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Commission met in regular session at 12:30 p.m. in Commission chambers at the Marion County Courthouse with Chr. Randy Dallke, Comm. Dave Crofoot, Comm. David Mueller, Comm. Kent Becker, and Comm. Jonah Gehring present. Also present were Co. Clerk Tina Spencer and Co. Counselor Brad Jantz. Present for portions of the meeting were County staff, members of the public and members of the press.

**AGENDA APPROVAL:** Chr. Dallke added an executive session for personnel performance to the agenda. Dallke moved to adopt the agenda. Gehring seconded and motion carried 5-0.

**PUBLIC COMMENTS:** None.

**ADMINISTRATIVE:** Gehring moved to approve the minutes of September 7<sup>th</sup>, September 13<sup>th</sup>, and September 15<sup>th</sup>. Becker seconded and motion carried 5-0.

- Supplements affecting the 2020 valuation were reviewed by the Board. Change orders affecting 2020 and prior years' taxes were reviewed and signed by the Board.
- Pay Application #2 to NF Construction for the EMS building project was presented for approval in the amount of \$37,584.00. Gehring moved to approve Pay Application #2. Becker seconded and motion carried 5-0.
- The Hillsboro Free Press asked whether the County would like to contribute a column once per month to the paper. After discussion, the consensus was to have Comm. Mueller draft a proposed first column for review and consideration of the Board.
- Mueller moved to allow the Treasurer's Office to close from noon to 5:00 p.m. on October 8<sup>th</sup> to allow staff to attend the retirement reception of Jeannine Bateman and also the morning of Tuesday, October 12<sup>th</sup> from 8:00 a.m. until after the swearing in ceremony (for Treasurer-Elect Susan Berg). Crofoot seconded and motion carried 5-0. Chr. Dallke noted that the closure will need to be published and posted ahead of time.
- The Board directed Co. Counselor Brad Jantz to work with Spencer on the details of a lease-purchase for Marion County Fire District #3.

**8**<sup>TH</sup> **JUDICIAL DISTRICT – MEDIATION:** Interim Chief Judge Ben Sexton and Court Administrator Nikki Davenport were present to discuss the district's mediation process and to make the Board aware that invoices may be coming through for payments to mediators, including some retired judges.

**PERSONNEL DISCUSSION:** Dallke moved to recess into executive session to discuss personnel/performance pursuant to K.S.A. 75-4319b (1) for personnel matters of non-elected personnel with the Board, Jantz, and Spencer present for 15 minutes (from 1:07 p.m. until 1:22 p.m.). Gehring seconded and motion carried 5-0. Open session resumed with no action.

**HEALTH DEPARTMENT:** Admin. Diedre Serene reported that all grants for the department have been approved for a 30-day extension on reporting until November 15<sup>th</sup>. Serene turned in her Health Officer badge and County ID badge. The Board thanked Serene for her years of service to the County, and Chr. Dallke presented her retirement pin.

- Dallke moved to appoint Dr. Don Hodson as the Interim Health Officer for Marion County effective at 5:00 p.m. on Monday, September 20, 2021. Becker seconded and motion carried 5-0.
- Dallke moved to authorize Jessica Gilbert to perform administrative duties for the Marion County Health Department in accordance with established County policies and procedures while the Health Department Director position is vacant beginning at 5:00 p.m. on Monday, September 20, 2021. These duties include but are not limited to: financial oversight, approval of invoices, staff schedule requests, and other administrative tasks deemed necessary. All Health Department personnel will continue their respective duties and other tasks necessary to ensure continuity of service under the supervision of the Board of Commissioners / Board of Public Health. Gehring seconded and motion carried 5-0.
- Dallke moved to appoint Dave Crofoot as the primary contact person and Randy Dallke as the secondary contact person on the Board of County Commissioners / Board of Public Health for Health Department staff during the period of time that the Health Department Director position is vacant. This contact person will work to find answers to questions regarding policies and procedures of Marion County and/or outside agencies if requested by Health Department staff, and will be responsible for bringing any new / necessary information before the Board of Public Health as needed for progress reports or decision making for issues that arise outside the typical day to day operations. Mueller seconded and motion carried 5-0.
- Gehring moved to authorize Dave Crofoot to research interim incentives with the existing personnel for purposes of compensation during the interim period. Dallke seconded and motion carried 5-0.

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**PLANNING/ZONING/ENVIRONMENTAL HEALTH:** Dir. Sharon Omstead presented proposed text amendments to the zoning regulations which were recommended by the Planning Commission. After discussion, Mueller moved to adopt Resolution 2021-21 approving text amendments regarding solar energy systems. Crofoot seconded and motion carried 5-0 on a roll-call vote.

• Mueller moved to adopt Resolution 2021-22 approving text amendments regarding confined animal feeding operations. Becker seconded and motion carried 5-0 on a roll-call vote.

**AMBULANCE:** Dir. Travis Parmley presented quarterly statistics and accounts receivable reports. Parmley requested approval of quarterly write-offs. Becker moved to charge off \$9,835.73 as of September 20, 2021. Mueller seconded and motion carried 5-0.

- Parmley updated the Board on the building project for the new station in Hillsboro.
- Other topics discussed with no action were potential ambulance purchases and changing paid leave accrual for department employees working 24-hour shifts.

**EMERGENCY MANAGEMENT:** Dir. Randy Frank gave a presentation about the upcoming event in Pilsen honoring Father Emil Kapaun. The command structure for the event was reviewed.

**ROAD & BRIDGE:** Co. Engineer Brice Goebel reported that the cost-share application is ready to submit. Mueller and Becker provided letters of support from constituents and elected officials.

• Ongoing and upcoming projects were discussed with no action.

**PUBLIC COMMENTS:** None.

**COMMISSION COMMENTS:** Gehring stated that he had received positive comments about Marion County EMS during the Hillsboro Arts & Craft event.

• Dallke noted that the road maintenance (RMA) money has now been received from the Diamond Vista project, and the Commission has not specifically designated those funds or the PILOT payments. Spencer noted that the RMA funds will likely be needed to help fund the Road & Bridge budget for 2022.

	D 1 D 111 C1 '	
	Randy Dallke, Chairman	
ATTEST:		
Tina D. Spencer, County Clerk		

Dallke moved to adjourn. Gehring seconded and motion carried 5-0. Meeting adjourned at 3:12 p.m.

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# RESOLUTION NUMBER 2021-21

# A RESOLUTION APPROVING TEXT AMENDMENTS TO THE ZONING REGULATIONS OF MARION COUNTY, KANSAS.

WHEREAS, a public notice calling for a public hearing by the Marion County Planning Commission on proposed text amendments to the Marion County Zoning Regulations was properly given by publication in the official County newspaper on August 4, 2021 and mailed to City and Township Officials; and

WHEREAS, on August 26, 2021, the Marion County Planning Commission held public hearings to address proposed amendments to the Marion County Zoning Regulations to address how the County regulates Solar Energy Systems throughout the Unincorporated Portion of the County; and,

WHEREAS, the Marion County Planning Commission, by a majority vote of the Commission, has recommended approval of amendments to the zoning regulations concerning said Solar Energy Systems.

WHEREAS, on September 20, 2021, the Marion County Board of County Commissioners, by a 2/3 majority vote of the membership of the Governing Body, voted to approve the Planning Commission's recommendation, with respect to section 1-104 (213); 19-109 (1.I); 19-109 (2.A); and 19-105 (63).

**NOW THEREFORE BE IT RESOLVED** that the Marion County Zoning Regulations shall be amended as follows:

Section 1. Changes to Article 1-104 – Definitions as follows:

#### Existing language:

1-104 (213). <u>SOLAR COLLECTOR</u>: A device or combination of devices, structure, or part of a structure that transforms direct solar energy into thermal, chemical, or electrical energy and contributes significantly to, or is a substitute for, a structure's energy supply.

#### Proposed new language:

1-104 (213). <u>SOLAR ENERGY SYSTEM</u>: A device or combination of devices, structure, or part of a structure that transforms direct solar energy into thermal, chemical, or electrical energy and contributes significantly to, or is a substitute for, the energy supply of an on-site user, or the wholesale production of energy for sale. Ancillary uses, such as battery energy storage equipment, is included in this definition.

1-104 (213a). <u>SOLAR ENERGY SYSTEM – PRIVATE</u>: means a solar collection facility that converts sunlight into electricity, whether by photovoltaics (PV), or other similar conversion technology, for the primary purpose of the private use of generated electricity with a name-plate capacity of less than 250 kilowatt (kW), of solar energy capacity. Associated support facilities, such as battery energy storage equipment, shall be included in this definition. Concentrating solar thermal device (CST) installations are prohibited.

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1-104 (213b). SOLAR ENERGY SYSTEM – UTILITY SCALE (SES-U): means a commercial solar collection facility that converts sunlight into electricity, whether by photovoltaics (PV), or other similar conversion technology, for the primary purpose of wholesale sales of generated electricity with a name-plate capacity of 250 kilowatt (kW), or greater, of solar energy capacity, or a facility occupying an area of two (2), or more acres. Such facilities may also be used to reduce onsite consumption of utility power for commercial and industrial applications. All associated support facilities including, but not limited to, battery energy storage equipment, roads, substations, operation and maintenance buildings, as specified in the application, shall be included in this definition. Concentrating solar thermal device (CST) installation are prohibited.

Section 2. Changes to Article 19-105 – Conditional Uses Enumerated as follows:

#### Proposed new language:

19-105 (63). Solar Energy System – Utility Scale (SES-U), provided:

- A. Information shall be provided relative to the solar technology to be used (i.e. polycrystalline PV, monocrystalline PV, Cadmium Telluride PV, evacuated tube solar thermal, flat plate solar thermal, etc.); approximate number of solar modules/panels; system mounting (i.e. fixed-tilt on flat roof, fixed-tilt ground mount, 1-axis tracking ground mount, etc.); the maximum height of the array from the ground or roof surface; the maximum height of any new utility poles; and power capacity of the system, in both DC and AC Watts where applicable; total acreage of array and acreage of total project; manner in which the project will connect (i.e. net meter to existing distribution line, to new distribution line, to transmission line); and, whether a new substation will be constructed. (If so, provide location and size).
- B. If a SES-U is proposed to be placed within one (1) mile of any airport or airstrip, the applicant shall provide acknowledgement of location approval from the Federal Aviation Administration prior to construction.
- C. No SES-U shall be placed such that concentrated solar glare casts onto adjacent properties or roadways. The applicant shall provide a Solar Glare Hazard Analysis utilizing the latest version of the Solar Glare Hazard Analysis Tool (SGHAT), or its equivalent, to evaluate the solar glare aviation hazard. The full report for each flight path and observation point, as well as the contact information, shall be submitted to the Zoning Administrator at least 30 days before the required public hearing for the Conditional Use Permit for the SES-U. Any applicable SES-U design changes (e.g., module tilt, module reflectivity, etc.) after initial submittal shall be rerun in the SGHAT tool and the new full report shall be sent without undue delay to the County for accurate records of the as-built system. The analysis shall provide an assessment of when and where glare will occur throughout the year.
  - If solar glare is predicted, the applicant shall provide mitigation measures
    to address the impacts of solar glare. Mitigation measures may include
    and are not limited to textured glass, anti-reflective coatings, screening,
    distance, and angling of solar PV modules in a manner that reduces glare
    to surrounding land uses of non-participating property owners.

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- D. The applicant shall submit an Environmental Assessment to EPA standards that addresses the project's impact, if any, on: wildlife habitat; bird migration; the projects potential to cause bird and bat strikes or death; officially listed flora and fauna; and flood zones.
- E. The applicant shall provide information that addresses: stormwater drainage, soil erosion, sediment control, and will detail how same will be addressed, prevented or enhanced by grading, re-vegetation or other standard construction practices. Damage to existing vegetation shall be minimized. Disturbed areas shall be reseeded. Weed control shall be maintained as directed by the Marion County Noxious Weed Department.
- F. The applicant shall provide an agreement to adequately compensate Marion County for governmental services and for impacts related to the Project. Said agreement, in content and form acceptable to Marion County in its sole discretion, shall be executed within one hundred-twenty (120) days following the adoption of a County Resolution approving a Conditional Use Permit, or failure to do so shall render the Conditional Use Permit null and void.
- G. All roads not a part of the primary highway system of the State of Kansas intended to be used by the applicant as a means of ingress and egress to the proposed facility shall be designated on the application. Final approval of the designated roads to be used shall be made a part of the Conditional Use Permit, if approved. A construction agreement between the applicant and Marion County shall be required, and said agreement shall specify the standards to which such roads will be reconstructed, if necessary. The responsibility of determining sufficiency of compliance with the road agreement shall be with Marion County or its designee. No building or construction permit shall be issued until the applicant submits proof that appropriate permits and any required guarantees dealing with road damage or maintenance can be provided.
- H. The applicant shall provide a list of all local, state and federal agencies requiring approval and a copy of such approval, including all required studies, reports and certifications. In the event that a state or federal agency has not yet approved a required study, report or certification, then the enforcement of the conditional use permit shall be subject to receipt of a copy of such approval, unless good cause is shown to the satisfaction of the Zoning Administrator.
- I. The SES-U infrastructure, such as solar collector panels, shall not exceed fifteen feet (15') in height; provided, said height restriction shall not apply to substation facilities or transmission lines. All other structures shall have a maximum height of 35 feet.
- J. Setbacks: All SES-U structures shall be setback from the project boundary lines and public rights-of-way at least forty (40) feet. Additional setbacks may be required to mitigate site specific issues or to provide for access, road or commercial corridors. No SES-U shall be located nearer than one (1) mile from the incorporated limits of any city in Marion County. In the event that an applicant desires to locate a SES-U within this one-mile buffer

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requirement, the application may only be approved if findings are made by the Board of County Commissioners that circumstances exist which are believed to necessitate the need for a deviation from this buffer requirement.

- K. The SES-U shall be enclosed by perimeter fencing at least 8 feet tall to restrict unauthorized access.
- L. No outdoor storage of any materials or equipment associated with an SES-U is permitted unless explicitly permitted by the Conditional Use Permit.
- M. On-site communication lines and power collection lines are to be installed underground. Above ground utility or power lines may be used only in public rights-of-way, easements or other legally dedicated land permitting such uses, or when conditions on-site are found to make installation of such lines or facilities impractical or infeasible, such as existing underground pipelines, utilities or high groundwater.
- N. The SES-U should be located to make maximum use of existing terrain, vegetation and structures to screen the project from off-site views.
- O. The applicants shall submit a mitigation plan to account for potential fires related to range burning (prescribed and/or nonprescribed), failures of any on-site battery energy storage equipment, or any other similar emergency occurring within the application area. Said plan shall be made available to the Marion County Zoning Administrator and all Fire Departments serving the County prior to building permit approval.
- P. No lighting over 15 feet in height shall be installed on renewable energy facilities unless approved as part of the Conditional Use review process and is required by local, state or federal requirements. No light source greater than one foot-candle shall be directed off-site. Security or safety lighting of the SES-U and accessory structures shall be limited to the minimum necessary and full cutoff lighting (e.g., dark sky compliant) may be required when determined necessary to mitigate visual impacts. Lighting shall be shielded and downcast such that the light does not spill onto the adjacent parcel or the night sky. Motion sensor control is preferred.
- Q. The applicant(s) shall provide a site and facility reclamation and decommissioning plan for approval by the Marion County Board of County Commissioners, which indicates the planned life of the SES-U and the means by which the facility and its site will be decommissioned and reclaimed at the end of the facility's life. Said reclamation and decommissioning plan shall certify that any owner of land within the SES-U and who is not the applicant(s) has been consulted in development of the reclamation and decommissioning plan. If the permit is granted, the plan shall be updated every five (5) years until site reclamation and decommissioning is complete. Before final inspection by public officials, the applicant shall provide evidence that the decommissioning plan, and amendments thereto, have been recorded with the Register of Deeds. The reclamation and decommissioning plan shall provide that, at the end of the project's life; or array component of an SES-U, all, or the appropriate portion, of the site's equipment and access

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roads shall be removed from the site and the site shall be returned to original condition, or restored to such condition as to allow a use compatible with surrounding uses as determined by the Zoning Administrator, or to such condition as agreed to by the landowner and the SES-U owner, developer, and/or operator. The landowner may choose to have access roads left intact.

- R. Approval of a Conditional Use does not authorize construction of the project until the Applicant has obtained a Power Purchase Agreement (PPA) for the electricity to be generated by the SES-U. The Applicant shall advise the Zoning Administrator when it obtains a PPA and shall provide such documentation confirming said agreement. Unless an alternate timeline is determined as a condition attached to the approved Conditional Use on a case-by-case basis, the PPA must be obtained within one year of the date of publication of the Resolution for the Conditional Use. This one-year period may receive up to a 6-month extension upon written request by the Applicant and subsequent approval by the Board of County Commissioners. In the event the Applicant does not obtain a PPA within the 12-to-18-month time span, the Resolution effectuating the Conditional Use shall automatically become null and void.
- S. A construction permit must be applied for within two (2) years of the approval of the CUP. If construction cannot be commenced within that two (2) year period, the applicant may obtain a single one-year extension upon the submission of a written report to the Zoning Administrator setting forth the reason(s) for a delay and the plan for commencing construction within the one-year extension period. A failure of the holder of a Conditional Use Permit approved for a SES-U project to timely apply for a construction permit or to timely commence construction shall result in the automatic termination the right to a SES-U use under the CUP and of the CUP. Subject to the previous provision, for all Conditional Use Permits approved for a SES-U project, such permit shall be allowed to continue, as long as all conditions placed on it are met. However, if the SES-U project use ceases to exist for a period of two (2) years, the CUP will forfeit its Development Plan and will not be allowed to exist again unless a new application is made, a public hearing held, and a new Development Plan approved. However, the applicant may obtain a single one-year extension upon the submission of a written report to the Zoning Administrator setting forth the reason for the temporary cessation of operations and the plan of initiating operations. The County may initiate an action to remove the Conditional Use, but must follow the same procedures as followed to establish the Conditional Use originally.
- T. Any other issues or concerns that are identified relative to a specific request for a SES-U may be included within the information required for consideration of the Conditional Use Permit.

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Tina D. Spencer, County

Section 3. Changes to Article 19-109 - Accessory Uses Allowed as follows: **Existing language:** 19-109 (1.I) Solar collectors 19-109 (2.A) Solar collectors Proposed new language: 19-109 (1.I) Solar Energy System - Private 19-109 (2.A) Solar Energy System - Private This Resolution shall be in full force and effect from and after publication once in the Section 4. official county newspaper. ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS of Marion County, Kansas, this  $20^{\text{th}}$  day of September, 2021. BOARD OF COUNTY COMMISSIONERS MARION COUNTY, KANSAS MYea € Nay [ ] Abstain allke, Chairman - District 3 [X] Yea [] Nay [ ] Abstain Kent Becker, Member - District 1 **⋈**Yea [] Nay [] Abstain David Mueller, Member – District 2 [∆Yea []Nay [ ] Abstain Dave Crofoot, Member District 4 Yea [] Nay [ ] Abstain Jonah Gehring, Member District 5

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### RESOLUTION NUMBER 2021-22

# A RESOLUTION APPROVING TEXT AMENDMENTS TO THE ZONING REGULATIONS OF MARION COUNTY, KANSAS.

WHEREAS, a public notice calling for a public hearing by the Marion County Planning Commission on proposed text amendments to the Marion County Zoning Regulations was properly given by publication in the official County newspaper on August 4, 2021 and mailed to City and Township Officials: and

WHEREAS, on August 26<sup>th</sup>, 2021, the Marion County Planning Commission held public hearings to address proposed amendments to the Marion County Zoning Regulations concerning modifications that pertain to Confined Animal Feeding Operations (feedlots) in Article 1-104 – Definitions, and Article 19-105 – Conditional Uses Enumerated; and,

WHEREAS, the Marion County Planning Commission, by a majority vote of the Commission, has recommended approval of amendments to the zoning regulations concerning said Article 1-104 and Article 19-105.

WHEREAS, on September 20, 2021, the Marion County Board of County Commissioners, by a 2/3 majority vote of the membership of the Governing Body, voted to approve the Planning Commission's recommendation, with respect to section 1-104 and 19-105.

NOW THEREFORE BE IT RESOLVED that the Marion County Zoning Regulations shall be amended as follows:

# Section 1. Changes to Article 1-104 – Definitions as follows

#### **Existing language:**

- 9. AGRICULTURAL PURPOSES, LAND USED FOR: The use of a tract of land for the production of plants, animals or horticultural products, including but not limited to: Forages; grains and feed crops; dairy animals and dairy products; beef cattle, sheep, swine and horses; bees and apiary products; trees and forest products; fruits, nuts and berries; vegetables; or nursery, floral, ornamental or greenhouse products. Land used for agricultural purposes shall not include the:
  - h. The operation or maintenance of a commercial stockyard, feedlot or other confined animal feeding operation
- 94. <u>FEED LOT, COMMERCIAL</u>: A livestock feedlot or feedyard as defined by K.S.A. 65-171D et seq, licensed by and operated under standards regulated by Kansas Department of Health and Environment and the Environmental Protection Agency, as a commercial operation over 1,000 animal units and requiring federal permits.

#### Proposed new language:

 AGRICULTURAL PURPOSES, LAND USED FOR: The use of a tract of land for the production of plants, animals or horticultural products, including but not limited

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to: Forages; grains and feed crops; dairy animals and dairy products; beef cattle, sheep, swine and horses; bees and apiary products; trees and forest products; fruits, nuts and berries; vegetables; or nursery, floral, ornamental or greenhouse products. Land used for agricultural purposes shall not include the:

- h. The operation or maintenance of a commercial stockyard or agricultural processing, feedlot or other confined animal feeding operation—unless specifically authorized by a Conditional Use Permit only after they have been reviewed and approved as required by Article 19.
- 94. FEED LOT, COMMERCIAL: A livestock feedlot or feedyard as defined by K.S.A. 65-171D et seq, licensed by and operated under standards regulated by Kansas Department of Health and Environment and the Environmental Protection Agency, as a commercial operation over 1,000 animal units and requiring federal permits.

AGRICULTURAL PROCESSING: The commercial aggregation, storage, processing, and distribution of farm products. Examples include grain elevator, livestock auction yard, commercial stockyard, commercial slaughter facility, or rendering plant. This definition shall not include processing of farm products for non-retail or non-wholesale personal consumption.

Section 2. Changes to Article 19-105 –Conditional Uses Enumerated as follows:

#### **Existing language:**

19-105 (13). Commercial stockyard or feedlot.

#### Proposed new language:

- 19-105 (13). Commercial stockyard or feedlot agricultural processing facility, including hog, dairy and poultry, provided:
  - A. The development plan shall include a statement verifying compliance with the applicable provisions of Kansas statutes and Kansas Administrative Regulations in effect at the time of application. Copies of all permit documents, plans, specifications or reports required to be submitted to the KDHE, or any state agency, shall be submitted with the application.
  - B. The applicant shall identify the method to be used in the handling and disposal of all animal waste generated from all one-site operations.
  - C. All roads not a part of the primary highway system of the State of Kansas intended to be used by the applicant as a means of ingress and egress to the proposed facility shall be designated on the application. Final approval of the designated roads to be used shall be made a part of the Conditional Use Permit, if approved. A construction agreement between the applicant and Marion County shall be required. Such agreement shall specify the standards to which such roads will be reconstructed, if necessary. The responsibility of determining sufficiency of compliance with the road agreement shall be with Marion County or its designee.

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D. If the Conditional Use Permit is approved, the applicant and all successors or operators of the facilities shall submit copies of all annual reports and documents required to be submitted to all state regulatory agencies to the Marion County Planning & Zoning/Environmental Health Department, which shall keep them on file.

Section 4. This Resolution shall be in full force and effect from and after publication once in the official county newspaper.

ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS of Marion County, Kansas, this 20th day of September, 2021.

BOARD OF COUNTY COMMISSIONERS MARION COUNTY, KANSAS Yea []Nay [ ] Abstain allke, Chairman - District 3 Y-Yea [] Nay [ ] Abstain Kent Becker, Member – District [X] Yea [] Nay [] Abstain David Mueller, Member - District 2 ON COUNTY FAR Yea Nay Sea. [ ] Abstain Dave Crofoot, Member - District 4 Yea [] Nay [ ] Abstain Jonah Gehring, Member – District 5

Tina D. Spencer, County Clerk

ATTEST: