality of waters by waste to a degree which unreasonably affects, or has the potential to unreasonably affect, either the waters for beneficial uses or the facilities which serve these beneficial uses.

“Premises” means any building lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

“Pretreatment” or “treatment” means the reduction of the amount of pollutants, the removal of pollutants or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the sanitary sewer system. The reduction or alteration can be obtained by physical, chemical or biological processes or process changes by other means, except by dilution as prohibited by federal regulation.

“Pretreatment standard” means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act which applies to industrial users.

“Private service line” means a pipe or enclosed conduit to convey waste or wastewater from the premises of a user to a public sanitary sewer.

“Publicly owned treatment works (POTW)” means a treatment works as defined by Section 212 of the Act (33 U.S.C. 1292), which is owned in this instance by the city, including any sewers that convey wastewater to the POTW treatment plant, but does

not include pipes, sewers or other conveyances not connected to a facility providing treatment and also includes any public sanitary sewer or public combined sewer that convey wastewaters to the POTW from persons outside the city who are users of the city's POTW.

"Qualified personnel" means a person who possesses the appropriate skills and ability as demonstrated by sufficient education, training, experience, and/or, when applicable, any required certification or licensing to perform a specific activity in a timely and complete manner consistent with the applicable regulatory requirements and generally accepted industry standards for such activity.

"Recharge" means the replenishment of underground water reserves.

"Redevelopment" means any construction, alteration or improvement in areas where existing land use is commercial, industrial, institutional or multi-family residential, previously developed property.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the municipal sanitary system or MS4 or the waters of the United States.

"Residential developed property" means developed property which is classified by the county appraisal, as amended or supplemented, as used or usable for residential purposes upon which there is located at least one dwelling unit.

"Revenues" means all rates, fees, assessments, rentals or other charges or other income received by the utility, in connection with the management and operation of the system, including amounts received from the investment or deposit of moneys in any

fund or account and any amounts contributed by the city, all as calculated in accordance with sound accounting practice.

“Significant industrial user” means a user of the municipal sanitary sewer system that meets one or more of the following criteria:

(1) Users whose average wastewater strength cannot be established because of seasonal or other variations and/or operations;

(2) Users whose wastewater strength exceeds the normal range of wastewater strength;

(3) Users using an unmetered source of water;

(4) Users who fall under those guidelines set forth for federal categorical industries;

(5) Users discharging an amount greater than 25,000 gallons per day of process wastewater for any day during the preceding 12-month period;

(6) Users whose average discharge, measured either by volume of flow, weight of suspended solids, biochemical oxygen demand, or chemical oxygen demand, exceeds two percent of the average loading on the applicable treatment facility; and

(7) Other users determined by the superintendent to require special regulation or source control.

“Silver associated process” means any process, manufacturing or service related business which falls within any of the following standard industrial classifications: 2711, 2721, 2731, 2732, 2741, 2751 to 2754, and 8062 under the most recent edition of the Standard Industrial Classification Manual issued by the EOP, OMB.

“Slug” means any discharge of wastewater, sewage or industrial waste which, in concentration of any given constituent or in quantity of flow, exceeds for any 15-minute period more than five times its average 24-hour concentration or flows during normal operation.

“Standard industrial classification” or “SIC” means a classification pursuant to the most recent edition of the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget.

“State” means the state of Kansas.

“Stop work order” means an order issued which requires that all construction activity on a site be stopped.

“Storm Drainage Design Criteria” means the storm drainage design criteria chapter found in the current edition of the City of Topeka Design Criteria and Drafting Standards Manual.

“Stormwater” means any water flow occurring during or following any form of natural precipitation (i.e., rain, snow, or ice) and any surface runoff or drainage resulting therefrom.

“Stormwater discharge associated with industrial activity” means the discharge from any system which is used for collecting and conveying stormwater and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant which is within one of the categories of facilities listed in 40 CFR Part 122.26(b)(14), and which is not excluded from the United States Environmental Protection Agency’s definition of the same term.

433 "Stormwater management" means the use of structural or non-structural
434 practices that are designed to reduce stormwater runoff pollutant loads, discharge
435 volumes, and/or peak flow discharge rates.

436 "Stormwater pollution prevention plan (SWPPP)" means a document which
437 describes the BMP and activities to be implemented by a person or business to identify
438 sources of pollution or contamination at a site and the actions to eliminate or reduce
439 pollutant discharges to stormwater, stormwater conveyance systems and/or receiving
440 waters to the maximum extent practicable, prepared under the supervision of an
441 engineer, geologist, architect, landscape architect or a certified professional in erosion
442 and sediment control.

443 "Stormwater runoff" means flow on the surface of the ground, resulting from
444 precipitation.

445 "Stormwater Treatment Practices (STPs)" means measures, either structural or
446 nonstructural, that are determined to be the most effective, practical means of
447 preventing or reducing point source or nonpoint source pollution inputs to stormwater
448 runoff and water bodies.

449 "Stormwater utility" or "utility" means the enterprise fund utility established in
450 Chapter 13.25 TMC to operate, maintain and improve the MS4 and for such other
451 purposes as stated.

452 "Superintendent" means the individual responsible for the operation and
453 management of the city water pollution control operation of the city public works
454 department, or his or her designee.

“System extension and replacement” means extensions, additions and capital improvements to, or the renewal and replacement of, capital assets of, or purchasing and installing new equipment for, the sanitary sewer system or MS4, or land acquisition for the systems, and any costs related thereto, or paying extraordinary maintenance and repair, including the costs of construction, or any other expenses which are not costs of operation and maintenance or debt service.

“Total suspended solids” means solids that either float on the surface of or are in suspension with water, sewage or other liquids, and which are removable by laboratory filtering.

“Toxic pollutant” means any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administrator of the Environmental Protection Agency under the provision of Section 307(a)(1) of the Act.

“Undisturbed property” means real property which has not been altered from its natural state by dredging, filling, removal of trees and vegetation or other activities which have disturbed or altered the topography or soils on the property.

“Unpolluted water” means water to which no pollutant has been added, either intentionally or accidentally, which would render such water unacceptable for disposal to storm or natural drainages or directly to surface waters.

“User” means any person that discharges, directly or indirectly, causes or permits the discharge of wastewater into the municipal sanitary sewer system.

“Waste” means substances, whether liquid or solid, associated with human habitation or of human origin or from any producing, manufacturing or processing

operation of whatever nature, whether treated or untreated, discharged into or permitted to enter a municipal sanitary sewer system.

“Wastewater” means waste and water, whether treated or untreated, discharged into or permitted to enter a municipal sanitary sewer system.

“Water quality standard” means the criteria set by the Kansas Department of Health and Environment for individual pollutants based on different water uses within the state.

“Watercourse” means a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

“Waters of the state” means any water, surface or underground, within the boundaries of the state.

“Waters of the United States” means surface watercourses and water bodies as defined at 40 CFR 122.2.

Section 2. That section 13.15.020, Statement of purpose, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Statement of purpose.

The purpose of ~~this chapter~~ Chapters 13.15, 13.20, 13.25, 13.30 and 13.35 is to:

(a) Prevent the introduction of pollutants into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;

(b) Prevent the introduction of pollutants into the municipal wastewater system which will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system;

(c) Improve the opportunity to recycle and reclaim wastewaters and sludges from the system;

(d) Enable the water pollution control division of the public works department to meet water quality requirements, to ensure compliance with any applicable effluent limitations, national standards of performance, toxic pretreatment effluent standards, and other discharge criteria which are required by state and federal law; and

(e) Provide for the issuance of permits to certain users and the establishment of penalties for violation of ~~this chapter~~ Chapters 13.15, 13.20, 13.25, 13.30 and 13.35.

Section 3. That section 13.15.030, Statement of policy, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Statement of policy.

~~This chapter~~ Chapters 13.15, 13.20, 13.25, 13.30 and 13.35 provides for the regulation of contributors to the municipal wastewater system through the issuance of wastewater discharge permits to certain nondomestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting and assumes that existing customers will not be preempted.

Section 4. That section 13.15.040, Applicability, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Applicability.

~~This chapter~~ Chapters 13.15, 13.20, 13.25, 13.30 and 13.35 shall apply to the city and to persons outside of the city who are, by contract or agreement with the city, users of the city's publicly owned treatment works (POTW). Except as otherwise provided in

523 this chapter, the superintendent ~~of the water pollution control division, or designated~~
524 ~~representative,~~ shall administer, implement, and enforce the provisions of this
525 ~~chapter~~ Chapters 13.15, 13.20, 13.25, 13.30 and 13.35.

526 Section 5. That section 13.15.110, Notice of violation, of The Code of the City
527 of Topeka, Kansas, is hereby amended to read as follows:

528 **Notice of violation.**

529 (a) Contents of Notice. Whenever the superintendent finds that any user has
530 violated or is violating any provisions set forth in Chapters 13.20, 13.25, ~~and 13.30~~ and
531 13.35 TMC, the superintendent may serve notice upon such user which contains the
532 following:

533 (1) The street address or a legal description sufficient for identification
534 of the premises at which the violation is occurring.

535 (2) A clear statement of violation and code section in violation.

536 (3) If applicable, notice may contain a statement of the corrective
537 action required to be taken as determined by the superintendent.

538 (b) Service of Notice. The notice and any amended or supplemental notice
539 shall be served upon the owner of record, and one copy thereof shall be served on each
540 of the following, if applicable, if known or disclosed from official public records: (1) the
541 tenant in possession or (2) the contractor or other individual named in the permit upon
542 which work is being done on the premises. The failure of the superintendent to serve
543 any person required herein to be served shall not invalidate any proceedings hereunder
544 as to any other person duly served or relieve any such person from any duty or
545 obligation imposed by the provisions of this section.

(c) Method of Service. Service of the notice shall be made upon all persons entitled either personally or by mailing a copy of such notice by certified mail, postage prepaid, return receipt requested, to each such person at their address as it appears on the register of deeds, Shawnee County records or at the address listed in the permit or under which the work is being done. If the location of such person is unknown or if no address of such person so appears after diligent effort, then copies of such notice shall be mailed by first class mail to the individual at the address of the real property at which the violation is occurring, and a copy of such notice shall be published once in the official city paper. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on the date of receipt.

Section 6. That section 13.15.120, Enforcement methods, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Enforcement methods.

The following enforcement methods shall apply to provisions set forth in Chapters 13.20, 13.25, 13.30 and 13.35.

(a) Abatement of Nuisance. Once the property owner has been given notice and opportunity to correct the violations and then failed to do so, the city shall be authorized to abate the violation in accordance with K.S.A. ~~Section 12-1617e~~, as amended which may result in a service assessment and lien imposed pursuant to TMC § 3.45.090 et seq. or K.S.A. 12-6a17 and amendments thereto.

(b) Emergency Provisions.

(1) Immediate Abatement. The superintendent is authorized to require immediate abatement of any violation of the provisions set forth in Chapters 13.20, 13.25, ~~and 13.30~~ and 13.35 that constitutes an immediate threat to the health, safety or well-being of the public. If any such violation is not abated immediately as directed by the superintendent, the city may abate the violation. Any costs of abating incurred by the city shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent the city from seeking other and further relief authorized under this article.

(2) Emergency Shut-Off Water. In addition to any other remedies available under this article, the superintendent shall be authorized to order the shut-off of water to the property to eliminate an immediate threat to the health, safety, or well-being of the public.

(3) Placarding. Whenever the superintendent determines that there has been a violation of ~~this code~~ any provisions set forth at 13.20, 13.25, 13.30 or 13.35 or has reasonable grounds to believe that a violation has occurred that is an immediate threat to the health, safety, or well-being of the public, the superintendent shall have the authority to order the immediate removal of persons from their property and shall give notice to the owner or the person or persons responsible therefore in the manner prescribed below. Such written notice shall contain the following:

(i) The street address or a legal description sufficient for identification of the premises at which the violation is occurring.

(ii) A clear statement of violation and code section in violation.

(iii) If applicable, notice may contain a statement of the corrective action required to be taken as determined by the superintendent.

(4) Stop Work Order.

(i) Authority. Whenever the superintendent finds any construction activity being performed is either in violation of the provisions set forth in Chapters 13.20, 13.25, ~~and 13.30~~ and 13.35 TMC, applicable permit, or is dangerous or unsafe, the superintendent is authorized to issue a stop work order.

(ii) Issuance. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.

(iii) Unlawful Continuance. It shall be unlawful for any person to continue to work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition.

(5) Injunctions. Whenever a violation of the provisions set forth in Chapters 13.20, 13.25, ~~or 13.30~~ or 13.35 TMC causes or threatens to cause a condition of contamination, pollution or nuisance, the superintendent may petition

the district court for the issuance of a preliminary or permanent injunction, or both, as may be appropriate in restraining the continuance of such violation.

Section 7. That section 13.15.130, Administrative search warrants, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Administrative search warrants.

If the superintendent has been refused access to a building, structure or property, or any part thereof, and if the superintendent has demonstrated probable cause to believe that there may be a violation of the provisions set forth in Chapter 13.20, 13.25, ~~or 13.30~~ or 13.35 TMC or that there is a need to inspect the property to verify compliance with the provisions of Chapter 13.20, 13.25, ~~or 13.30~~ or 13.35 TMC or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then, upon application to a district court judge, the superintendent shall obtain an administrative search warrant describing therein the specific location subject to the administrative warrant. The warrant shall specify what, if anything, may be searched on the property described. Such warrant shall be served at reasonable hours by the superintendent.

Section 8. That section 13.15.140, Administrative monetary penalties, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Administrative monetary penalties.

The superintendent shall have the authority to impose the following administrative monetary penalties:

(a) The following administrative monetary penalty shall apply to violations of the provisions relating to construction activity, ~~and erosion and sediment control and stormwater management practices~~ in Chapter 13.20, 13.25, ~~or 13.30~~ and 13.35 TMC:

(1) Fifty dollars per violation for a first violation.

(2) One hundred dollars per violation for a second violation within a continuous 12-month period of the first violation.

(3) Two hundred dollars per violation for a third or subsequent violation within a continuous 12-month period of the two previous violations.

(b) The following administrative monetary penalty shall apply to violations of the provisions relating to the introduction of industrial or hazardous waste into municipal separate storm sewer system or municipal sanitary sewer system in Chapter 13.20, 13.25, ~~or 13.30~~ or 13.35 TMC:

(1) One hundred dollars per violation for a first violation.

(2) Five hundred dollars per violation for a second violation within a continuous 12-month period of the first violation.

(3) One thousand dollars per violation for a third or subsequent violation within a continuous 12-month period of the two previous violations.

Section 9. That section 13.15.150, Criminal prosecution, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Criminal prosecution.

(a) It shall be unlawful for any person to violate any provisions of Chapter 13.20, 13.25, ~~or 13.30~~ or 13.35 TMC.

(b) Any person violating this section may be punished by:

- 657 (1) A fine of not more than \$499.00;
- 658 (2) Imprisonment in jail for not more than 179 days; or
- 659 (3) Both such fine and imprisonment not to exceed these limits.

660 Section 10. That The Code of the City of Topeka, Kansas, is hereby amended
661 by adding Chapter 13.35, Stormwater Management.

662 Section 11. That The Code of the City of Topeka, Kansas, is hereby amended
663 by adding a section, to be numbered 13.35.010, which said section reads as follows:

664 **Applicability.**

665 (a) Except as provided in TMC 13.35.020(d), unless an exception is granted
666 pursuant to TMC §13.30.080(d), this chapter shall apply to the following:

667 (1) All requests for approval of subdivision plats and site plans
668 pertaining to land development activities that are greater than or equal to one
669 acre of land, including projects that cause a land disturbance less than one acre
670 that are part of a larger common plan of development or sale; or

671 (2) Land disturbance activities that are less than one acre but located
672 in an impacted watershed as determined by the director based upon an
673 engineering study.

674 Section 12. That The Code of the City of Topeka, Kansas, is hereby amended
675 by adding a section, to be numbered 13.35.020, which said section reads as follows:

676 **Waiver/Exemptions/Mitigations.**

677 (a) The director may grant a waiver for one or more stormwater management
678 requirements if the standard can be met in any of the following ways:

679 (1) Discharging the stormwater runoff to an existing stormwater
680 management facility, whether public or private, that is an off-site facility designed,
681 adequately sized, constructed and maintained to provide a level of stormwater
682 control that is equal to or greater than that which would be afforded by on-site
683 practices and there is an entity responsible for long-term operation and
684 maintenance of the stormwater practice, provided the developer produces a
685 written agreement permitting the discharge of stormwater runoff and long-term
686 operation and maintenance to the existing stormwater management facility.

687 (2) Engineering studies determine that installing a stormwater
688 management facility in order to meet the stormwater management standards will
689 cause adverse impact to water quality, or cause a negative impact to a
690 downstream channel.

691 (3) For redevelopment, Engineering studies demonstrate there is no
692 net increase in stormwater runoff from current conditions.

693 (b) Acceptable mitigation measures may be required in order to prevent
694 deterioration of existing culverts, bridges, dams, and other structures, degradation of
695 biological functions or habitat, accelerated stream bank or stream bed erosion or
696 siltation, and increased threat of flood damage to public health, life, and property. Such
697 mitigation measures may include, but are not limited to:

698 (1) The purchase and donation of privately owned lands, or the
699 granting of an easement to be dedicated for preservation or reforestation.

(2) The creation of a stormwater management facility or other drainage improvement on previously developed properties, public or private, that currently lack stormwater management facilities.

(3) Granting an easement or dedicating land to the city to be used for the construction of an off-site storm water management facility. Such easement shall be granted prior to issuance of any building permit.

(c) A request for waiver shall not be granted without an engineering study shown in drainage plans submitted for new development or redevelopment that creates additional impervious surfaces establishing the adequacy of downstream or shared off-site stormwater management facilities which offer equivalent or greater protection than the standard(s) for which a waiver is requested.

(d) Site plans for single-family and two-family dwellings on individual lots are exempt from this chapter unless they are located in an area which drains to an impacted waterway as deemed by the director based on an engineering study.

Section 13. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 13.35.030, which said section reads as follows:

Performance criteria for stormwater management.

All subdivision plats and site plans shall meet the following requirements for stormwater management:

(a) Designs shall establish stormwater management practices to control peak flow rates of discharge according to the Storm Drainage Design Criteria. These practices should utilize pervious areas for stormwater treatment and to infiltrate stormwater runoff from driveways, sidewalks, rooftops, parking lots, storage areas, and

landscaped areas to the maximum extent practical to provide treatment for both water quality and quantity.

(b) All stormwater runoff generated from new developments shall not discharge directly into a jurisdictional wetland or local water body without adequate treatment as specified in the Post Construction Stormwater Quality Policy. Where such discharges are proposed, they shall meet all applicable local, state and federal requirements, permits, plans and programs. The owner is responsible for complying with all local state and federal permits that are applicable to the site.

(c) BMPs shall be designed to promote infiltration to the maximum extent possible through the use of structural and non-structural methods.

(d) For new development and redevelopment, structural stormwater treatment practices shall meet the following performance standards:

(1) Stormwater runoff shall be treated for water quality prior to discharge from the development site,

(2) Designed according to the City of Topeka Design Criteria and Drafting Standards,

(3) Reduce the discharge of the Total Maximum Daily Load (TMDL) regulated pollutants to an associated stream and/or lake as identified in the Post Construction Stormwater Quality Policy set forth by the director.

(4) Reduce the discharge of principal pollutants of concern as identified in the Post Construction Stormwater Quality Policy set forth by the director.

Section 14. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 13.35.040, which said section reads as follows:

Requirements for stormwater management plan approval.

(a) No application for subdivision plats or site plans to which this chapter applies, shall be approved unless the application includes a stormwater management plan detailing in concept how runoff and associated water quality impacts resulting from development will be controlled or managed.

(b) Stormwater management concept. The stormwater management concept plan shall include the following information to evaluate the environmental characteristics of the project site, the potential impacts of all proposed development of the site, both present and future, on the water resources, and the effectiveness and acceptability of the measures proposed for managing stormwater generated at the project site:

(1) A map (or maps) indicating the location of existing and proposed buildings, roads, parking areas, utilities, structural stormwater management and sediment control facilities. The map(s) will also clearly show proposed land use with tabulation of the percentage of surface area to be adapted to various uses, drainage patterns, locations of utilities, roads and easements, and the limits of clearing and grading. A written description of the site plan and justification of proposed changes in natural conditions may also be required.

(2) A plan designed by qualified personnel showing that the proposed stormwater management measures are capable of controlling runoff from the site in compliance with this chapter and the specifications of the Storm Drainage Design Criteria. A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project and a description of the watershed and its relation to the project site. This description

shall address soil conditions, forest cover, topography, wetlands, native vegetative areas on the site, and environmentally sensitive features that provide particular opportunities or constraints for development.

(3) A written description of the individual(s) responsible for maintenance of the proposed plan.

(4) A written description of the maintenance that shall be performed by the responsible party.

(5) The director may also require a concept plan to address the maximum development potential of a site under existing zoning, regardless of whether the applicant presently intends to develop the site to its maximum potential.

(c) Final Stormwater Management Plan Requirements. After review of the stormwater management concept plan, and modifications to that plan as deemed necessary by the director, a final stormwater management plan shall be submitted for approval. The final stormwater management plan, in addition to the information from the concept plan, shall include the following:

(1) Contact Information. The name, address, and telephone number of all persons having a legal interest in the property and the tax reference number and parcel number of the property or properties affected.

(2) Topographic Base Map. A 1" = 200' topographic base map of the site which extends a minimum of 100' feet beyond the limits of the proposed development and indicates existing surface water drainage including streams, ponds, culverts, ditches, and wetlands; current land use including all existing

792 structures; locations of utilities, roads, and easements; and significant natural
793 and manmade features not otherwise shown.

794 (3) Calculations. Hydrologic and hydraulic design calculations for the
795 pre-development and post-development conditions for the design storms
796 specified in the Storm Drainage Design Criteria. Such calculations shall include
797 (i) description of the design storm frequency, intensity and duration, (ii) time of
798 concentration, (iii) Soil Curve Numbers or runoff coefficients, (iv) peak runoff
799 rates and total runoff volumes for each watershed area, (v) infiltration rates,
800 where applicable, (vi) culvert capacities, (vii) flow velocities, (viii) data on the
801 increase in rate and volume of runoff for the design storms referenced in the
802 Storm Drainage Design Criteria, and (ix) documentation of sources for all
803 computation methods and field test results.

804 (4) Soils Information. If a stormwater management control measure
805 depends on the hydrologic properties of soils (e.g., infiltration basins), then a
806 soils report shall be submitted. The soils report shall be based on on-site boring
807 logs or soil pit profiles. The number and location of required soil borings or soil
808 sits shall be determined based on the need to determine the suitability and
809 distribution of soil types present at the location of the control measure.

810 (5) Maintenance and Repair. The design and planning of all
811 stormwater management facilities shall include detailed maintenance and repair
812 procedures to ensure their continued function, as well as the individual(s)
813 responsible for such maintenance. The applicant shall identify the parts or
814 components of a stormwater management facility that need to be maintained and

815 the equipment, skills or training necessary. Provisions for the periodic review
816 and evaluation of the effectiveness of the maintenance program and the need for
817 revisions or additional maintenance procedures shall be included.

818 (6) Landscaping. The applicant shall present a detailed plan for
819 management of vegetation at the site after construction is finished, including
820 responsibility for the maintenance of vegetation at the site and the practices
821 employed to ensure that adequate vegetative cover is preserved. These
822 provisions shall be prepared by qualified personnel.

823 (7) Easements. The applicant shall provide access to the City for all
824 stormwater treatment facilities or easements at the site for the purpose of
825 inspection and repair by securing all the necessary easements needed on a
826 permanent basis. These easements will be shown on the recorded plat or
827 granted by separate instrument and shall run with the land.

828 (8) Erosion and Sediment Control Plans for Construction of Stormwater
829 Management Measures. The applicant shall prepare an erosion and sediment
830 control plan or submit a SWPPP for all construction activities related to
831 implementing any on-site stormwater management practices.

832 (9) Other Environmental Permits. The applicant shall assure that all
833 other applicable environmental permits have been acquired for the site prior to
834 approval of the final stormwater design plan.

835 (10) Requirement for stabilization. Banks of all streams, channels,
836 ditches and other earthen stormwater conveyances shall be left in a stabilized
837 condition upon completion of the new development or redevelopment. No

838 actively eroding, bare or unstable vertical banks shall remain after completion of
839 construction.

840 (11) All stormwater facilities and systems, including those designed and
841 constructed for water quality treatment, downstream channel stabilization, and
842 peak discharge control shall be designed, constructed and maintained in
843 accordance with the criteria, standards, and specifications presented in this
844 chapter, or other professionally accepted manual for stormwater quality
845 management. The standards for water quality treatment, downstream channel
846 stabilization and peak discharge analysis and control shall be achieved through
847 the use of one or more stormwater quality management facilities that are
848 designed and constructed in accordance with the design criteria, guidance, and
849 specifications provided in a professionally accepted manual for stormwater
850 quality or other acceptable professional methods. Methods, designs or
851 technologies for stormwater quality management facilities that are not provided in
852 any stormwater quality manual may be submitted for approval if it is proven that
853 such methods, designs or technologies will meet or exceed the stormwater
854 treatment standards set forth in this Chapter.

855 Section 15. That The Code of the City of Topeka, Kansas, is hereby amended
856 by adding a section, to be numbered 13.35.050, which said section reads as follows:

857 **Construction inspection.**

858 (a) The director shall have the right to perform inspections during the
859 construction of the stormwater management system.

(b) As Built Plans. All applicants shall submit actual "as built" plans for any stormwater management practices located on-site after final construction is completed. The plan shall identify the final design specifications for all stormwater management facilities and shall be certified by qualified personnel.

Section 16. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 13.35.060, which said section reads as follows:

Maintenance and repair of stormwater facilities.

(a) Stormwater Management Easement. Prior to the approval of subdivision or site plan applications pertaining to land development activities described in § 13.35.010(a), the owner of the site shall provide for access to the facility at reasonable times for periodic inspection by the City, or its contractor or agent, and shall require the property owner to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this chapter. The stormwater management easement shall be shown on the recorded plat or granted by separate, recorded instrument.

(b) Inspection of Stormwater Facilities. The director shall have the ability to conduct inspections of the stormwater facilities. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater treatment practices.

(c) Failure to Maintain Practices. If a responsible party fails or refuses to meet the requirements set forth in the stormwater management plan, the City, after reasonable notice, may pursue enforcement of the plan or the provisions of this chapter.

Section 17. That original § 13.15.010 through § 13.15.040 and § 13.15.110 through § 13.15.150 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 18. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 19. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 20. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the City Council on August 23, 2011.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk