AGENDA
GARDNER CITY COUNCIL
City Hall – 120 East Main Street -- Gardner, Kansas
Monday, February 18, 2019
7:00 p.m.

CALL TO ORDER
PLEDGE OF ALLEGIANCE
PRESENTATION
PUBLIC HEARING
1. Hold a public hearing on the proposed Community Improvement District (Main Street Market Place)

PUBLIC COMMENTS
Members of the public are welcome to use this time to make comments about City matters or items on the agenda that are not part of a public hearing

CONSENT AGENDA
1. Standing approval of the minutes as written for the regular meeting on February 4, 2019
2. Standing approval of City expenditures prepared January 30, 2019, in the amount of $322,041.91; January 31, 2019, in the amount of $359,288.66; February 8, 2019 in the amount of $207,973.07
3. Consider a Position Title Change in the Parks and Recreation Department
4. Consider authorizing the Mayor and City Administrator to sign KDOT Form 1302 for the Center Street Sidewalk project
5. Consider the acceptance of ingress/egress and utility easement dedications by separate instruments for Mid America Bank
6. Consider Authorizing the City Administrator to enter into a contract agreement with US Foods to provide certain concessions supplies to Gardner Parks and Recreation Department

COMMITTEE RECOMMENDATIONS
1. Consider an ordinance approving rezoning Z-18-07 for 1000 E. Santa Fe Street from M-2 (General Industrial) District to M-1 (Restricted Industrial)

OLD BUSINESS
1. Consider a resolution declaring the intent of the City of Gardner, Kansas, to issue Industrial Revenue Bonds in the approximate principal amount of $19,390,000, for the purpose of financing a portion of the costs of the acquisition, construction and equipping of a commercial facility within the City (Main Street Market Place)

NEW BUSINESS
1. Consider adopting an ordinance authorizing the creation of the Main Street Market Place Community Improvement District in the City of Gardner, Kansas and authorizing the imposition of a community improvement district sales tax to be collected within such district.
2. Consider adopting an ordinance approving and adopting a redevelopment project plan for a redevelopment district in the City of Gardner, Kansas (Main Street Market Place Redevelopment District, Project Area 1)
3. Consider adopting a resolution approving the execution and delivery of a development agreement for a development project within the City (Main Street Market Place)
4. Consider a petition for the formation of a benefit district for a sanitary lift station and related site improvements to serve the Tuscan Farms residential development and adopt a resolution determining the advisability of certain internal improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvements in accordance with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Tuscan Farm sanitary lift station special benefit district).
5. Consider a petition for the formation of a benefit district for certain infrastructure improvements to serve the Tuscan Farms residential development and adopt a resolution determining the advisability of certain internal improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvement in accordance

In compliance with the Americans with Disabilities Act, the City of Gardner will provide reasonable accommodations for all public meetings. Persons requiring accommodations in attending any of our public meetings should contact the City Clerk’s Office at 913-856-0945 a minimum of 48 hours prior to the meeting.
with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Tuscan Farm Phase I Infrastructure special benefit district

6. Consider adopting a resolution establishing an account with the State of Kansas Municipal Investment Pool and repealing all other resolutions not in conformity herewith


COUNCIL UPDATE – Oral presentation unless otherwise noted

ADJOURNMENT
**COUNCIL ACTION FORM**  
**MEETING DATE:** FEBRUARY 18, 2019  
**STAFF CONTACT:** MATTHEW WOLFF, CPFO  
Finance Director

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<th>Hold a public hearing on the proposed Community Improvement District (Main Street Market Place)</th>
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**Background/Description of Item:**  
Super Market Developers, Inc. have applied for the use of a Community Improvement District (CID) using the State of Kansas Community Improvement District Act. If the CID is created by the City and certain further conditions are met, the City intends to impose a 1.0% CID Sales Tax within the CID to reimburse eligible costs of the Main Street Market Place Project and to consider the issuance of special obligation CID bonds.

**Staff Recommendation:**  
Hold a public hearing on proposed Community Improvement District (Main Street Market Place).
The City Council of the City of Gardner, Kansas met in regular session on February 4, 2019, at 7:00 p.m. in the Council Chambers at Gardner City Hall, 120 East Main Street, Gardner, Kansas, with the Honorable Mayor Steve Shute presiding. Present were Councilmembers Mark Baldwin, Randy Gregorcyk, Rich Melton, Lee Moore, and Todd Winters. City staff present were Interim City Administrator Laura Gourley; Police Chief James Pruettting; Business & Economic Development Director Larry Powell; Utilities Director Gonzalo Garcia; Public Works Director Michael Kramer; Finance Director Matthew Wolff; and City Clerk Amy Nasta. Others present included those listed on the attached sign-in sheet and others who did not sign in.

**CALL TO ORDER**

There being a quorum of Councilmembers present, the meeting was called to order by Mayor Shute at 7:00 p.m.

**PLEDGE OF ALLEGIANCE**

Mayor Shute led those present in the Pledge of Allegiance.

Mayor Shute stated New Business Item 1, consider adopting an ordinance regulating the sale of cereal malt beverage and beer containing not more than 6% alcohol by volume within the City of Gardner, Kansas and repealing all ordinances or parts of ordinances not in conformity herewith, was being removed from the agenda for additional legal review.

**PRESENTATIONS**

1. **Governing Body Rules of Procedure Update**

City Clerk Amy Nasta requested direction from the Council on six items included in Governing Body Rules of Procedure that the Council had previously requested additional research on, as well as an additional item identified by city staff. The Governing Body provided consensus for the following:

Add the language “including on social media” to the end of several stipulations regarding etiquette in Chapter 3; add clarification as presented regarding what constitutes a conflict of interest to Chapter 3(A), paragraph 2, bullet 4; add clarification as presented regarding attendance expectations to Chapter 3(A), paragraph 2, bullet 5, omitting the phrase “business commitments shall not be a good excuse”; add clarification as presented regarding contact with City Administrator and staff and combine Chapter 3(C), bullets 1, 7, and 8; leave chapter 5(A), “Quorum” subsection unchanged; add clarification as presented regarding agenda item submission to Chapter 5(B) and set the item submission deadline for Governing Body members to 12:00 noon, five days prior to the Council meeting; add a “Planning and Zoning Consent Agenda” to Chapter 5(D).

Ms. Nasta stated this item would be returned to Council for final approval at the second meeting in March as several ordinance changes may need to be passed concurrently with the final version of Governing Body Rules of Procedure.

Councilmember Baldwin asked if it was possible to move Public Comments prior to Presentations. Interim City Administrator Laura Gourley stated Presentations had been moved prior to Public Comments in the past for a few reasons, including that the public’s questions were often answered during presentations, and that outside consultants being paid by the City were often tasked with providing presentations. Mayor Shute stated the agenda could be rearranged as needed on a case-by-case basis.

**PUBLIC COMMENTS**

**CONSENT AGENDA**

1. **Standing approval of the minutes as written for the regular meeting on January 22, 2019**
2. Standing approval of City expenditures prepared January 18, 2019, in the amount of $198,847.72; January 25, 2019, in the amount of $351,850.34

3. Consider the acceptance of sidewalk and waterline easement dedications by separate instruments for Olathe Health

Councilmember Melton made a motion to approve the Consent Agenda.
Councilmember Winters Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

NEW BUSINESS
1. Consider approval of the 2019 State Legislative Agenda

Councilmember Melton stated he had done research and found that there was a lot of fraud in Medicaid, and wished to remove the item regarding its expansion. Councilmember Baldwin stated he agreed.

Councilmember Baldwin stated he wished to strike item 5, the item regarding K-12 funding as he felt that the included terms such as “adequately and equitably” and “world class education” had not been properly defined at the state level. Councilmember Melton stated he agreed. Councilmember Baldwin stated he would be in favor of a statement indicating the City is supportive of the school system and funding it at current level. Mayor Shute suggested the changing the current statement to read “We are highly supportive of the efforts by our public school districts to manage their costs in an effective manner to maximize the return of funds to the classroom and we encourage the State legislature to quickly define fair and equitable within the context of the Kansas Constitution.” The Council provided consensus to make this change.

Interim City Administrator Gourley asked if there was a consensus on Medicaid. Councilmember Baldwin stated to strike the entire item. Councilmember Melton and Councilmember Moore stated they would also like to strike the item. Councilmember Winters stated he was not opposed to Medicaid but striking it indicated a more neutral stance. The Council provided consensus to strike item 8 regarding Medicaid.

Councilmember Moore stated the item regarding Dark Store Theory should be made more generic to include any model of operation similar to the Dark Store Theory. Finance Director Matt Wolff stated this could be referred to as “commercial valuation”. Councilmember Baldwin suggested adding “based on Dark Store Theory”. Councilmember Gregorcyk stated he was also concerned with warehouse space. The Council provided consensus to make this change.

Mayor Shute stated he appreciated the work Public Works Director had done on the Transportation section of the Legislative Agenda.

Councilmember Gregorcyk made a motion to approve the 2019 State Legislative Agenda for the City of Gardner as amended
Councilmember Baldwin Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

COUNCIL UPDATES

Utilities Director Gonzalo Garcia stated three companies had submitted qualifications for performing the design-build for Hillsdale. He said a selection committee would review the qualifications and applicants would be interviewed.
Business and Economic Director Larry Powell stated staff had started a review of the 2018 IRC, which was expected to be completed in the second quarter and subsequently brought before the Council for adoption. He said many other cities had already undergone this process, so developers have had exposure to it.

Mr. Powell stated the Planning Commission will be reviewing the Waverly Plaza project. He said several comments and calls had been received by staff. He said this was a dual project, with the east half being market value apartments which would not receive tax support of any kind, and the west side being commercial. He said the main complaint had been regarding the clubhouse zone, which was both commercial and residential. He said the only change in zoning was to make this a planned district. He said this was originally to be a residential development, but was sold to a developer. He continued that the streets included had been previously platted but were never constructed. He said a separate meeting with property owners would likely be necessary.

Councilmember Melton stated there were no sidewalks on West Santa Fe or Waverly shown on the map. Mr. Powell stated Santa Fe is being totally rebuilt and there will be a trail sidewalk on the north side along with a regular sidewalk on the south side. He said additional sidewalks would also be built off of Waverly.

Councilmember Moore stated he was excited about the project.

Councilmember Gregorcyk asked if a traffic signal would be included. Mr. Powell stated a traffic study was being conducted. Councilmember Gregorcyk stated this was a busy area, especially during school time. Public Works Director Michael Kramer stated he would follow up with City Engineer Tim McEldowney. Interim City Administrator Laura Gourley stated there was a planned upcoming meeting with the school regarding this area.

Mr. Powell stated staff had completed a review on the old Police Department building. He reminded the Governing Body that one of the factors for passing the new Justice Center was the condition of the building. He said while it was not justifiable to spend a lot of money to bring the building up to code for continued use, the garage portion of the building was both movable and reusable. He said planning staff, in reviewing the downtown development suggestion list, had been encouraged to put together an RFP for future use of this area and other adjacent properties and determine if adjacent property owners would be interested in entering into an RFP process to explore possibilities for the use of the property in the long term. He said the Downtown Development plan encouraged the usage of the property for commercial development, but the present goal would be to conduct an RFP process for this property and the adjacent properties if the adjacent property owners were willing to look at this as a more consolidated process maybe allowing for a larger project. He asked for consensus from the Council to start the RFP process for this. The Council provided consensus.

Public Works Director Michael Kramer stated the field tech plans for phase one of the I-35 and Gardner Road project has been submitted to KDOT during the previous week and staff was currently awaiting comments. He thanked Parks and Recreation, Public Works staff, and Johnson County Public Works for their assistance with tree debris removal. He said approximately 400 pickup truck loads had been dropped off and mulched for use by the Johnson County Fairgrounds.

Mayor Shute stated there were still trees down and asked what resources were available for homeowners that had trees that were down and too big to remove. Interim City Administrator Gourley stated staff does not have the equipment to assist with this and asked if the City should investigate outsourcing. Councilmember Baldwin stated this would have a considerable cost. Councilmember Moore asked if volunteers could be utilized.

Interim City Administrator Gourley stated the City had received a small grant to send staff to volunteer coordinator training. Councilmember Baldwin stated this would be a conduit to facilitate things for the public without adding to the City’s burden.

Councilmember Melton asked for an update on truncated domes in Willow Springs. Mr. Kramer stated the domes were in compliance according to documentation received by the City. He said the contractor has indicated he will return to review them again and asked if there was a specific location. Councilmember Melton stated they did not appear to have been replaced as they were previously and asked if this could be specified in the next bid. Mr.
Kramer stated there have been some changes to the bid for this year, but that the domes were replaced because the previous domes were non-compliant.

Councilmember Melton asked if chip seal bids would be going out soon. Mr. Kramer stated staff was working to finalize those bids, and that the current plan was to also fog seal everything that was to be chip sealed.

Councilmember Gregorcyk asked who would fill in for the school crossing guards if they were not there. Police Chief James Pruetting stated this was a contract, and that if notification was provided an officer was sent to the intersection. He said there had been no problems with the current company. Councilmember Gregorcyk asked who would generally provide notification. Chief Pruetting stated it was typically a parent from the school.

Councilmember Gregorcyk stated he had met with the new owner of the filling station on 191st and asked if there would be any interest in adding this as an additional car wash choice for city vehicles. Chief Pruetting stated the Police Department does not use a commercial car wash. Councilmember Gregorcyk stated a five dollar car wash was being offered and the council may wish to consider this. Councilmember Winters asked if there would be a facility for washing cars at the new Justice Center. Chief Pruetting stated the bay could be used. Councilmember Moore asked who washes the cars. Chief Pruetting stated it was divided evenly between shifts, with one shift cleaning the outside and one shift cleaning the inside.

Councilmember Gregorcyk asked for an update on the City Administrator selection process. Mayor Shute stated the submission period had ended on February 1, 2019, and forty-four applications had been received. He said the applications were currently being compiled and would be returned to the Interim City Administrator, Human Resources, and himself. He said the field would be narrowed and skype interviews would be conducted with the selection committee during the last week of February. Councilmember Gregorcyk asked if those on the selection committee had been notified. Interim City Administrator Gourley stated final dates had not yet been provided.

Mayor Shute thanked staff for their work on the evening’s presentations.

ADJOURNMENT

There being no further business to come before the Council, on a motion duly made by Councilmember Melton and seconded by Councilmember Moore the meeting adjourned at 08:49 p.m.

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**2019 KRPA CONFERENCE**

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**TOTAL EXPENDITURES ****

GRAND TOTAL **************************

24,598.75
Council Action Form

Meeting Date: February 18, 2019
Staff Contact: Alan Abramovitz, Human Resources Manager
JASON BRUCE, Director of Parks and Recreation

Agenda Item: Consider Position Title Change in the Parks and Recreation Department

Strategic Priority: Asset Management

Department: Administration & Parks and Recreation

Staff Recommendation:
Staff recommends reclassifying the Parks and Recreation Customer Service Representative position to an Administrative Assistant position.

Background/Description of Item:
This is a restructuring of duties to increase efficiency in the Parks and Recreation Department. Currently the Customer Service position is under-utilized and there are additional tasks such as financial responsibilities and website coordination that will be assigned when the position is changed to an Administrative Assistant. The duties of the existing Customer Service Representative position do not include the responsibility for these additional tasks. If the incumbent performed these duties while a Customer Service Representative she would be working out of class.

This is being presented to the City Council because policy requires approval from the Governing Body when changing a job title that was not previously approved in the budget process.

Financial Impact:
This change will result in an overall savings of $2,084 due to staff’s absorption of the responsibilities of a current seasonal position.

Attachments:
Job descriptions of Customer Service Representative-Parks and Recreation and Administrative Assistant-Parks and Recreation

Suggested Motion:
Reclassify the Parks and Recreation Customer Service Representative position to an Administrative Assistant position.
Customer Service Representative – Parks and Recreation

Position Title: Customer Service Representative – Parks and Recreation
Department: Parks and Recreation
Reports To: Recreation Superintendent
Salary Range: 1
FLSA Status: Non-Exempt (eligible for overtime pay)
Last Update: June 15, 2018

Job Summary:
Under the supervision of the Recreation Superintendent, the Customer Service Representative is responsible for assisting the public with inquiries, registrations, reservations and payments received in person, by telephone, and online.

Job Scope:
Work is performed within the framework of prescribed policies and procedures. Employee does not have supervisory responsibility for subordinate personnel.

Essential Duties and Responsibilities:
- Receives inquiries from members of the public in person, email and by telephone; responds or refers inquiries as appropriate;
- Accepts, processes, balances, and deposits registration, reservation and recreation permit payments daily;
- Completes data entry for registrations, reservations, revenue deposits, and invoices;
- Processes service requests to the appropriate staff;
- Assists with promotional materials for programs, events and facilities and other marketing efforts;
- Assists with maintenance of department website as directed;
- Checks in equipment and supplies from volunteers;
- Provides daily assistance to department recreation staff and the Parks and Recreation Director;
- Performs other related duties and assists other coworkers as required.

Education, Certification, and Experience Requirements:
High school diploma or GED and a minimum of two years experience in a related position, or any equivalent combination of training and experience that provides the appropriate knowledge, abilities, and skills. Requires the possession of a valid driver's license and a good driving record.

Skills, Knowledge and Abilities:
Exceptional customer service skills. Skills in operating listed tools and equipment. Ability to understand and carry out oral and written instructions. Ability to make mathematical computations and routine monetary transactions with speed and accuracy. Basic knowledge of accounting principles applying to cash management. Ability to establish and maintain effective working relationships with superiors, other employees, and the general public contacted in the course of the work. Ability to resolve customer concerns and complaints within established procedures.

Tools and Equipment Used:
Network computer system operating recreation software; personal computer operating word processing, spreadsheet and data base software; 10-key calculator; telephone; copier; facsimile and postage meter.
Physical Demands:
The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. While performing the duties of this job, the employee is frequently required to sit and talk and hear. The employee is frequently required to walk; use hands to operate, finger, handle or feel objects, tools, or controls; and reach with hands and arms. The employee must occasionally lift and/or move up to 20 pounds. Specific vision abilities required by this job include close vision and the ability to focus.

Work Environment:
The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. While performing the duties of this job, the employee normally works within an office environment. The noise level is usually moderately quiet.

Selection Guidelines:
Formal application, rating of education and experience; and successful completion of oral interview; reference check; physical and drug screen; and background checks are required. Job related tests including assessments may be required.

The City of Gardner is an equal opportunity employer. Any applicant/employee with a disability as defined in the Americans with Disabilities Act may request an accommodation to perform the functions of this position. Requests should be directed to the immediate supervisor.

The duties listed above are intended only as illustrations of the various types of work performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

The job description does not constitute an employment agreement between the employer and the employee and is subject to change by the employer as the needs of the employer and requirements of the job change.
City of Gardner Position Description

ADMINISTRATIVE ASSISTANT - PARKS & RECREATION

Position Title: Administrative Assistant – Parks and Recreation
Department: Parks and Recreation
Reports To: Parks and Recreation Director
Salary Range: 2
FLSA Status: Non-Exempt (eligible for overtime pay)
Last Update: January 29, 2019

Job Summary:
The Administrative Assistant performs skilled full administrative support of the Parks and Recreation department.

Job Scope:
Work is of a responsible and sometimes confidential nature requiring the execution of independent judgment and discretion. Employee is responsible to and subject to the direct supervision of the Parks and Recreation Director and/or their designees. Employee does not have supervisory responsibility for subordinate personnel.

Essential Duties and Responsibilities:
• Responds to or directs to appropriate person inquiries from citizens, elected officials, developers, etc. through phone, email, in writing, or direct contact
• Accepts, processes, balances, and deposits registration, reservation and recreation permit payments daily;
• Completes data entry for registrations, reservations, and revenue deposits;
• Maintains the accounts payable records and invoicing;
• Processes service requests to the appropriate staff;
• Provides general administrative support functions to the divisions
• Works on occasional research and special projects.
• Manages the listings on the recreation software program and online registration accounts;
• Assists with promotional materials for programs, events and facilities and other marketing efforts;
• Assists with maintenance of department website as directed;
• Position requires ability to work evenings, weekends and holidays as required.
• Performs other related duties for multiple departments as deemed necessary or as required.

Education, Certification, and Experience Requirements:
High school diploma or GED and a minimum of two years experience in a related position, or any equivalent combination of training and experience that provides the appropriate knowledge, abilities, and skills. Requires the possession of a valid driver’s license and a good driving record.

Skills, Knowledge and Abilities:
Exceptional customer service skills. Skills in operating listed tools and equipment. Ability to understand and carry out oral and written instructions. Ability to make mathematical computations and routine monetary transactions with speed and accuracy. Basic knowledge of accounting principles applying to cash management. Ability to establish and maintain effective working relationships with superiors, other employees, and the general public contacted in the course of the work. Ability to resolve customer concerns and complaints within established procedures.

Tools and Equipment Used:
Network computer system operating recreation software; personal computer operating word processing, spreadsheet and data base software; 10-key calculator; telephone; copier; facsimile and postage meter.
Physical Demands:
The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. While performing the duties of this job, the employee is frequently required to sit and talk and hear. The employee is frequently required to walk; use hands to operate, finger, handle or feel objects, tools, or controls; and reach with hands and arms. The employee must occasionally lift and/or move up to 20 pounds. Specific vision abilities required by this job include close vision and the ability to focus.

Work Environment:
The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. While performing the duties of this job, the employee normally works within an office environment. The noise level is usually moderately quiet.

Selection Guidelines:
Formal application, rating of education and experience; and successful completion of oral interview; reference check; physical and drug screen; and background checks are required. Job related tests including assessments may be required.

The City of Gardner is an equal opportunity employer. Any applicant/employee with a disability as defined in the Americans with Disabilities Act may request an accommodation to perform the functions of this position. Requests should be directed to the immediate supervisor.

The duties listed above are intended only as illustrations of the various types of work performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

The job description does not constitute an employment agreement between the employer and the employee and is subject to change by the employer as the needs of the employer and requirements of the job change.
Agenda Item: Consider authorizing the Mayor and City Administrator to sign KDOT Form 1302 for the Center Street Sidewalk project.

Strategic Priority: Infrastructure and Asset Management

Department: Public Works

Staff Recommendation:
Staff recommends that the City Council authorize the Mayor and City Administrator to sign KDOT Form 1302 for the Center Street Sidewalk project.

Background/Description of Item:
In 2018 the City applied for and received funding through KDOT and the Mid-America Regional Council for pedestrian improvements to Center Street. The improvements include adding a sidewalk on the west side of Center Street between Shawnee and McKinley and widening the existing sidewalk on the Center Street Bridge over the BNSF. The purpose of Form 1302 is to request that KDOT program the project.

Financial Impact:
None at this time. The project is scheduled to be designed in 2021 and constructed in 2022.

Attachments included:
- KDOT Form 1302

Suggested Motion:
Authorize the Mayor and City Administrator to sign KDOT Form 1302 for the Center Street Sidewalk project.
KANSAS DEPARTMENT OF TRANSPORTATION - BUREAU OF LOCAL PROJECTS

PROJECT PROGRAMMING REQUEST

Program Year: 2022  Funding Program: TA (Transportation Alternatives)

KDOT District: 1  MPO: MPO

MPO TIP #: 343109

County: Johnson  City: Gardner  Route / Corridor: Center St

Functional Classification: 4 = Minor Arterial

Project Sponsor / Lead Agency: City of Gardner

Project Mgr / Contact: Tim McEldowney  Phone: 913-856-0959  E-mail Address: tmceldowney@gardnerkansas.gov

Project Title: Center Street Sidewalk Improvements

Project Length: 0.250 miles  Desired Letting Date: January 2022

Letting Type:  LPA

Location, Project Limits, Description, Scope of Work

Center Street from Shawnee to McKinley - new sidewalk
Center Street bridge over BNSF - widen existing sidewalk

Purpose and Need

The new sidewalk fills in a gap in the City’s sidewalk system. It provides additional access for a nearby development that house several disabled individuals. The existing sidewalk on the Center Street bridge is only 3 ft wide and will be widened to better accommodate bicycles and disabled individuals.

Project Benefits

Filling in the sidewalk gap will eliminate/reduce uncontrolled pedestrian crossing along Center St. It will also provide better access to the downtown area from west of Center St. The bridge improvements will allow for pedestrians and

<table>
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<th>RR within 1/2 mile?</th>
<th>RR Company Name</th>
<th>No. of Tracks</th>
<th>Existing Crossing Protection</th>
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<td>Yes</td>
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In accordance with the Bureau of Local Projects (BLP) Memo 99-11, dated December 16, 1999, we are required, under the Comprehensive Transportation Program (CTP), to collect and record total costs of all work phases of projects. This includes local agency federal-aid and state-aid projects that include any non-participating, pre-construction local agency costs for preliminary engineering (plan design), rights of way and utility adjustments. Please show your estimate of the cost for all work phases below:

Project Cost Estimate

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Project Totals: $ 315,000.00  $ 71,000.00  $ 386,000.00
BE IT RESOLVED: That sufficient funds from City of Gardner are now, or will be available and are hereby pledged to the Secretary in the amount and at the time required for the supplementing of federal funds available for the completion of this project. Prior to Federal Authorization, any project expenditures made by the LPA are ineligible for federal funding and remain the responsibility of the LPA. Upon cancellation of the project by the LPA, the LPA shall reimburse the Secretary within thirty (30) days after receipt of statement of cost incurred by the Secretary prior to cancellation.

Please sign below in accordance with your local policy.

Recommended for Approval:  

Appropriate Local Officials

Title  

Title

ATTEST:

Title

Title
Agenda Item: Consider the acceptance of ingress/egress and utility easement dedications by separate instruments for Mid America Bank

Strategic Priority: Economic Development and Infrastructure Management

Department: Public Works, Utility, Economic Development

Staff Recommendation:
Staff recommends the acceptance of the ingress/egress, and utility easement dedications by separate instruments for Mid America Bank.

Background/Description:
The easements are needed for the drive access and utilities serving the development. The easements are not shown on the approved and previously accepted dedications. As a result, the attached easement dedication instruments are presented to be considered for acceptance.

No condemnation of property is necessary for these easements.

Financial Impact:
- None

Attachments Included:
- Ingress/Egress Easement
- Utility Easements (2)

Suggested Motion:
Accept the dedication of the Ingress/Egress and Utility Easement dedications by separate instruments for Mid America Bank.
INGRESS/EGRESS EASEMENT

THIS AGREEMENT, Made and entered into this _____ day of ____________, 2019, by and between ____________________________________, a single person, hereinafter called Grantor, and the CITY OF GARDNER, KANSAS, a Municipal Corporation, located in the County of Johnson, State of Kansas, hereinafter called Grantee.

NOW, THEREFORE, for the consideration hereinafter described, the parties hereto agree as follows:

SECTION ONE
GRANT OF PERMANENT EASEMENT

WITNESSETH, That the Grantor, in consideration of the sum of One Dollar ($1.00) to it paid by the Grantee, the receipt and sufficiency of which is hereby acknowledged, does by these presents grant, bargain and sell, convey and confirm unto said Grantee, its successors and assigns, a Permanent Ingress/Egress Easement for use as access to on, over, across the following described tracts of land:

Description:

See Exhibit “A” attached hereto and by reference made a part hereof
SECTION TWO
RESTRICTED USE BY GRANTOR

Grantor grants and conveys to Grantee an easement for ingress and egress over and through the Easement Area for the sole purpose of vehicular and pedestrian traffic through Lot 1, Center Street Commons.

SECTION THREE
WARRANTY OF TITLE

Grantor covenants that he is the owner of the premises and has the right, title and capacity to grant the easement granted herein.

SECTION FOUR
EFFECT OF AGREEMENT

This agreement shall be binding upon the heirs, legal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

GRANTOR:

____________________________________
Printed Name: ________________________
Street Address: _______________________
City, State & Zip: ______________________

GRANTEE:
CITY OF GARDNER, KANSAS,
A Municipal Corporation

By: __________________________________
Laura Gourley, City Administrator

ATTEST:

____________________________
Amy Nasta, City Clerk
(SEAL)
A tract of land 26.00 feet in width being 13.00 feet on either side of the following described centerline in Lot 1, Center Street Commons a subdivision of land located in Gardner, Johnson County, Kansas, more particularly described as follows:

Commencing at the Northwest corner of said Lot 1, thence South 88 degrees 10 minutes 34 seconds West, along the North line of said Lot 1, a distance of 61.41 feet, to the point of beginning; thence South 1 degrees 49 minutes 14 seconds West, a distance of 180.86 feet to the point of termination, said point being on the South line of said Lot 1.
PERMANENT UTILITY EASEMENT

THIS AGREEMENT, Made and entered into this ______ day of ____________, 201__, by and between ________________________________, a _______________________ (LLC, Corporation, Partnership), hereinafter called Grantor, and the CITY OF GARDNER, KANSAS, a Municipal Corporation, located in the County of Johnson, State of Kansas, hereinafter called Grantee.

NOW, THEREFORE, for the consideration hereinafter described, the parties hereto agree as follows:

SECTION ONE
GRANT OF PERMANENT EASEMENT

In consideration of One and No/100 Dollar ($1.00) in hand paid and other valuable consideration, including just compensation paid for all property damage resulting from the public improvement and from those factors set forth in K.S.A. 26-513 and other factors arising from the public improvement to be made, including but not limited to loss of trees, overhanging tree branches or landscaping within the easement area, receipt of which is hereby acknowledged, the Grantor does hereby grant and convey unto the Grantee, its successors and assigns, a permanent easement for public utility lines, including but not limited to water, telephone, gas, electricity, cable, storm sewer, sanitary sewer line(s) and other appurtenances in, over, on, under and through the following described land in the County of Johnson, State of Kansas (such land is referred to herein as the premises):
SEE EXHIBIT “A” ATTACHED HERETO
AND BY REFERENCE MADE A PART HEREOF.

SECTION TWO
RESTRICTED USE BY GRANTOR

Grantor shall not interfere with the exercise by Grantee of the rights granted herein. Grantor shall not allow or construct or permit to be constructed any structure, trees, overhanging tree branches or landscaping, or obstructions on or over the above described easement area or interfere with the construction, maintenance, or operation of utility lines and appurtenance constructed pursuant to this instrument. Grantee and any public utility company, or their agents, shall have the right to trim back any overhanging tree branches and landscaping to the main trunk located on Grantor’s property.

SECTION THREE
WARRANTY OF TITLE

Grantor covenants that it is the owner of the premises and has the right, title and capacity to grant the easement granted herein.

SECTION FOUR
EFFECT OF AGREEMENT

This agreement shall be binding upon the heirs, legal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.
GRANTOR:
____________________________________
(Name of LLC, Corporation, Partnership)
By: _________________________________
Printed Name: ________________________
Title: ________________________________
Street Address: _______________________
City, State & Zip: ______________________

ACKNOWLEDGMENT

STATE OF KANSAS        )
) ss:
COUNTY OF JOHNSON )

BE IT REMEMBERED, that on this ______________ day of ____________________, 201__, before me, the undersigned, a Notary Public within and for the County and State aforesaid, came ____________________, (Name) (Title) of ____________________, who is personally known to me to be the same person who executed the within document on behalf of said entity and said person duly acknowledged the execution of the same to be the act and deed of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

____________________________________
Notary Public

My Appointment Expires:

____________________________________
GRANTEE:
CITY OF GARDNER, KANSAS,
A Municipal Corporation

By: __________________________________
   Laura Gourley, City Administrator

ATTEST:
____________________________________
Amy Nasta, City Clerk
(SEAL)

ACKNOWLEDGMENT

STATE OF KANSAS        )
                        ) ss:
COUNTY OF JOHNSON     )

BE IT REMEMBERED, that on this ________ day of ________________, 201__, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Laura Gourley, City Administrator of the City of Gardner, Kansas, and Amy Nasta, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

____________________________________
Notary Public

My Appointment Expires:
A part of Tract D, Center Street Commons a subdivision of land located in Gardner, Johnson County, Kansas, more particularly described as follows:

Commencing at the Southeast corner of said Tract D, thence North 34 degrees 00 minutes 24 seconds East, along the West line of Lots 18 and 19, Evergreen Park, a subdivision now in the City of Gardner, Johnson County, Kansas, a distance of 31.22 feet; thence North 2 degrees 19 minutes 15 seconds East, a distance of 193.26 feet; thence North 62 degrees 03 minutes 04 seconds West, a distance of 28.84 feet to the point of beginning; thence South 48 degrees 12 minutes 41 seconds East, a distance of 5.57 feet; thence South 2 degrees 19 minutes 15 seconds West, a distance of 178.45 feet; thence North 88 degrees 01 minutes 03 seconds West, a distance of 10.03 feet; thence on a Northeasterly curve to the left, having a radius of 375.00 feet, initial tangent bearing North 10 degrees 07 minutes 41 seconds East, delta 11 degrees 56 minutes 56 seconds, a distance of 78.20 feet; thence North 1 degree 49 minutes 26 seconds East, a distance of 93.93 feet; thence on a Northeasterly curve to the right having a radius of 40.00 feet, delta 26 degrees 27 minutes 17 seconds, a distance of 18.47 feet; thence South 62 degrees 03 minutes 04 seconds East, a distance of 17.12 feet, to the point of beginning.
PERMANENT UTILITY EASEMENT

THIS AGREEMENT, Made and entered into this _____ day of ____________, 2019, by and between ____________________________, a ____________________________, hereinafter called Grantor, and the CITY OF GARDNER, KANSAS, a Municipal Corporation, located in the County of Johnson, State of Kansas, hereinafter called Grantee.

NOW, THEREFORE, for the consideration hereinafter described, the parties hereto agree as follows:

SECTION ONE
GRANT OF PERMANENT EASEMENT

In consideration of One and No/100 Dollar ($1.00) in hand paid and other valuable consideration, including just compensation paid for all property damage resulting from the public improvement and from those factors set forth in K.S.A. 26-513 and other factors arising from the public improvement to be made, including but not limited to loss of trees, overhanging tree branches or landscaping within the easement area, receipt of which is hereby acknowledged, the Grantor does hereby grant and convey unto the Grantee, its successors and assigns, a permanent easement for public utility lines, including but not limited to water, telephone, gas, electricity, cable, storm sewer, sanitary sewer line(s) and other appurtenances in, over, on, under and through the following described land in the County of Johnson, State of Kansas (such land is referred to herein as the premises):
SECTION TWO
RESTRICTED USE BY GRANTOR

Grantor shall not interfere with the exercise by Grantee of the rights granted herein. Grantor shall not allow or construct or permit to be constructed any structure, trees, overhanging tree branches or landscaping, or obstructions on or over the above described easement area or interfere with the construction, maintenance, or operation of utility lines and appurtenance constructed pursuant to this instrument. Grantee and any public utility company, or their agents, shall have the right to trim back any overhanging tree branches and landscaping to the main trunk located on Grantor’s property.

SECTION THREE
WARRANTY OF TITLE

Grantor covenants that it is the owner of the premises and has the right, title and capacity to grant the easement granted herein.

SECTION FOUR
EFFECT OF AGREEMENT

This agreement shall be binding upon the heirs, legal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.
GRANTOR:

____________________________________

(Name of LLC, Corporation, Partnership)

By: ________________________________

Printed Name: ________________________

Title: ________________________________

Street Address: _______________________

City, State & Zip: _____________________

ACKNOWLEDGMENT

STATE OF KANSAS        )
COUNTY OF JOHNSON ) ss:

BE IT REMEMBERED, that on this ____________ day of ____________________, 201__, before me, the undersigned, a Notary Public within and for the County and State aforesaid, came ____________________, (Name) (Title) of ____________________, who is personally known to me to be the same person who executed the within document on behalf of said entity and said person duly acknowledged the execution of the same to be the act and deed of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

____________________________________

Notary Public

My Appointment Expires:

____________________________________
GRANTEE:
CITY OF GARDNER, KANSAS,
A Municipal Corporation

By: ______________________________________
Laura Gourley, City Administrator

ATTEST:

____________________________
Amy Nasta, City Clerk
(SEAL)

ACKNOWLEDGMENT

STATE OF KANSAS        )
) ss:
COUNTY OF JOHNSON )

BE IT REMEMBERED, that on this ________ day of ________________, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Laura Gourley, City Administrator of the City of Gardner, Kansas, and Amy Nasta, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

____________________________________
Notary Public

My Appointment Expires:

____________________________
A tract of land 20.00 feet in width being 10.00 feet on either side of the following described centerline in Lot 1, Center Street Commons a subdivision of land located in Gardner, Johnson County, Kansas, more particularly described as follows:

Commencing at the Northeast corner of said Lot 1, thence on a southwesterly curve to the right, with a radius of 350.00 feet, a distance of 60.17 feet, to the Point of Beginning; thence North 88 degrees 36 minutes 45 seconds West, a distance of 47.27 feet to the point of termination.
Agenda Item: Consider Authorizing the City Administrator to enter into a contract agreement with US Foods to provide certain concessions supplies to Gardner Parks and Recreation Department

Strategic Priority: Fiscal Stewardship

Department: Parks and Recreation

Staff Recommendation:
Authorize the City Administrator to enter into a contract agreement with US Foods to provide certain concessions supplies to Gardner Parks and Recreation Department based on the terms and pricing submitted.

Background/Description of Item:
Bids were recently solicited from food and product distribution companies to supply the four (4) concession facilities that the Parks and Recreation department operates. Unit pricing was required for each of the products scheduled for purchase. Notice to bidders was publicly advertised and bid documents were provided to EVCO Foods, SYSCO and US FOODS. All three (3) of these vendors provided responses.

A bid tabulation for the sixteen (16) most popular items is attached. US foods had the lowest price per unit on seventy-five percent (75%) of the items (12 of 16). Of the remaining four (4) items, EVCO had the lowest price per unit on three (3); however, it should be noted that the price per unit difference between US Foods and EVCO on these items were all approximately one half cent ($0.006, $0.004, and $0.005, respectively). SYSCO had the lowest price on the remaining item. Of the three (3) vendors submitting bids, only US Foods offered all sixteen (16) of the most popular concessions items.

Due to the lowest overall per item prices and the availability of products, staff recommends selecting US Foods as the concessions supplier.

The term of the agreement will be for two years and the City will only be billed for the products that are ordered and delivered. The 2017-2018 purchase history was utilized to develop the estimated expenditures listed in the table below.

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017-18 Actuals</td>
<td>$83,326.31</td>
</tr>
<tr>
<td>US Foods</td>
<td>$93,134.00</td>
</tr>
</tbody>
</table>

The Parks and Recreation Department has just completed a two year agreement with US Foods. Service and product has been reliable and satisfactory.
Financial Impact:
This is a budgeted item for 2019-2020

Attachments:
- Bid Tabulation
- Concessions Agreement

Suggested Motion:
Authorize the City Administrator to enter into a contract agreement with US Foods to provide certain concessions supplies to Gardner Parks and Recreation Department based on the terms and pricing submitted.
<table>
<thead>
<tr>
<th>Top Sellings Items</th>
<th>US Foods</th>
<th>EVCO</th>
<th>SYSCO</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Item Cost</td>
<td>Quantity</td>
<td>Cost per Unit</td>
</tr>
<tr>
<td>Pretzels</td>
<td>36.21</td>
<td>50</td>
<td>0.724</td>
</tr>
<tr>
<td>Hot Dogs</td>
<td>$22.40</td>
<td>50</td>
<td>0.448</td>
</tr>
<tr>
<td>Hot Dog Buns</td>
<td>$22.64</td>
<td>96</td>
<td>0.236</td>
</tr>
<tr>
<td>Nacho Chips</td>
<td>$21.00</td>
<td>36</td>
<td><strong>0.583</strong></td>
</tr>
<tr>
<td>Nacho Cheese</td>
<td>$45.07</td>
<td>4</td>
<td>11.268</td>
</tr>
<tr>
<td>Popcorn Kernels</td>
<td>$22.37</td>
<td>1</td>
<td><strong>22.370</strong></td>
</tr>
<tr>
<td>Cookies</td>
<td>$31.67</td>
<td>48</td>
<td>0.660</td>
</tr>
<tr>
<td>Sunflower Seeds</td>
<td>$50.61</td>
<td>144</td>
<td>0.351</td>
</tr>
<tr>
<td>Bags of Chips (Individual)</td>
<td>$26.21</td>
<td>60</td>
<td>0.437</td>
</tr>
<tr>
<td>M/M’s Plain</td>
<td>$210.49</td>
<td>324</td>
<td><strong>0.650</strong></td>
</tr>
<tr>
<td>Twix</td>
<td>$233.87</td>
<td>360</td>
<td><strong>0.650</strong></td>
</tr>
<tr>
<td>Snickers</td>
<td>$249.47</td>
<td>384</td>
<td>0.650</td>
</tr>
<tr>
<td>Reese’s</td>
<td>$25.30</td>
<td>36</td>
<td>0.703</td>
</tr>
<tr>
<td>Starburst</td>
<td>$234.27</td>
<td>360</td>
<td><strong>0.651</strong></td>
</tr>
<tr>
<td>Skittles</td>
<td>$234.27</td>
<td>360</td>
<td><strong>0.651</strong></td>
</tr>
<tr>
<td>Airheads</td>
<td>$55.21</td>
<td>432</td>
<td><strong>0.128</strong></td>
</tr>
</tbody>
</table>
CITY OF GARDNER, KANSAS
AGREEMENT FOR PURCHASE OF GOODS

AGREEMENT BETWEEN CITY AND VENDOR

FOR

THIS AGREEMENT is made and entered into this February, day of ___________ 2019, by
and between the City of Gardner, Kansas, hereinafter "City", and US Foods Inc. ___ , herein after
"Vendor."

WITNESSETH:

WHEREAS, City has caused to be prepared in accordance with the law, a Notice to Bidders, Bid
Form, this Agreement, Specifications and other Contract Documents for the materials,
vehicle/equipment and services herein described, and has approved and adopted these said Contract
Documents and has caused to be published, in the manner and for the time required by law, an
advertisement inviting sealed Bids for furnishing materials, labor, tools, vehicle/equipment and
transportation necessary for, and in connection with this Agreement; and

WHEREAS, Vendor, in response to the advertisement, has submitted to City, in the manner and at
the time specified, a sealed Bid in accordance with the terms of this Agreement; and

WHEREAS, City, in the manner prescribed by law, has publicly opened, examined and reviewed
the Bids submitted, and as a result of this review has, in accordance with the law, determined
and declared Vendor to be the Successful Bidder for providing the said materials, vehicle/equipment and
services, and has duly awarded to Vendor this Agreement therefore upon the terms and conditions
set forth in this Agreement and for the sum or sums named in the Bid Form attached to and made a
part of this Agreement.

NOW THEREFORE, in consideration for the compensation to be paid Vendor, and of the mutual
agreements herein contained, the parties hereto have agreed, and hereby agree, City for itself and its
successors, and Vendor for itself, himself/herself or themselves, its, his/her or their successors and
assigns, or its, his/her or their executors and administrators, as follows:

ARTICLE I. Vendor will furnish at its own cost and expense all labor, tools, equipment, materials,
transportation, and any other accessories, services and facilities required to complete the Work as
designated, described and required by the Contract Documents, all in accordance with the Notice to
Bidders, Bid Form, this Agreement, Specifications and other Contract Documents on file with the
City Clerk of Gardner, Kansas, all of which Contract Documents form this Agreement, and are as
fully a part hereof as if repeated verbatim herein; all Work to be done and materials or
vehicle/equipment delivered in a good, substantial and workmanlike manner and to the entire
satisfaction of City, and in accordance with the laws of City, the State of Kansas and the United
States of America.

US Foods understands and will comply.
ARTICLE II. City shall pay to Vendor for the provided supplies/materials embraced in this Agreement, and Vendor will accept in full compensation therefore, the amount per unit price as outlined in the bid form, (subject to adjustment as provided by and in accordance with the Contract Documents) for all Work covered by and included in the Contract Documents, payment thereof to be made in cash or its equivalent and in the manner provided in the Contract Documents. City reserves the right to make additions and deletions to the Contract Documents as provided in the Contract Documents.

US Foods understands and will comply.

ARTICLE III. Vendor shall commence the Work on March 4th, 2019, and will complete all Work covered by this Agreement on or before March 3rd, 2021. Time is of the essence.
(a) The City of Gardner grants the Vendor exclusive rights to provide certain food and operating supply products (listed in the bid form) at all four concession locations listed. This will exclude any other product not listed in the contract.
(b) The supplier agrees to make deliveries within 3 (calendar days) of product being ordered.

US Foods is committed to provide deliveries of products to City on the days and within the delivery windows mutually agreed upon. Except the national holidays of New Year’s Day, Thanksgiving, and Christmas. US Foods will begin deliveries on March 4th, 2019 if awarded bid.
(c) Same day order confirmation must be provided by the Vendor.

US Foods understands and will comply.

ARTICLE IV. Vendor shall not subcontract, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof without previous written consent of City. No subcontracts, or other transfer of this Agreement, shall release Vendor of its liability under this Agreement.

US Foods understands and will comply.

ARTICLE V. Vendor specifically acknowledges and confirms that it has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by it as specified herein and in the other Contract Documents and knowingly accepts same.

US Foods understands and will comply.

ARTICLE VI. It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.

US Foods understands and will comply.
ARTICLE VII. Nothing herein shall be construed to create a relationship of employer and employee or principal and agent or any other relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of this Agreement. The Agreement to be entered into is not intended to be, and will not constitute or otherwise recognize a joint venture, partnership agreement or relationship, or formal business organization or association of any kind between the parties; and, the rights and obligations of the parties shall be only those expressly set forth in the Agreement. The parties will agree that no persons supplied by Vendor in performance of the contract are employees of the City and further agree that no right of the City’s civil service, retirement, or personnel rules accrue to such persons. Vendor shall have the total responsibility for all salaries, wages, workers’ compensation insurance, unemployment compensation, bonuses, retirement, withholdings, other benefits, and all taxes and premiums appurtenant thereto concerning such persons and shall hold the City harmless with respect thereto.

US Foods, Inc. hereby agrees to indemnify, defend and hold harmless GPRD and its successors and assigns, (collectively, “Indemnitees”) from and against any and all claims, demands, actions, losses, expenses, damages, liabilities, costs (including, without limitation, interest, penalties and reasonable attorneys’ fees) and judgments (collectively, “Loss”) arising out of: (a) any damage or defect to any products that is caused by US Foods while such products were in the care, custody or control of USF, (b) any acts or omissions of USF and its employees and agents acting under its control or supervision, and (c) any breach of this Agreement or proposal by US Foods provided, however, that there shall be no right to indemnification hereunder for any Loss arising out of the acts or omissions of any Indemnitee.

ARTICLE VIII. All local, state and federal laws and requirements as described in the Contract Documents which apply to this Agreement shall be incorporated herein by reference.

US Foods understands and will comply.

ARTICLE IX. Should any provision of this Agreement or the other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.

US Foods understands and will comply.

ARTICLE X. Vendor will waive all fuel and service surcharges on all deliveries for the duration of the contract. Unit pricing submitted during the bidding process will remain unchanged throughout the duration of the contract.

US Foods understands and will comply.
ARTICLE XI. The City of Gardner reserves the right to terminate the agreement with or without cause by providing Ten (10) days notice of such termination to the vendor. The Supplier will provide full credit for all returned and unopened product. If City shall terminate the Agreement prior to expiration of the term of the Agreement, City shall compensate Vendor for all goods and services provided and satisfactorily completed through the date of termination. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.

US Foods understands and will comply.

ARTICLE XII. Vendor shall secure and maintain, throughout the duration of this Agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in the least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms provided by the City or on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate. Such insurance coverage’s shall include, but not be limited to the minimum amounts defined below:

Commercial General Liability $1,000,000.00  
Workers’ Compensation $100,000.00 per accident / $500,000.00 policy limit  
Automobile Liability $1,000,000.00

The City will only accept coverage from an insurance carrier who offers proof that it:

1. Is licensed to do business in the State of Kansas;
2. Carries a Best’s policy holder rating of A or better; and
3. Carries at least a Class X financial rating;
   OR
4. Is a company mutually agreed upon by the City and the Contractor.

With regards to the US Foods’ insurance requirements, US Foods shall provide certificates evidencing that the coverage and limits as outlined herein are in force and will remain in force, and should any of the described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

ARTICLE XIII. For purposes of this Agreement, Vendor hereby agrees to indemnify, defend and hold harmless the City, its employees and agents from any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Vendor, its affiliates, subsidiaries, employees, agents, subcontractors/assignees and their respective servants, agents and employees.

It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the City’s or any third party’s joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that the Vendor’s obligation hereunder shall not include amounts attributable to the fault or negligence of the City or any third party for whom the Vendor is responsible.
In the case of any claims against the City, its employees or agents indemnified under this Agreement, by an employee of the Vendor, its affiliates, subsidiaries, or assignees, the indemnification obligation contained in this Agreement shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for the Vendor, its affiliates, subsidiaries, or assignees, under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

US Foods, Inc. hereby agrees to indemnify, defend and hold harmless GPRD and its successors and assigns, (collectively, “Indemnitees”) from and against any and all claims, demands, actions, losses, expenses, damages, liabilities, costs (including, without limitation, interest, penalties and reasonable attorneys’ fees) and judgments (collectively, “Loss”) arising out of: (a) any damage or defect to any products that is caused by US Foods while such products were in the care, custody or control of USF, (b) any acts or omissions of USF and its employees and agents acting under its control or supervision, and (c) any breach of this Agreement or proposal by US Foods provided, however, that there shall be no right to indemnification hereunder for any Loss arising out of the acts or omissions of any Indemnitee.

ARTICLE XIV. This Agreement is subject to the Kansas Cash Basis Law, K.S.A. 10-1101. Any automatic renewal of the terms of the Agreement shall create no legal obligation on the part of the City. The City is obligated only to pay periodic payments or monthly installments under the Agreement as may lawfully be made from (a) funds budgeted and appropriated for that purpose during the City’s current budget year, or (b) funds made available from any lawfully operated revenue producing source.

US Foods understands and will comply.

ARTICLE XV. This Agreement, together with the other Contract Documents, constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except as provided herein or in the other Contract Documents. No oral modification or supplementation of this Agreement shall have any legal effect.

US Foods understands and will comply.

ARTICLE XVI. This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas. The sole and exclusive venue for any action that may arise from any dispute under the terms of this Agreement shall be within the District Court of Johnson County, Kansas.

US Foods understands and will comply.

IN WITNESS WHEREOF, the City of Gardner, Kansas, has caused this Agreement to be executed on its behalf, thereunto duly authorized, and the said Vendor has executed counterparts of this Contract in the prescribed form and manner, the day and year first above written.

CITY OF GARDNER, KANSAS

By: ___________________________ Date: ___________________________
Laura Gourley, Interim City Administrator
[SEAL]

ATTEST:

_________________________________________ Date: ______________________________________
Amy Nasta, City Clerk

VENDOR

_________________________________________
Vendor

[SEAL]

BY: ______________________________________ Date: __________________________
Signature

ATTEST: ______________________________________________________________
Title

Secretary

_________________________________________
Address

_________________________________________
City, State, Zip

_________________________________________ Phone No.  Facsimile No. (if available)
CITY OF GARDNER, KANSAS
CERTIFICATE OF NONDISCRIMINATION
MANDATORY PROVISIONS

K.S.A. § 44-1030(a) provides that every contract for or on behalf of the City of Gardner, Kansas, for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services shall contain provisions by which the contractor agrees to the following:

(1) that the contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, age, national origin or ancestry;

(2) that in all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer," or similar phrase as approved by the state commission;

(3) that if the contractor fails to comply with the manner in which the contractor reports to the state commission in accordance with the provision of K.S.A. § 44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the City of Gardner;

(4) that if the contractor is found guilty of a violation of the Kansas Act Against Discrimination under decision or order of the state commission which has become final, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the City of Gardner; and

(5) that the contractor shall include the provisions of K.S.A. § 44-1030(a) subsections (1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of K.S.A. § 44-1030(a) shall not apply to a contract entered into by a contractor: (1) who employs fewer than four (4) employees during the term of such contract; or (2) whose contracts with the City of Gardner cumulatively totals $5,000 or less during the same fiscal year.

By signing this Certificate of Nondiscrimination, contractor acknowledges inclusion of the requirements of K.S.A. 44-1030(a) in the base contract and in all subcontracts.

DATE: __________________________

Contractor/Principal

By: __________________________

Signature

CORPORATE SEAL

______________________________
(Official Title of Signer)

{K0409771.DOC, 1}CA-6
Agenda Item: Consider an ordinance approving rezoning Z-18-07 for 1000 E. Santa Fe Street from M-2 (General Industrial) District to M-1 (Restricted Industrial).

Strategic Priority: Economic Development and Fiscal Stewardship

Department: Business & Economic Development

Planning Commission Recommendation:
After review of application Z-18-07, a rezoning for 1.97 acres located at 1000 E. Santa Fe Street (Tax Id CP42300000 0001A) from M-2 (General Industrial) District to M-1 (Restricted Industrial) District, and staff report dated January 29, 2019, the Planning Commission recommends the Governing Body approve the application.

Staff Recommendation:
Staff recommends approval of the proposed rezoning of 1000 E. Santa Fe Street from M-2 District to M-1 District.

Background/Description of Item:
The site is developed with three structures: a barn building built in the 1920’s and two warehouse buildings built in 1985. The site also has a significant drainage way running through the property. Currently the site is used for an online retail store warehouse.

The property adjacent to the subject property to the east is zoned M-2 District and developed with personal outdoor storage. The remainder of the adjacent properties are zoned for commercial uses and a large portion is undeveloped. The developed portion includes an online retail store (Freight and Distribution – Light), daycare (Day Care Center), auto sales (Outdoor Sales – Heavy), and veterinarian (Animal Care Large). The M-1 District allows for both commercial and lower intensity industrial uses including the existing Freight and Distribution – Light use and the proposed onsite retail sales. The existing use is not permitted in the adjacent C-3 or C-O Districts which are also identified as appropriate zoning districts for the designated land use. The proposed rezoning would be compatible with the surrounding zoning districts and uses.

The subject property zoning allows for moderate to heavy industrial uses. The property is also split into two portions by a significant drainage way. While this drainage way could be dealt with by enclosing it in pipe, the site is just under two acres which would be considered small for a higher intensity industrial use. The site is better suited for small scale industrial or manufacturing, small commercial or office type uses which are consistent with the M-1 District uses and intent.

The proposed change is consistent with the Gardner Main Street Corridor Plan which is incorporated by reference into the Comprehensive Plan, and with the intent statement of the applicable Commercial & Light Industrial future land use category.
This site is within one mile of the New Century Air Center and will also require review by the Johnson County Airport Commission and Board of County Commissioners.

The Planning Commission held a public hearing on this request at their January 29, 2019 meeting. The Commission unanimously recommended that the Governing Body approve the rezoning. No members of the public spoke regarding this item.

**Financial Impact:**
None at this time.

**Other Impacts:**
None.

**Attachments included:**
- Ordinance
- Vicinity map
- Draft January 29, 2019 Planning Commission meeting minute excerpt
- Planning Commission packet

**Suggested Motion:**
Adopt Ordinance 2600 changing the zoning classifications or districts of certain lands located in the City of Gardner, Kansas, under the authority granted by Title 17 of the Municipal Code of the City of Gardner, Kansas
ORDINANCE NO. 2600

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF GARDNER, KANSAS, UNDER THE AUTHORITY GRANTED BY TITLE 17 OF THE MUNICIPAL CODE OF THE CITY OF GARDNER, KANSAS;

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:

SECTION ONE: That having received a recommendation from the Planning Commission on January 29, 2018, and proper notice having been given and hearing held as provided by law and under the authority of and subject to the provisions of the Gardner, Kansas Land Development Code, the zoning classification or districts of the lands legally described hereby are changed as follows:

The following described properties shall hereafter have a zoning classification of M-1 (Restricted Industrial District):

CASE NO. Z-18-07

Rezoning from M-2 (General Industrial) District to M-1 (Restricted Industrial) District:

Legal Description:

Kate Industrial Park First Plat, a Subdivision in the City of Gardner, Johnson County, Kansas, Lot 1, except the East 222.53’ and except the West 344’ thereof.

SECTION TWO: That upon the taking effect of this Ordinance, the above zoning changes shall be incorporated and shown on the Zoning District Map previously adopted by reference, and said Zoning District Map is hereby reincorporated as a part of the Land Development Code as amended.

SECTION THREE: That this Ordinance shall take effect and be in force from and after its adoption by the Governing Body and publication in the official City Newspaper.

PASSED by the Governing Body this 18th day of February, 2019.

SIGNED by the Mayor this 18th day of February, 2019.

______________________________
Steve Shute, Mayor

CITY OF GARDNER, KANSAS

(SEAL)

Attest:

______________________________
Amy Nasta, City Clerk
Approved as to form:

______________________________
Ryan B. Denk, City Attorney

(Case No. Z-18-07)
Gardner City Council
Z-18-07: Rezoning 1000 E. Santa Fe St.
Meeting Date: February 18, 2019

Legend
Subject Property

200' Notice Buffer

City Limits

Zoning
The meeting of the Gardner Planning Commission was called to order at 7:00 p.m. on Tuesday, January 29, 2019, by Commissioner Tory Roberts.

Commissioner Roberts led the Pledge of Allegiance.

Commissioners present:
Commissioner Boden
Commissioner Brady
Commissioner Gardenhire
Commissioner McNeer
Commissioner Roberts
Commissioner Simmons-Lee

Commissioners absent:
Chairman Austin

Staff members present:
Larry Powell, Director, Business & Economic Development
Kelly Drake Woodward, Chief Planner
Michelle Leininger, Principal Planner
Bob Case, Planner
Kristie Hatley, Planning Technician
Charles Dunlay, City Attorney

There was one member of the public in attendance.

REGULAR AGENDA

2. REZONING
Z-18-07: Hold a public hearing and consider a rezoning for approximately 1.97 acres at 1000 E. Santa Fe Street from M-2 (General Industrial) District to M-1 (Restricted Industrial) District.

Ms. Michelle Leininger, Principal Planner, presented the rezoning request for the subject property, currently zoned M-2 District. The general character of the neighborhood includes commercial, office, and personal storage uses. North of the site is Hwy 56 and
the railroad tracks, to the east are storage uses, to the south is undeveloped land zoned C-3 and CP-3, to the southwest is a future office/warehouse building with storage units and to the west is a daycare center zoned C-2. The site zoned for moderate to heavy industrial but staff has found that it is better suited for small scale industrial, manufacturing, small commercial or office type uses. The change in zoning will make the property more consistent with the developed and potential uses of the adjacent properties. The uses permitted in the nearby commercial districts are the same or similar to those of the M-1 District. The relative gain to economic development would allow for a current owner to expand the existing business to allow for retail sales onsite in addition to the current online sales. The proposed zoning is consistent with the Comprehensive Plan. She presented an excerpt from the Gardner Main Street Corridor Plan that shows this parcel within a larger area labelled as Commercial and Light Industrial. This property is also within 1 mile of New Century AirCenter so will also need approvals by the Airport Board and County Commission.

Public Hearing

No one from the public spoke.

Motion to close the public hearing made by Boden and seconded by McNeer.

Motion passed 6-0.

Commission Discussion

Commissioner Gardenhire asked for clarification on the case number since it was shown as Z-18-08 on the agenda and as Z-18-07 on the staff report.

Ms. Leininger replied the staff report was correct and the case number was Z-18-07.

Motion made after review of application Z-18-07, a rezoning for 1.97 acres located at 1000 E. Santa Fe Street (Tax Id CP42300000 0001A) from M-2 (General Industrial) District to M-1 (Restricted Industrial) District, and staff report dated January 29, 2019, the Planning Commission recommends the Governing Body approve the application.

Motion made by McNeer and seconded by Boden.

Motion passed 6-0.
PLANNING COMMISSION STAFF REPORT  NEW BUSINESS ITEM NO. 2
MEETING DATE: JANUARY 29, 2019
PREPARED BY: MICHELLE LEININGER, AICP, PRINCIPAL PLANNER

PROJECT NUMBER / TITLE: Z-18-07: Rezoning of 1000 E. Santa Fe St. from M-2 to M-1

PROCESS INFORMATION
Type of Request: Zoning Map Amendment (Rezoning)
Date Received: November 30, 2018

APPLICATION INFORMATION
Applicant: Cory Roberts
Owner: Cory and Marisa Roberts
Parcel ID: CP42300000 0001A
Location: 1000 E. Santa Fe Street

REQUESTED ACTION
The applicant is requesting the rezoning of 1.97 acres at 1000 E. Santa Fe Street from M-2 (General Industrial) District to M-1 (Restricted Industrial) District to allow for retail sales onsite.

EXISTING ZONING AND LAND USE
The subject property is currently zoned M-2 (General Industrial) District and is used for an online pet supply business which would fall into the Freight and Distribution – Light use group.

SURROUNDING ZONING AND LAND USE

<table>
<thead>
<tr>
<th>Zoning</th>
<th>Use(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>North of subject property</strong></td>
<td></td>
</tr>
<tr>
<td>M-2 (General Industrial) District</td>
<td>BNSF railroad tracks and Kansas Department of Transportation right-of-way for Hwy 56</td>
</tr>
<tr>
<td><strong>East of subject property</strong></td>
<td></td>
</tr>
<tr>
<td>M-2 District</td>
<td>Personal outdoor storage units</td>
</tr>
<tr>
<td><strong>South of subject property</strong></td>
<td></td>
</tr>
<tr>
<td>CP-3 (Planned Heavy Commercial) District</td>
<td>Agriculture land</td>
</tr>
<tr>
<td>C-3 (Heavy Commercial) District</td>
<td>Agriculture land</td>
</tr>
<tr>
<td><strong>West of subject property</strong></td>
<td></td>
</tr>
<tr>
<td>C-2 (General Business) District</td>
<td>Daycare</td>
</tr>
</tbody>
</table>
EXISTING CONDITIONS

The site is developed with three structures; a barn building built in the 1920’s and two warehouse buildings built in 1985. The site also has a significant drainage way running through the property. Currently the site is used for an online retail store warehouse.

BACKGROUND / HISTORY

The subject property was annexed into the city in the early 1980’s and platted as part of Lot 1 of Kate Industrial Park First Plat in 1985.
CONSISTENCY WITH COMPREHENSIVE PLAN

The subject property is within the planning area for the Gardner Main Street Corridor Plan, within the East Gateway Subarea. This plan calls for the subject property to be Commercial and Light Industrial uses on the Future Land Use map. The Commercial & Light Industrial use category is described as “Commercial and Light Industrial uses involve the manufacturing, processing, storage, and distribution of goods and materials that may have limited effect on surrounding uses. Typically, operations occur indoors, though outdoor storage or distribution may produce negative impacts such as truck traffic and visual and auditory nuisances on nearby uses.”

Table 5-1 of the Gardner Land Development Code translates future land uses into typically applicable zoning districts. The Commercial & Light Industrial future land use category corresponds with the C-O (Office) District, C-3 (Heavy Commercial) District, or M-1 (Restricted Industrial) District. The applicant wishes to continue the existing online retail business and add a small onsite retail component. The M-1 District best meets the intentions of the applicant as the current Freight and Distribution – Light use is not permitted in the C-O or C-3 Districts. By changing the zoning of the subject property from the M-2 to the M-1 District, the property would then be consistent with the Main Street Corridor Plan.

STAFF ANALYSIS - ZONING MAP AMENDMENT

17.03.030 (B) Review Criteria:

1. The character of the neighborhood, including the design of streets, civic spaces and other open spaces; the scale, pattern and design of buildings; and the operation and uses of land and buildings;

Staff Comment: The general character of the neighborhood includes office and personal storage uses. The property to the south is undeveloped, though is planted with row crops in the summer. There are single-family homes approximately an eighth of a mile to the east along E. Santa Fe St. and a mobile home park to the south approximately the same distance. To the north of the subject property are railroad tracks. Directly adjacent properties have historically been low intensity industrial businesses.

2. The zoning and use of properties nearby, and the compatibility with potential uses in the proposed district with these zoning districts;

Staff Comment: The property adjacent to the subject property to the east is zoned M-2 District and developed with personal outdoor storage. The remainder of the adjacent properties are zoned for commercial uses and a large portion is undeveloped. The developed portion includes an online retail store (Freight and Distribution – Light), daycare (Day Care Center), auto sales (Outdoor Sales – Heavy), and veterinarian (Animal Care Large). The M-1 District allows for both commercial and lower intensity industrial uses including the existing Freight and Distribution – Light use and the proposed onsite retail sales. The existing use is not permitted in the adjacent C-3 or C-O Districts which are identified as appropriate zoning districts for the designated land use. The proposed rezoning would be compatible with the surrounding zoning districts and uses.

3. The suitability of the subject property for the uses to which it has been restricted;

Staff Comment: The subject property zoning allows for moderate to heavy industrial uses. The property is also split into two portions by a significant drainage way. While this drainage way could be dealt with by enclosing it in pipe, the site is just under two acres which would be considered small for a higher intensity industrial use. The site is better suited for small scale industrial or manufacturing, small commercial or office type of uses which is consistent with the M-1 District uses and intent.
4. The extent to which removal of the restrictions will detrimentally affect nearby property;

**Staff Comment:** *The removal of the restrictions will not detrimentally affect nearby properties as the request is to a lesser intensity zoning district. The change in zoning will make the property more consistent with the developed and potential uses of the undeveloped property. The uses permitted in the nearby commercial districts are the same or similar to those of the M-1 District.*

5. The length of time the subject property has remained vacant as zoned;

**Staff Comment:** *The property was developed with the existing warehouse buildings starting in the 1980’s. Prior to the 1980’s the property was associated with a residence to the west.*

6. The relative gain to economic development, public health, safety and welfare by the current restrictions on the applicant's property as compared to the hardship imposed by such restrictions upon the property;

**Staff Comment:** *The relative gain to economic development would allow for a current owner to expand the existing business to allow for retail sales onsite in addition to the current online sales. If the property was to remain the M-2 District, the onsite retail sales could not occur.*

7. The recommendations of professional staff;

**Staff Comment:** *Staff recommends approval of the rezoning from M-2 District to M-1 District based on the findings in the staff report.*

8. The conformance of the requested change to the Comprehensive Plan, and in particular the relationship of the intent statement for the proposed district and how the specific application furthers that intent statement in relation to the Comprehensive Plan;

**Staff Comment:** *The proposed change is consistent with the Gardner Main Street Corridor Plan which is incorporated by reference into the Comprehensive Plan and the intent statement of the Commercial & Light Industrial land use category.*

9. The extent to which the proposed use would adversely affect the capacity or safety of any utilities, infrastructure or public services serving the vicinity; and

**Staff Comment:** *The proposed use would not affect the utilities, infrastructure or public services as it is an existing developed site and no new facilities are proposed at this time.*

10. Other factors relevant to a particular proposed amendment or other factors which support other adopted policies of the City.

**Staff Comment:** *No other policies or factors apply to this case.*

**STAFF ANALYSIS – INFRASTRUCTURE / OTHER**

Infrastructure for water, sewer, and electric are currently present onsite and no new utilities are proposed though it is unknown as to if additional utilities will be required in the future. The site currently has one road access to E. 175th Street. A site plan review may be needed with any proposed changes.

**ATTACHMENTS**

I. Public notice
II. Application
RECOMMENDATION

Staff recommends approval of the proposed rezoning of 1000 E. Santa Fe Street from M-2 District to M-1 District.

Recommended Motion:

After review of application Z-18-07, a rezoning for 1.97 acres located at 1000 E. Santa Fe Street (Tax Id CP42300000 0001A) from M-2 (General Industrial) District to M-1 (Restricted Industrial) District, and staff report dated January 29, 2019, the Planning Commission recommends the Governing Body approve the application.
January 7, 2019

Dear Property Owner:

The Gardner Planning Commission will hold their regular meeting on Tuesday, January 29, 2019, beginning at 7:00 p.m., in the Gardner City Hall, 120 E Main Street. The following items may be of interest to you:

**Z-18-07:** Hold a public hearing and consider a rezoning for approximately 1.97 acres at 1000 E. Santa Fe Street from M-2 (General Industrial) District to M-1 (Restricted Industrial) District. (Tax ID CP423000000001A).

Rezoning requests are considered public hearing items and the public will be given the opportunity to make oral comments on such requests at the meeting. Written comments are welcome and encouraged.

A complete legal description for this property is available at the City of Gardner Business & Economic Development Department at Gardner City Hall, 120 E. Main Street, Monday - Friday from 8:00 a.m. - 5:00 p.m. If you have questions relating to this matter, please contact me at 913-856-0909.

After the Planning Commission makes a recommendation, property owners within 200’ of the subject area, 1000’ in the county, may submit a protest petition against such recommendation. The protest petition must be filed with the City Clerk, within 14 days of the conclusion of the public hearing. For more information, contact the Business & Economic Development Department.

**PLEASE NOTE:** If you have recently transferred ownership of your property in the area of this request, or if such property is under a contract purchase agreement, we ask you to please forward this letter to the new owner or the contract purchaser.

Sincerely,

Michelle Leininguer, AICP
Principal Planner

Enclosure
ATTACHMENT II

GARDNER KANSAS

ZONING MAP AMENDMENT (REZONING) APPLICATION

OWNER INFORMATION

Name(s) Cory Roberts
Contact
Address 1000 E. SANTA FE ST
City GARDNER State KS Zip 66030
Phone 913-217-5753 Email CQ321@ME.COM

APPLICANT/AGENT INFORMATION

Name(s) Cory Roberts
Contact
Address 1000 E. SANTA FE ST
City GARDNER State KS Zip 66030
Phone 913-217-5753 Email CQ321@ME.COM

SITE INFORMATION

Property Address/Location: 1000 E. SANTA FE
Legal Description (Attach If Necessary)
Total Site Area
Present Zoning M-2 Proposed Zoning M-1
Present Land Use Proposed Land Use
Proposed Building Type(s)

Please indicate a reason for the request:
PET SUPPLIES - RETAIL

SIGNATURE

I/We, the undersigned am/are the (owner(s)), (duly authorized agent), (Circle One) of the aforementioned property. By execution of my/our signature, I/we do hereby officially apply for rezoning as indicated above.

Signature(s): ____________________________ Date 2/29/18

N/A

Revised 10/24/16

Page 1 of 4

Rezoning Application

Pre-App Date
App Date
Fee $900
File No.
OWNER AFFIDAVIT

I/we ________________ Roberts, hereby referred to as the “Undersigned”, being of lawful age, do hereby on this 14th day of February, 2018, make the following statements to wit:

1. I/we the Undersigned, on the date first above written, am/are the lawful owner(s) in fee simple absolute of the following described real property:

   See “Exhibit A, Legal Description” attached hereto and incorporated herein by reference.

2. I/we the undersigned, have previously authorized and hereby authorize ______________________________ (Herein referred to as “Applicant”), to act on my/our behalf for the purpose of making application with the City of Gardner, regarding 1000 E. Santa Fe (common address), the subject property, or portion thereof. Such authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process. I/we further attest that I/we agree to be legally bound by the application made on our behalf by applicant and the resultant action upon such application by the City of Gardner.

3. It is understood that in the event the Undersigned is a corporation or partnership then the individual whose signature appears below for and on behalf of the corporation or partnership has in fact the authority to so bind the corporation or partnership to the terms and statements contained within this instrument.

IN WITNESS THEREOF, I, the Undersigned, have set my hand and seal below.

______________________________
Owner

______________________________
Owner

STATE OF Kansas
COUNTY OF Johnson

The foregoing instrument was acknowledged before me on this 23rd day of February, 2018, by ________________ Roberts.

My Commission Expires: 08-08-2021

Notary Public
APPLICATION SUBMITTAL REQUIREMENTS

Yes ☑ No ☐
1. Complete application packet
☑
2. Application fee
☑
3. Digital copies (PDF) of the completed application and legal description (Word)
☑
4. Sign posting affidavit
☐
5. Preliminary Development Plan application and plans (if rezoning to a planned development)
☑

Please respond to the following statements:

Anticipated relationship of proposed zoning to economic development or public health, safety and welfare:

PET SUPPLIES - RETAIL

Anticipated impact of proposed zoning/use on existing public infrastructure:

I hereby submit all information required for rezoning application review. I understand that failure to provide the required information may result in a postponement of my request for review until all information has been submitted.

[Signature of Applicant]

[Date: 2/23/18]
Agenda Item: Consider a resolution declaring the intent of the City of Gardner, Kansas, to issue Industrial Revenue Bonds in the approximate principal amount of $19,390,000, for the purpose of financing a portion of the costs of the acquisition, construction and equipping of a commercial facility within the City (Main Street Market Place).

Strategic Priority: Promote Economic Development, Fiscal Stewardship, Quality of Life

Department: Finance

Staff Recommendation:
Adopt a resolution declaring the intent of the City of Gardner, Kansas, to issue Industrial Revenue Bonds, in the approximate principal amount of $19,390,000, for the purpose of financing a portion of the costs of the acquisition, construction and equipping of a commercial facility within the City (Main Street Market Place).

Background/Description of Item:
Pursuant to the Development Agreement for the Main Street Market Place Project, the City will issue approximately $19,390,000 principal amount of Industrial Revenue Bonds (IRB’s) in order to enable an exemption on the sales taxes levied by Kansas governmental entities for construction materials, equipment and furnishings related to the development of the property. The project includes an approximately 60,000 square foot grocery store, the redevelopment of an existing grocery store, and the development of two pad sites, including buildings, improvements and equipment. The project does not include vertical construction on the two pad sites.

The City’s bond counsel, Tyler Ellsworth of Kutak Rock will be at the meeting to answer any questions.

Financial Impact:
The IRB bonds will be payable solely out of the rentals, revenues, and receipts derived from the lease of the project to the Company from the City. The bonds shall not be general obligations of the Issuer, nor constitute a pledge of full faith and credit of the Issuer and shall not be payable in any manner by taxation. The bonds have been requested by the developer for the sales tax exemption on construction materials, equipment and furnishings; there is no property tax abatement associated with the bonds.

Attachments:
- Resolution No. 2010
Suggested Motion:
Adopt Resolution No. 2010 declaring the intent of the City of Gardner, Kansas, to issue Industrial Revenue Bonds, in the approximate principal amount of $19,390,000, for the purpose of financing a portion of the costs of the acquisition, construction and equipping of a commercial facility within the City (Main Street Market Place).
RESOLUTION NO. 2010


WHEREAS, the City of Gardner, Kansas (the “City”), is authorized and empowered pursuant to the provisions of K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the “Act”), to acquire, construct and equip certain facilities (as defined in the Act) for the stated statutory purposes, to enter into leases or lease-purchase agreements with any person, firm or corporation for said facilities and to issue revenue bonds for the purpose of paying the cost of such facilities;

WHEREAS, pursuant to a development agreement (the “Development Agreement”) between the City and Super Market Developers, Inc., a Missouri corporation (together with its assigns, as approved by the City, the “Company”), to be considered by the Governing Body of the City on February 18, 2019, the City is agreeing to issue industrial revenue bonds in order to enable an exemption on sales taxes levied by Kansas governmental entities for construction materials, equipment, and furnishings related to the development of property generally located at the northwest corner of E. Main Street and N. Moonlight Road in the City;

WHEREAS, the Company has requested the City issue its industrial revenue bonds in the approximate principal amount of $19,390,000 to finance a portion of the costs of acquiring, constructing and equipping an approximately 60,000 square foot grocery store, the redevelopment of an existing grocery store, and the development of two pad sites, including buildings, improvements and equipment (collectively, the “Project”), generally located at the northwest corner of E. Main Street and N. Moonlight Road in the City, in order to promote, stimulate and develop the general economic welfare and prosperity of the City and its environs and the health of the citizens thereof and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas and the health of the citizens thereof;

WHEREAS, the Company will lease the Project to the City, and the City will lease the Project back to the Company; and

WHEREAS, subject to the provisions of Section 3 of this Resolution, the City desires to finance a portion of the cost of acquiring, constructing and equipping the Project by the issuance of its industrial revenue bonds in the approximate principal amount of $19,390,000 pursuant to the Act, said bonds to be payable solely out of the rentals, revenues and receipts derived from the lease of the Project to the Company from the City;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS, AS FOLLOWS:

Section 1. Subject to the provisions of Section 3 of this Resolution, it is hereby found and declared that the issuance of the Industrial Revenue Bonds (Taxable Under Federal Law),
Series 2020 (Main Street Market Place), in the approximate principal amount of $19,390,000 (the “Bonds”), by the City for the purpose of financing a portion of the cost of the proposed Project to be leased to the Company will promote, stimulate and develop the general economic welfare and prosperity of the City and its environs and the health of the citizens thereof as well as further promoting, stimulating and developing the general economic welfare and prosperity of the State of Kansas and the health of the citizens thereof.

Section 2. Subject to the provisions of Section 3 of this Resolution, the Governing Body of the City hereby intends to authorize the issuance of the Bonds pursuant to the Act and all necessary regulatory approvals, and upon the conditions more fully set forth in Section 3 hereof.

Section 3. Notwithstanding this Resolution of intent of the City to issue the Bonds, the issuance of the Bonds is expressly subject to presentation, completion and final approval by the Governing Body of the City of each of the conditions set forth in subparagraphs (a) through (f) below. In addition, the issuance of such Bonds is also conditioned on and subject to the reservations of rights set forth in subparagraphs (g) and (h) below:

(a) Satisfactory negotiation and approval of a base lease, lease agreement, trust indenture, ordinance and other documents necessary for the issuance of the Bonds;

(b) Obtaining all necessary zoning and building permits and compliance with all necessary regulatory approvals and with the City ordinances;

(c) Successful private placement of the Bonds or other purchase method approved by the City;

(d) Approval of the Bonds by Bond Counsel, Kutak Rock LLP, and approval of certain legal matters pertaining to the Bonds by counsel to the Company;

(e) Adequate security for the payment of the Bonds;

(f) Compliance with the terms and conditions of the Development Agreement;

(g) The City hereby reserves the right to rescind this Resolution of intent if the conditions specified in this Section 3 are not, in the sole judgment of the City, satisfied, or upon change of federal or state law or regulations affecting the City’s issuing authority; and

(h) If the Bonds are not issued for any reason, including noncompliance with the conditions of this Section 3, the City shall not be subject to any liability, whatsoever, to the Company.

Section 4. Subject to the conditions and prior approvals of Section 3, the Company is hereby authorized to proceed with all matters necessary to accomplish the purposes set forth in this Resolution.

Section 5. The Mayor, City Council, City Administrator, Finance Director, Bond Counsel, City Attorney and other officers, employees and representatives of the City are hereby directed to
take such action as they deem necessary in cooperation with all persons involved with the financing of the Project in order to present the necessary documents to the Governing Body of the City for final action. In connection therewith, Bond Counsel is directed to work with the Company and its counsel, and all others necessary, to accomplish the purposes set forth herein.

Section 6. The City and the Company expect to incur expenses in connection with the acquisition, construction and equipping of the Project prior to the issuance of the Bonds. The City and the Company hereby reasonably expect to reimburse certain of such expenditures in connection with the Project from the proceeds of the Bonds.

Section 7. This Resolution shall take effect and be in full force on the date it is adopted by the Governing Body and signed by the Mayor. This Resolution shall be of no effect and shall be null and void on December 31, 2020, in the event the Bonds have not been issued by such date.

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ADOPTED by the Governing Body of the City of Gardner, Kansas, on February 18, 2019.

CITY OF GARDNER, KANSAS

By ________________________________
Mayor

(Seal)

Attest:

_____________________________________
City Clerk
COUNCIL ACTION FORM

MEETING DATE: FEBRUARY 18, 2019
STAFF CONTACT: MATTHEW WOLFF, CPFO
Finance Director

NEW BUSINESS ITEM NO. 1

Agenda Item: Consider adopting an ordinance authorizing the creation of the Main Street Market Place Community Improvement District in the City of Gardner, Kansas and authorizing the imposition of a community improvement district sales tax to be collected within such district.

Strategic Priority: Promote Economic Development; Fiscal Stewardship

Department: Finance

Staff Recommendation:
Adopt an ordinance authorizing the creation of the Main Street Market Place Community Improvement District in the City of Gardner, Kansas and authorizing the imposition of a community improvement district sales tax to be collected within such district.

Background/Description of Item:
Super Market Developers, Inc. has applied for the use of a Community Improvement District (CID) using the State of Kansas Community Improvement District Act. If the CID is created by the City and certain further conditions are met, the City intends to impose a 1.0% CID sales tax within the CID to reimburse eligible costs of the Main Street Market Place Project and to consider the issuance of special obligation CID bonds.

The project financed with the CID includes an approximately 60,000 square foot grocery store, the redevelopment of an existing grocery store, the construction of two pad sites, including buildings, site and parking improvements, and certain façade improvements to the existing inline retail shops.

This ordinance establishes the CID and levies a CID sales tax of 1.0% within the district. The district includes, and the proposed CID sales tax would be levied upon, the new grocery store, redeveloped existing grocery store, two pad sites, and existing inline retail shops.

Bond Counsel Ellsworth will be available at the City Council meeting to answer any questions from the Governing Body.

Financial Impact:
The CID will have a term of 22 years and CID reimbursable project costs will be capped at $12,500,000. The City will retain an amount equal to 3.0% of the CID sales tax collected in this district as part of a City Administrative Fee.

Attachments:
• Ordinance 2601
Suggested Motion:
Adopt Ordinance No. 2601 authorizing the creation of the Main Street Market Place Community Improvement District in the City of Gardner, Kansas and authorizing the imposition of a community improvement district sales tax to be collected within such district.
ORDINANCE NO. 2601

AN ORDINANCE AUTHORIZING THE CREATION OF THE MAIN STREET MARKET PLACE COMMUNITY IMPROVEMENT DISTRICT IN THE CITY OF GARDNER, KANSAS; AND AUTHORIZING THE IMPOSITION OF A COMMUNITY IMPROVEMENT DISTRICT SALES TAX TO BE COLLECTED WITHIN SUCH DISTRICT.

WHEREAS, pursuant to K.S.A. 12-6a26 et seq., as amended (the “Act”), municipalities are authorized to create community improvement districts for economic development purposes and any other purpose for which public money may be expended; and

WHEREAS, the City of Gardner, Kansas (the “City”), is a municipality within the meaning of the Act; and

WHEREAS, a petition (the “Petition”) was filed by Super Market Developers, Inc., a Missouri corporation, with the City Clerk requesting: (a) that the community improvement district described therein (the “CID”) be created; (b) that the City levy a community improvement district sales tax on the selling of tangible personal property at retail or rendering or furnishing services within the CID in the amount of 1.00% (the “CID Sales Tax”); and (c) that certain community improvement district project costs to be incurred within the CID be financed with special obligation notes and bonds, all in accordance with the Act; and

WHEREAS, said Petition was signed by the owner of record of more than 55% of the land area within the proposed CID and the owner of record collectively owning more than 55% by assessed value of the land area within the proposed CID; and

WHEREAS, the Act provides that prior to creating any community improvement district and imposing a community improvement district sales tax, the Governing Body shall, by resolution, direct and order a public hearing on the advisability of creating such community improvement district and the construction of such community improvement district project therein, and provide for notice of the hearing by publication at least once each week for two consecutive weeks in the official city newspaper, with the second publication occurring at least seven days prior to the hearing, and by certified mail to all property owners within the proposed community improvement district, with such certified mail sent at least ten days prior to such hearing; and

WHEREAS, pursuant to Resolution No. 2007 of the City, adopted on January 22, 2019, the Governing Body of the City directed a public hearing on the proposed CID be held and declared its intent to levy the CID Sales Tax in the proposed CID; and

WHEREAS, on February 18, 2019, following proper notice as provided in the Act, the Governing Body of the City held a public hearing on the proposed CID, the proposed community improvement district project, and the imposition of the CID Sales Tax in the proposed CID; and

WHEREAS, the Governing Body hereby finds and determines that it is in the best interests of the City and in furtherance of the purposes of the Act to create the CID;
NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE
CITY OF GARDNER, KANSAS AS FOLLOWS:

Section 1. Creation of the Community Improvement District; Boundaries. The
Governing Body of the City hereby creates the CID within the City, which shall be designated as the
“Main Street Market Place CID.” The boundaries of the CID shall be as legally described on Exhibit
A attached hereto and as depicted on the map attached as Exhibit B hereto.

Section 2. Authorization of Community Improvement District Project; Estimated
Costs. The Governing Body of the City hereby authorizes the project within the CID described on
Exhibit C attached hereto (the “Project”) and approves the total estimated cost of the Project at
$28,993,740. Notwithstanding the approval of the Project by this Ordinance, the Project and owner
or owners of all property comprising the Project must comply with all applicable zoning, planning,
permit and other laws and regulations applicable to the Project.

Section 3. Method of Financing. All or a portion of the Project within the proposed CID
is expected to be financed by the issuance of special obligation notes and bonds payable from
revenues received from the imposition of the CID Sales Tax, as more particularly set forth in a
development agreement between the City and the Company (the “Development Agreement”) with
the balance of the costs of the Project, if any, reimbursed on a pay-as-you-go basis. No special
assessments shall be implemented under the Act to pay for the Project, and no general obligations
bonds or notes will be issued to finance the Project.

Section 4. Levy of Sales Tax. In accordance with the Act and to provide funds to pay a
portion of the costs of the Project, the Governing Body of the City hereby levies a community
improvement district sales tax on the selling of tangible personal property at retail or rendering or
furnishing services within the CID in the amount of 1.00%, i.e., the “CID Sales Tax.” The
collection of the CID Sales Tax shall commence on July 1, 2020, or the earliest date thereafter
on which the Kansas Department of Revenue agrees to begin the imposition of the CID Sales Tax
and shall expire on the earlier of (a) the date of maturity of any special obligation bonds issued to
finance the Project; or (b) 22 years from the date the Department of Revenue begins the collection
of the CID Sales Tax. The CID Sales Tax shall be administered, collected and subject to the
provisions of K.S.A. 12-187 et seq., this Ordinance and the Development Agreement.

Section 5. Authorization to Execute Documents. The Mayor, City Clerk and other
appropriate officers of the City are hereby authorized and directed to execute, attest, acknowledge
and deliver for and on behalf of and as the act and deed of the City, any other documents, certificates
and instruments as may be necessary or desirable to carry out and comply with the intent of this
Ordinance.

Section 6. Effective Date. This Ordinance shall be in force and take effect from and after
publication of the Ordinance once in the official City newspaper. When this Ordinance becomes
effective in accordance with this section, the City Clerk shall provide a certified copy of the same to
the State Director of Taxation pursuant to K.S.A. 12-189.

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PASSED by the Governing Body of the City and approved by the Mayor on February 18, 2019.

CITY OF GARDNER, KANSAS

(Seal)

ATTEST:

______________________________
City Clerk

______________________________
Mayor
EXHIBIT A

Legal Description of Main Street Market Place CID

All of Lot 47, WHITE ACRES, and a part of Lot 1, GAULTCEST REPLAT, and a part of Lot 1, MOONLIGHT PLAZA FIRST PLAT, and all of Lot 1 MOONLIGHT PLAZA CENTER, and all of Lot 1, COUNTRY MART, all being additions to the City of Gardner along with a part of the Southeast Quarter of Section 24, Township 14 South, Range 22 East, in the City of Gardner, Johnson County, Kansas, and being described as follows:

Commencing at the Northeast corner of the Southeast Quarter of said Section 24; thence S 02°07'55" E along the East line of said Southeast Quarter, 1755.65 feet to the centerline of Lincoln Lane extended; thence S 88°27'57" W along said centerline, 235.00 feet to the Northeast corner of said COUNTRY MART, said point being the Point of Beginning;

thence continuing S 88°27'57" W along said centerline extended, 1258.40 feet to a point on the East line of said WHITE ACRES;

thence S 02°05’19” E, along the East line of said WHITE ACRES, 601.53 feet to the Northeast corner of said Lot 47, WHITE ACRES;

thence S 88°04’45” W, along the North line of said Lot 47, 120.00 feet to the Northwest corner thereof;

thence S 01°53’27” E, along the West line of said Lot 47, 103.77 feet to the Southwest corner thereof;

thence N 88°04’45” E, along the South line of said Lot 47, 120.00 feet to the Southeast corner thereof;

thence S 01°53’27” E, along the East line of said WHITE ACRES and the West line of said Lot 1, GAULTCEST REPLAT, 154.00 feet to the Southwest corner of said Lot 1;

thence N 88°24’06” E, along the South line of said Lot 1, GAULTCEST REPLAT, 193.30 feet to a point on the West line of said Lot 1, QUIKTRIP STORE NO. 249;

thence N 02°06’59” W, along the West line of said Lot 1, QUIKTRIP STORE NO. 249, 298.13 feet to the Northwest corner thereof;

thence N 87°51’18” E, along the North line, 300.09 feet to the Northeast corner of said Lot 1, QUIKTRIP STORE NO. 249, said point also being on the West line of said MOONLIGHT PLAZA CENTER;

thence S 02°07’55” E, along said West line, 268.37 feet to the Southwest corner thereof;

thence N 80°31’36” E, along the South line of said MOONLIGHT PLAZA CENTER, 45.37 feet;
thence N 02°07’55” W, along an Easterly line, of said MOONLIGHT PLAZA CENTER, 254.96 feet;

thence N 88°27’57” E, along the Southerly line, 401.00 feet to the Southeast corner of said Lot 1, MOONLIGHT PLAZA CENTER, said point also being the Southwest corner of said Lot 1, COUNTRY MART;

thence departing said Southerly line, S 02°07’55” E through a portion said Lot 1, MOONLIGHT PLAZA FIRST PLAT, 165.44 feet to a point on the US Highway 56 Northerly Right of Way line as described in Deed Book 2564 at Page 398 of the records of said Johnson County;

thence N 75°26’05” E, along said Northerly Right of Way line and Southerly line of said Lot 1, Country Mart, 322.80 feet to the Southwest corner of said COUNTY MART;

thence N 02°07’55” W, along the Easterly line of said COUNTRY MART, 294.00 feet to a corner;

thence N 87°52’05” E along said Easterly line, 5.20 feet to a corner;

thence N 02°07’55” W along said Easterly line, 363.50 feet to the POINT OF BEGINNING.

Said parcel contains 829,705 square feet, or 19.047 acres, more or less, inclusive of existing road and highway right of way.
EXHIBIT B

Map of Main Street Market Place CID
The general nature of the proposed community improvement district project (the “Project”) is: (a) construction of a new grocery store of approximately 60,000 square feet; (b) redevelopment of an existing grocery store building into new commercial uses; (c) façade improvements to the existing Moonlight Plaza shopping center; (d) construction of two (2) pad sites; and (e) related site and parking improvements, all within the Main Street Market Place CID located on the property legally described on Exhibit A.
Discussion Item: Consider adopting an ordinance approving and adopting a redevelopment project plan for a redevelopment district in the City of Gardner, Kansas (Main Street Market Place Redevelopment District, Project Area 1)

Strategic Priority: Promote Economic Development; Fiscal Stewardship; Quality of Life

Department: Finance

Staff Recommendation:
Adopt an ordinance approving the redevelopment project plan for the Main Street Market Place Redevelopment District.

Background/Description of Item:
Super Market Developers, Inc. applied for the use of a Redevelopment District using the State of Kansas Tax Increment Financing Act (TIF). The City established a TIF district on October 15, 2018, after a public hearing.

Now that the district is in place, the City may consider an actual project within the district. Super Market Developers has submitted a redevelopment project plan for a new Price Chopper and additional pad site, both of which are proposed for TIF Project Area 1, located in the western portion of the TIF district. The plan includes estimated costs and estimated revenues for the project. Municipal Advisor Bruce Kimmel of Ehlers has prepared a comprehensive feasibility study.

The Planning Commission of the City reviewed the proposed project plan and has found and determined that the plan is consistent with the intent of the comprehensive plan for development of the City. The City held a public hearing for the TIF Project Plan Area 1 on December 17, 2018, which hearing was continued to and concluded on January 22, 2019.

This ordinance approves the proposed project plan for the redevelopment district, and passage of the ordinance requires a 2/3 vote of the Governing Body pursuant to Kansas statute.

Bond Counsel Ellsworth and Senior Municipal Advisor Kimmel will be available at the City Council meeting to answer any questions from the Governing Body.

Attachments:
- Ordinance 2602
- Feasibility Study
- TIF Project Plan
Suggested Motion:
Adopt Ordinance 2602 approving and adopting a redevelopment project plan for a redevelopment district in the City of Gardner, Kansas (Main Street Market Place Redevelopment District, Project Area 1).
Discussion Item: Consider adopting an ordinance approving and adopting a redevelopment project plan for a redevelopment district in the City of Gardner, Kansas (Main Street Market Place Redevelopment District, Project Area 1)

Strategic Priority: Promote Economic Development; Fiscal Stewardship; Quality of Life

Department: Finance

Staff Recommendation:
Adopt an ordinance approving the redevelopment project plan for the Main Street Market Place Redevelopment District.

Background/Description of Item:
Super Market Developers, Inc. applied for the use of a Redevelopment District using the State of Kansas Tax Increment Financing Act (TIF). The City established a TIF district on October 15, 2018, after a public hearing.

Now that the district is in place, the City may consider an actual project within the district. Super Market Developers has submitted a redevelopment project plan for a new Price Chopper and additional pad site, both of which are proposed for TIF Project Area 1, located in the western portion of the TIF district. The plan includes estimated costs and estimated revenues for the project. Municipal Advisor Bruce Kimmel of Ehlers has prepared a comprehensive feasibility study.

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Attachments:
- Ordinance 2602
- Feasibility Study
- TIF Project Plan
Suggested Motion:
Adopt Ordinance 2602 approving and adopting a redevelopment project plan for a redevelopment district in the City of Gardner, Kansas (Main Street Market Place Redevelopment District, Project Area 1).
The City of Gardner (the “City”) has requested that Ehlers prepare the statutorily-required feasibility study for the proposed Main Street Market Place TIF Redevelopment Project #1. This report provides the financial analysis that Kansas law requires to be summarized in the TIF Project Plan which is scheduled for City Council consideration on January 22, 2019.

Introduction

Main Street Market Place TIF Redevelopment Project #1 consists of five of the nine parcels located between North Moonlight Road, East Main Street, North Cedar Street, and Lincoln Lane in Gardner. In this area, Super Market Developers (the “Developer”) proposes to build a new PriceChopper supermarket and pharmacy of approximately 62,500 square feet, install related public and site improvements, including stormwater drainage, and prepare a pad site for approximately 3,500 square feet of ancillary retail development (collectively, the “Project”).

The Developer is a wholly-owned subsidiary of Associated Wholesale Grocers (“AWG”), a retailer-owned cooperative serving more than 2,300 member stores. The Developer buys, sells, develops, and leases real estate in connection with grocery and retail center uses. The Developer intends to build the Project supermarket and then sell it to the grocery retailer that proposes to own and operate the Project supermarket.

The Developer proposes to complete the Project supermarket, as well as most public and site improvements in a first phase to begin in early 2019 and be completed by the spring of 2020. The Developer states that the timing of the adjacent retail development will hinge on the sale of the pad site to a third-party developer but expects it to begin in the spring of 2020 and be completed by the spring of 2021.

The Kansas TIF Act (K.S.A. 12-1770 et seq., the “Act”) requires a feasibility study to be completed as part of the process of establishing a redevelopment project. Specifically, the feasibility study must include a cost-benefit analysis demonstrating whether the “project’s benefits and tax increment revenue and other available revenues…are
expected to exceed or be sufficient to pay for the redevelopment…project costs” and must also include several other elements as described in (k) of K.S.A. 12-1770a.

Description of the Project

The Project consists of acquiring the five parcels described below and constructing a new supermarket, ancillary retail center, paved and lighted parking areas and internal traffic lanes, other site infrastructure, and improvements to adjacent public infrastructure serving the Project, including a new traffic signal on East Main Street.

The Developer has negotiated real estate contracts to acquire the development parcels at an indicated total price of $2.5 million and has estimated a supermarket development cost (including land acquisition) of approximately $12.7 million. The Developer expects to use AWG equity to fund all development costs, and that the grocery retailer will then use long-term debt to purchase the store from the Developer. Supermarket equipment, fixtures, and inventory will be funded via separate arrangements.

The $12.7 million estimated Project cost notwithstanding, the Developer estimates, and Ehlers agrees based on our own experience, that the new supermarket likely will have a completed appraised value closer to $8.5 million, calculated at $136 per square foot for the 62,500 square foot building. With a final appraised value of $8.5 million, the Kansas statutory commercial property classification rate of 25%, and assuming a continuation of the 168.043 mill overall property tax rate that is currently applicable to the development parcels, the supermarket will pay roughly $357,100 in total annual property taxes.

In addition, the adjacent retail pad site development in Project #1 is expected to have a final appraised value of $1.4 million, calculated at $400 per square foot for the proposed 3,500 square foot building. As such, this building is expected to pay roughly $58,800 in annual property taxes, bringing total annual property taxes generated in the Project area to $415,900.

The Developer has stated that, absent TIF assistance, the store purchase price and the related annual debt service burden would make the store financially unviable. In other words, the store requires a price reduction – funded via TIF reimbursement for specified Project costs – in order to bring its future debt service costs in line with its expected grocery sales volume and net operating costs.

With the stated goal of making the grocery operator’s effective building lease rate (i.e. estimated annual debt service divided by store square footage) economically feasible, the Developer has asked the City to use property tax increment financing (property TIF) to reimburse 100% of the eligible new property taxes generated by the Project over eleven years (Assess 2019 / Fiscal 2020 through Assess 2029 / Fiscal 2030), up to a maximum principal balance of $2.1 million, on a “pay-as-you-go” basis.
In addition, the Developer has asked the City to designate property TIF generated from the redevelopment of the existing PriceChopper store and development of an ancillary restaurant use (designated as Project #2) as “other available revenue” for the Project. Over the same 11-year period as above, the City would use property TIF generated from Project #2 to reimburse an additional $1.1 million of Project #1 costs, bringing the total maximum pay-as-you-go TIF property reimbursement to $3.2 million.

This total does not include interest payments that the City would also make during the pay-as-you-go reimbursement term, which the City expects to be a 10-year span starting July 1, 2020 (after the new PriceChopper is complete and TIF-eligible costs have been certified) and ending no later than June 30, 2030. The City expects Pay-Go interest to accrue at an annual interest rate of 5.50%, beginning July 1, 2020 or the date on which TIF-eligible costs equal to the $3.2 million maximum amount have been certified, whichever is later.

In summary, TIF reimbursements will end as soon as the $3.2 million maximum cost reimbursement is reached, or after eleven Project years (and ten pay-as-you-go payment years) have elapsed as of June 30, 2030, whichever occurs first.

The City has not offered to make the sales tax increment generated by the Project available to reimburse Project costs, and the Developer is not requesting the issuance of TIF Bonds for the Project.

Other components of the Developer’s request to the City are (a) establishment of a 1.0% Community Improvement District (CID) sales tax rate for 22 years across the entire Main Street Market Place development, (b) City issuance of Special Obligation CID Bonds, and (c) City issuance of industrial revenue bonds (IRBs) to provide sales tax exemptions on building materials, fixtures, and equipment. None of these proposed City incentive mechanisms are required to be addressed in this study.

**Estimated Project Expense**

The total estimated cost to complete the Project, as described above, is $12.7 million. Under the Act, all Project expenses other than building construction costs and certain consultants’ fees are “Eligible Redevelopment Project Costs” that may be financed or reimbursed with tax increment. The Developer has identified in excess of $6.5 million of TIF-eligible costs, and as noted above, has asked for property TIF reimbursement of $3.2 million of public and site improvements costs in Project #1.

**Estimated Property TIF**

The Project will generate *ad valorem* property tax increment from the differential in the parcels’ assessed values from 2018, the year in which the TIF District was established, and 2022, the year in which the full completed value of the Project is expected to be recorded for property taxation purposes. The existing “base” values of the Project parcels are as follows:
The estimated completed assessed values of the Project (i.e. completed appraised values times the 25% commercial classification rate), and the future value captured by the TIF District and available for use within the Project, are as follows:

<table>
<thead>
<tr>
<th>Assessed Value</th>
<th>New PriceChopper</th>
<th>2,125,000</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Lot 2 Retail Center</td>
<td>350,000</td>
</tr>
<tr>
<td><strong>Total Estimated Value</strong></td>
<td></td>
<td><strong>2,475,000</strong></td>
</tr>
</tbody>
</table>

| TIF-Captured Assessed Value | 2,176,937 |

The Pay 2018 property tax mill rates – in total and TIF-eligible (excluding 28 mills of the School District’s 66.981 mill rate and the State’s 1.5 mill rate) – that are applicable to the Project are as follows:

<table>
<thead>
<tr>
<th>All Mill Rates</th>
<th>TIF-Eligible</th>
</tr>
</thead>
<tbody>
<tr>
<td>State (sub 1.5 mills)</td>
<td>1.500</td>
</tr>
<tr>
<td>County</td>
<td>19.318</td>
</tr>
<tr>
<td>College</td>
<td>9.503</td>
</tr>
<tr>
<td>Park</td>
<td>31.120</td>
</tr>
<tr>
<td>City of Gardner</td>
<td>20.540</td>
</tr>
<tr>
<td>School (sub 28 mills)</td>
<td>66.981</td>
</tr>
<tr>
<td>Fire</td>
<td>15.160</td>
</tr>
<tr>
<td>Library</td>
<td>3.921</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>168.043</strong></td>
</tr>
</tbody>
</table>

The estimated annual tax increment generated by the Project, therefore, is calculated:

Captured Assessed Value times TIF-Eligible Mill Rate divided by 1,000

\[
\text{Gross TIF Increment} = \frac{2,176,937 \times 138.543}{1,000} = 301,599
\]

Ehlers believes it is reasonable to estimate that the Captured Assessed Value of the supermarket and ancillary retail center in Project #1 and therefore the Gross Tax
Increment will increase by an average of 1% annually. This inflation projection assumes the TIF-eligible property tax rates totaling 138.543 mills will remain stable.

Estimated annual and present value property tax increments over the maximum 11-year term of Project #1 (Assess 2019 / Fiscal 2020 through Assess 2029 / Fiscal 2030), therefore, are as follows:

<table>
<thead>
<tr>
<th>TIF Year</th>
<th>Assessment Year and Est. Valuation</th>
<th>Fiscal Year</th>
<th>Est. Annual Payments</th>
<th>Est. Cumulative Present Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2019 - Nominal</td>
<td>2020</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2</td>
<td>2020 - Partial</td>
<td>2021</td>
<td>194,229</td>
<td>174,505</td>
</tr>
<tr>
<td>3</td>
<td>2021 - Partial</td>
<td>2022</td>
<td>291,901</td>
<td>423,092</td>
</tr>
<tr>
<td>4</td>
<td>2022 - Full</td>
<td>2023</td>
<td>301,599</td>
<td>666,548</td>
</tr>
<tr>
<td>5</td>
<td>2023 - 1% Inflate</td>
<td>2024</td>
<td>305,028</td>
<td>899,936</td>
</tr>
<tr>
<td>6</td>
<td>2024 - 1% Inflate</td>
<td>2025</td>
<td>308,492</td>
<td>1,123,668</td>
</tr>
<tr>
<td>7</td>
<td>2025 - 1% Inflate</td>
<td>2026</td>
<td>311,989</td>
<td>1,338,141</td>
</tr>
<tr>
<td>8</td>
<td>2026 - 1% Inflate</td>
<td>2027</td>
<td>315,522</td>
<td>1,543,735</td>
</tr>
<tr>
<td>9</td>
<td>2027 - 1% Inflate</td>
<td>2028</td>
<td>319,090</td>
<td>1,740,815</td>
</tr>
<tr>
<td>10</td>
<td>2028 - 1% Inflate</td>
<td>2029</td>
<td>322,694</td>
<td>1,929,730</td>
</tr>
<tr>
<td>11</td>
<td>2029 - 1% Inflate</td>
<td>2030</td>
<td>326,334</td>
<td>2,110,816</td>
</tr>
</tbody>
</table>

If Project #1’s actual completed assessed value is higher or lower than the estimated $2,475,000, or if it increases or decreases from the initial assessment, the Project’s Pay-Go TIF capacity will differ from the above projection.

Estimated annual and present value property tax increments over the maximum 11-year term of Project #2 (Assess 2019 / Fiscal 2020 through Assess 2029 / Fiscal 2030, serving as an additional TIF funding source for Project #1), are as follows:

<table>
<thead>
<tr>
<th>TIF Year</th>
<th>Assessment Year and Est. Valuation</th>
<th>Fiscal Year</th>
<th>Est. Annual Payments</th>
<th>Est. Cumulative Present Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2019 - Nominal</td>
<td>2020</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2</td>
<td>2020 - Partial</td>
<td>2021</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>3</td>
<td>2021 - Partial</td>
<td>2022</td>
<td>135,870</td>
<td>115,709</td>
</tr>
<tr>
<td>4</td>
<td>2022 - Full</td>
<td>2023</td>
<td>184,360</td>
<td>264,527</td>
</tr>
<tr>
<td>5</td>
<td>2023 - 1% Inflate</td>
<td>2024</td>
<td>187,477</td>
<td>407,972</td>
</tr>
<tr>
<td>6</td>
<td>2024 - 1% Inflate</td>
<td>2025</td>
<td>190,626</td>
<td>546,223</td>
</tr>
<tr>
<td>7</td>
<td>2025 - 1% Inflate</td>
<td>2026</td>
<td>193,805</td>
<td>679,452</td>
</tr>
<tr>
<td>8</td>
<td>2026 - 1% Inflate</td>
<td>2027</td>
<td>197,017</td>
<td>807,828</td>
</tr>
<tr>
<td>9</td>
<td>2027 - 1% Inflate</td>
<td>2028</td>
<td>200,261</td>
<td>931,515</td>
</tr>
<tr>
<td>10</td>
<td>2028 - 1% Inflate</td>
<td>2029</td>
<td>203,537</td>
<td>1,050,672</td>
</tr>
<tr>
<td>11</td>
<td>2029 - 1% Inflate</td>
<td>2030</td>
<td>206,846</td>
<td>1,165,453</td>
</tr>
</tbody>
</table>

If Project #2’s actual completed assessed value is higher or lower than the estimated $2,250,000, or if it increases or decreases from the initial assessment, the Project’s Pay-Go TIF capacity will differ from the above projection.
Looking at Projects #1 and 2 together, the estimated annual tax increments in the first eleven Project years (ten years following completion of supermarket construction) of Assess 2019 / Fiscal 2020 through Assess 2029 / Fiscal 2030 are as follows – with a combined pay-as-you-go TIF capacity in excess of $3.2 million:

<table>
<thead>
<tr>
<th>TIF Year</th>
<th>Assessment Year and Est. Valuation</th>
<th>Fiscal Year</th>
<th>Est. Annual Payments</th>
<th>Est. Cumulative Present Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2019 - Nominal</td>
<td>2020</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2</td>
<td>2020 - Partial</td>
<td>2021</td>
<td>194,229</td>
<td>174,505</td>
</tr>
<tr>
<td>3</td>
<td>2021 - Partial</td>
<td>2022</td>
<td>427,771</td>
<td>538,801</td>
</tr>
<tr>
<td>4</td>
<td>2022 - Full</td>
<td>2023</td>
<td>485,959</td>
<td>931,076</td>
</tr>
<tr>
<td>5</td>
<td>2023 - 1% Inflate</td>
<td>2024</td>
<td>492,506</td>
<td>1,307,908</td>
</tr>
<tr>
<td>6</td>
<td>2024 - 1% Inflate</td>
<td>2025</td>
<td>499,117</td>
<td>1,669,891</td>
</tr>
<tr>
<td>7</td>
<td>2025 - 1% Inflate</td>
<td>2026</td>
<td>505,795</td>
<td>2,017,593</td>
</tr>
<tr>
<td>8</td>
<td>2026 - 1% Inflate</td>
<td>2027</td>
<td>512,539</td>
<td>2,351,563</td>
</tr>
<tr>
<td>9</td>
<td>2027 - 1% Inflate</td>
<td>2028</td>
<td>519,351</td>
<td>2,672,330</td>
</tr>
<tr>
<td>10</td>
<td>2028 - 1% Inflate</td>
<td>2029</td>
<td>526,231</td>
<td>2,980,402</td>
</tr>
<tr>
<td>11</td>
<td>2029 - 1% Inflate</td>
<td>2030</td>
<td>533,180</td>
<td>3,276,269</td>
</tr>
</tbody>
</table>

Summary of Expenses and Revenues

Based on the estimated Project expense and property TIF revenue, as described in the preceding sections, the net TIF payments will be sufficient to pay the Project costs as contemplated under the Act, when supplemented with Developer debt and equity.

Effect on Special Obligation Bonds

No impact on special obligation bonds payable from revenues described in (a)(1)(D) of K.S.A. 12-1774 and amendments thereto is anticipated.

Contribution to Economic Development

The Project will provide significant economic development for the City by, among other things, creating substantial business activity on previously under-utilized parcels located in a commercial area of the City. Although the Project, in part, will replace an existing supermarket, the larger, more visible, and higher-quality development is expected to attract greater economic activity than does the existing facility. As such, the Project should be a long-term driver of sales and property tax revenues for the City, as well as employment. These benefits derived from the Project will exceed any costs thereof.

Local Sales and Use Taxes

The Project will not capture or use the local sales and use taxes generated by the development, and so these revenues will flow to the City.
Estimated Principal and Interest Schedule

While no TIF Bonds have been requested or proposed, from property tax increments generated in Project #1, the City expects to make annual pay-as-you-go payments ranging from approximately $190,000 to $330,000, up to a maximum principal amount of $2.1 million (not including interest payments) over a maximum Project term of eleven years and concluding no later than June 30, 2030.

While no TIF Bonds have been requested or proposed, from property tax increments generated in Project #2, the City expects to make annual pay-as-you-go payments ranging from approximately $140,000 to $210,000, up to a maximum principal amount of $1.1 million (not including interest payments) over a maximum Project term of eleven years and concluding no later than June 30, 2030.

While no TIF Bonds have been requested or proposed, from property tax increments generated in Projects #1 and 2 combined, the City expects to make annual pay-as-you-go payments ranging from approximately $190,000 to $540,000, up to a maximum principal amount of $3.2 million (not including interest payments) over a maximum Project term of eleven years and concluding no later than June 30, 2030.

Supplementation with Minutes

Upon City approval of the Project Plan, the City Clerk will attach the minutes of all City meetings where the Project was discussed as an exhibit to this feasibility study.

Conclusion

The proposed Project, as described within this feasibility study, will generate benefits and tax increment revenue which, when supplemented with Developer debt and equity, are expected to exceed the Redevelopment Project costs.
In order to promote, stimulate and develop the general and economic welfare of the City of Gardner, Kansas (the “City”), the Governing Body of the City on October 15, 2018, passed Ordinance No. 2588 (the “Ordinance”) establishing a redevelopment district (the “District”) pursuant to K.S.A. 12-1770 et seq., as amended (the “Act”).

This plan is the Redevelopment Project Plan for the Main Street Market Place Redevelopment TIF Project Area 1 (the “Project Plan”), located within the District. This Project Plan sets forth the information required by K.S.A. 12-1772, as amended, as follows:

1. **Description of the Buildings and Facilities proposed to be Constructed or Improved.** The Project Plan includes the design, development and construction of: (a) a new grocery store of approximately 60,000 square feet; (b) a pad site to accommodate approximately 3,500 square feet of retail/restaurant use; (c) site improvements; and (d) public improvements, including utility relocations, an access drive, new turn lanes along Main Street, and a new traffic signal. (The herein referenced buildings and improvements are referred to collectively as the “Redevelopment Project”). The Redevelopment Project will be constructed and improved in accordance with the requirements of the City Planning Commission, the City’s Governing Body and City ordinances.

2. **Summary of the Feasibility Study.** As required by the Act, a feasibility study (the “Feasibility Study”) was prepared by Ehlers, Inc. based on projections and estimates. Based on the Feasibility Study, the City anticipates the tax increment from Project Area 1 will generate approximately $2,110,000 in tax increment revenue (on a present value basis over a maximum 11-year period), all or a portion of which will be available to pay Redevelopment Project costs pursuant to the District Plan (as defined herein), the Act, and the terms of a development agreement between the City and the developer of the Redevelopment Project. All Redevelopment Project costs in excess of available tax increment revenues, including tax increment contributed from Project Area 2 in the approximate amount of $1,165,000 (on a present value basis over a maximum 11-year period), will be paid by the developer or from other available funds. The Redevelopment Project’s benefits and tax increment revenue and other available revenues under subsection (a)(1) of K.S.A. 12-1774, as amended, are expected to exceed or be sufficient to pay for the Redevelopment Project costs. The City is under no obligation to provide financial assistance if the tax increment generated from Project Area 1, plus the tax increment contributed from Project Area 2, does not meet the projections. The entire Feasibility Study is on file with the City Clerk.

There are no outstanding special obligation tax increment bonds for the District and, therefore, the Redevelopment Project costs are not expected to have any effect on outstanding special obligation tax increment bonds payable from revenues described in subsection (a)(1)(D) of K.S.A. 12-1774, as amended.
3. **Redevelopment District Plan and Location of the District.** The Ordinance established the District and approved the district plan described therein (the “District Plan”). The District is generally located at the northwest corner of E. Main Street and N. Moonlight Road within the City.

4. **Legal Description and Map of Project Area 1.** A legal description of Project Area 1 is attached as *Exhibit A* and a map of the District, with Project Area 1 labeled as “Project 1” and depicted in blue thereon, is attached as *Exhibit B*.

5. **Relocation Assistance Plan.** In the event the City acquires any real property within Project Area 1 in carrying out the provisions of the Act, and that, as a result, any persons, families and businesses move from real property located in Project Area 1 or move personal property from real property located in Project Area 1, the developer of Project Area 1 shall make at least a $500 payment to such persons, families and businesses. No persons or families residing in the District shall be displaced unless and until there is a suitable housing unit available and ready for occupancy by such displaced person or family at rents within their ability to pay. Such housing units shall be suitable to the needs of such displaced persons or families and must be decent, safe, sanitary and otherwise standard dwelling. No retailer shall be relocated from the District. Notwithstanding the foregoing, the City does not anticipate relocation of any persons, families or businesses in connection with the Redevelopment Project.

6. **Other Relevant Information.**

   a. Any reimbursement for Redevelopment Project costs will be made only from tax increment actually received by the City from the District in accordance with the Act. The City will have no responsibility for any other Redevelopment Project costs.

   b. Prior to any reimbursement to private entities for Redevelopment Project costs, such entities shall enter into one or more development agreements with the City identifying the procedure and circumstances under which the City will pay or reimburse Redevelopment Project costs and other requirements of the City pertaining to the development of Project Area 1 and the District.

   c. It is expected that the City will reimburse the developer on a pay-as-you-go basis for that portion and amount of the Redevelopment Project costs agreed upon by the City; provided, however, that the City may consider, in its discretion, the issuance of special obligation tax increment bonds.

   [Remainder of Page Intentionally Left Blank]
EXHIBIT A

PROJECT AREA LEGAL DESCRIPTION

All of Lot 47, WHITE ACRES, and a part of Lot 1, GAULTCEST REPLAT, and a part of Lot 1, MOONLIGHT PLAZA FIRST PLAT, and a part of Lot 1 MOONLIGHT PLAZA CENTER, all being additions to the City of Gardner along with a part of the Southeast Quarter of Section 24, Township 14 South, Range 22 East, in the City of Gardner, Johnson County, Kansas, and being described as follows:

Commencing at the Northeast corner of the Southeast Quarter of said Section 24; thence S 02°07′55″ E along the East line of said Southeast Quarter, 1755.65 feet to the centerline of Lincoln Lane extended; thence S 88°27′57″ W along said centerline, 956.45 feet to the Point of Beginning;

thence continuing S 88°27′57″ W along said centerline extended, 536.95 feet to a point on the East line of said WHITE ACRES;

thence S 02°05′19″ E, along the East line of said WHITE ACRES, 601.53 feet to the Northeast corner of said Lot 47, WHITE ACRES;

thence S 88°04′45″ W, along the North line of said Lot 47, 120.00 feet to the Northwest corner thereof;

thence S 01°53′27″ E, along the West line of said Lot 47, 103.77 feet to the Southwest corner thereof;

thence N 88°04′45″ E, along the South line of said Lot 47, 120.00 feet to the Southeast corner thereof;

thence S 01°53′27″ E, along the East line of said WHITE ACRES and the West line of said Lot 1, GAULTCEST REPLAT, 154.00 feet to the Southwest corner of said Lot 1;

thence N 88°24′06″ E, along the South line of said Lot 1, GAULTCEST REPLAT, 193.30 feet to a point on the West line of said Lot 1, QUIKTRIP STORE NO. 249;

thence N 02°06′59″ W, along the West line of said Lot 1, QUIKTRIP STORE NO. 249, 298.13 feet to the Northwest corner thereof;

thence N 87°51′18″ E, along the North line, 300.09 feet to the Northeast corner of said Lot 1, QUIKTRIP STORE NO. 249, said point also being on the West line of said MOONLIGHT PLAZA CENTER;

thence S 02°07′55″ E, along said West line, 268.37 feet to the Southwest corner thereof;

thence N 80°31′36″ E, along the South line of said MOONLIGHT PLAZA CENTER, 45.37 feet;

thence N 02°07′55″ W, along an Easterly line, of said Lot 1, MOONLIGHT PLAZA CENTER, extended, said line being 45.00 feet east of and parallel with the west line of said MOONLIGHT PLAZA CENTER, 819.86 feet to the Point of Beginning;

EXCEPT the North 40.00 feet thereof dedicated for Lincoln Lane right of way.
Said parcel contains 361,073 square feet, or 8.289 acres, more or less, exclusive of existing Lincoln Lane right of way.
Discussion Item: Consider adopting a resolution approving the execution and delivery of a development agreement for a development project within the City (Main Street Market Place).

Strategic Priority: Promote Economic Development; Fiscal Stewardship; Quality of Life

Department: Finance

Staff Recommendation:
Adopt a resolution approving the execution and delivery of a development agreement for a development project within the City (Main Street Market Place).

Background/Description of Item:
Super Market Developers, Inc. requested the use of a community improvement district (CID), a tax increment financing district (TIF), and the issuance of industrial revenue bonds (IRB) for the purpose of financing a portion of the costs of the proposed project.

The development agreement outlines the rights and obligations of the City and the developer in connection with the use of the CID, TIF, and IRB incentives.

The improvements in Project Area 1 include the construction of a new grocery store of approximately 60,000 square feet, a pad site to accommodate approximately 3,500 square feet of retail/restaurant use, site improvements, public improvements, including utility relocations, an access drive, new turn lanes along Main Street, and a new traffic signal.

The improvements in Project Area 2 include the redevelopment of the existing grocery store into new commercial uses and one pad site.

The improvements in Project Area 3 include parking lot paving and lighting, storm drainage, and certain improvements to the façade of the existing inline retail shops.

Bond Counsel Ellsworth will be available at the City Council meeting to answer any questions from the Governing Body.

Financial Impact:
At the request of the developer, the City intends to impose a 1.0% CID Sales Tax on the Community Improvement District to reimburse project eligible costs. The CID will have a term of 22 years and CID reimbursable project costs will be capped at $12,500,000. The City has also created a TIF district for the project area, which captures the property tax incremental values over the current tax value, which will assist in financing a portion of the project. The TIF reimbursement will have a maximum term of 12 years (which is 10 years following the opening of the new grocery store) and TIF reimbursable project costs will be capped at $3,200,000.
Attachments:
- Resolution 2011
- Development Agreement

Suggested Motion:
Adopt Resolution 2011 approving the execution and delivery of a development agreement for a development project within the City (Main Street Market Place).
RESOLUTION NO. 2011

A RESOLUTION OF THE CITY OF GARDNER, KANSAS, APPROVING THE EXECUTION AND DELIVERY OF A DEVELOPMENT AGREEMENT FOR A DEVELOPMENT PROJECT WITHIN THE CITY (MAIN STREET MARKET PLACE).

WHEREAS, the City of Gardner, Kansas (the “City”), is a duly organized city, created, organized and existing under the laws of the State of Kansas (the “State”);

WHEREAS, Super Market Developers, Inc. (the “Developer”), has proposed to acquire, construct and equip a grocery store and two pad sites, to redevelop an existing grocery store, and perform related improvements (the “Project”) within the City;

WHEREAS, at the request of the Developer, the City is creating a community improvement district (the “CID”) and has established a tax increment financing district (the “TIF”), and the Developer has requested the City issue its industrial revenue bonds (the “IRBs”) for the purpose of financing a portion of the costs of the Project; and

WHEREAS, in connection with proceedings had by the Governing Body of the City relating to the CID, the TIF and the IRBs for the Project, the City has determined that it is necessary and desirable to set forth the terms and conditions of such CID, TIF and IRB in an agreement between the City and the Developer;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS, AS FOLLOWS:

Section 1. The City is hereby authorized to enter into the Development Agreement (the “Development Agreement”) by and between the City and the Developer in substantially the form presented to and reviewed by the Governing Body on the date of this Resolution (copies of this document shall be on file in the records of the City) with such changes therein as shall be approved by the Mayor, with the Mayor’s signature thereon being conclusive evidence of his approval thereof and the same are hereby approved in all respects. In the event the CID has not been established by the date set forth in Section 202 of the Development Agreement, the authorization provided under this Resolution shall expire and be of no further force or effect.

Section 2. Subject to the limitation set forth in Section 1 of this Resolution, the Mayor, City Clerk, and other officers and representatives of the City are hereby authorized and directed to execute, seal, attest and deliver the Development Agreement and such other documents, certificates and instruments as may be necessary and desirable to carry out and comply with the intent of this Resolution, for and on behalf of and as the act and deed of the City.

Section 3. This Resolution shall be in full force and effect from and after its adoption.
ADOPTED by the Governing Body of the City of Gardner, Kansas on February 18, 2019.

CITY OF GARDNER, KANSAS

(Seal)

__________________________
Mayor

ATTEST:

__________________________
City Clerk
DEVELOPMENT AGREEMENT FOR PROJECT AREA ONE IN THE MAIN STREET MARKET PLACE TIF DISTRICT AND CID

THIS DEVELOPMENT AGREEMENT (this “Agreement”), is made and entered into as of ______________, 2019, by and between the CITY OF GARDNER, KANSAS, a municipal corporation duly organized under the laws of the State of Kansas (“City”), and SUPER MARKET DEVELOPERS, INC., a Missouri corporation (the “Developer”), the developer of a portion of the TIF District and CID, each as defined herein.

RECITALS

A. Pursuant to K.S.A. 12-1770 et seq., as amended (the “TIF Act”), the City has the authority to establish a redevelopment district and various redevelopment projects within such district, and to provide for tax increment financing to pay for some or all of the redevelopment project costs.

B. The Governing Body of the City adopted Resolution No. 1994 on September 4, 2018, setting October 15, 2018, for a public hearing to consider the establishment of a tax increment redevelopment district known as the “Main Street Market Place TIF District Redevelopment District” in the area described on Exhibit A (the “TIF District”), for the proposed redevelopment district plan (the “District Plan”) as set forth on Exhibit A to Resolution No. 1994 and attached as Exhibit B to this Agreement.

C. The TIF District was found by the Governing Body of the City to be “blighted” within the meaning of K.S.A. 12-1770a and was established by Ordinance No. 2588 passed by the Governing Body of the City on October 15, 2018, which Ordinance also set forth the District Plan.

D. The Developer submitted an application to the City requesting the utilization of tax increment financing to pay for certain costs associated with the development of a portion of the TIF District.

E. The City’s Planning Commission reviewed a proposed redevelopment project plan known as the “Redevelopment TIF Project Plan, Main Street Market Place Redevelopment District, Project Area One” as described on Exhibit C (the “Project Plan”), for the redevelopment of the portion of the TIF District proposed to be developed by the Developer and described on Exhibit D (“Project Area One”), and has made findings that such plan is consistent with the comprehensive plan for development of the City at its meeting held on October 23, 2018.

F. The Governing Body of the City adopted Resolution No. 1999 on November 5, 2018, which called for a public hearing to consider the approval of the Project Plan on December 17, 2018.

G. Following the public hearing on the Project Plan, the Governing Body of the City passed Ordinance No. ____ on ____________, 201__, approving the Project Plan.
H. The City and the Developer acknowledge that it is desirable and necessary for the redevelopment of Project Area One to construct certain improvements within the boundaries of the TIF District and certain infrastructure located outside the boundaries of the TIF District but contiguous to the TIF District and related to the Project Plan (as more fully described on Exhibit F) which improvements may be reimbursed with Incremental Real Property Taxes (as herein defined) and desire to enter into this Agreement to implement the Project Plan.

I. Pursuant to K.S.A. 12-6a26 et seq (the “CID Act”), the City has the authority to establish a community improvement district and to implement a community improvement district sales tax within such district to finance costs of projects authorized under the CID Act.

J. The Developer, together with Moonlight Plaza, L.L.C., a Kansas limited liability company, and DJC Properties L.L.C., a Kansas limited liability company (together, the “Co-Developers”), have submitted a petition (as amended, the “Petition”) requesting the creation of a community improvement district under the CID Act for an area described in such Petition (the “CID”) (as further described in the Petition attached hereto as Exhibit G).

K. Under the terms of the Petition, the Developer and Co-Developers have requested the implementation of a CID Sales Tax (as defined herein) within the CID to finance the project described on Exhibit F (the “CID Project”).

L. Pursuant to K.S.A. 12-1740 et seq. (the “IRB Act”), the City has the authority to issue industrial revenue bonds for commercial projects which promote, stimulate and develop the general welfare and economic prosperity of the City and its inhabitants and the state of Kansas.

M. The Developer has submitted an application to the City requesting the issuance of industrial revenue bonds to finance the cost of the facilities described on Exhibit H (the “IRB Project”) for the purpose of obtaining an exemption from Kansas and local sales tax on materials for the IRB Project that are financed with such bonds.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I
DEFINITIONS AND RULES OF CONSTRUCTION

Section 101. Definitions. Capitalized words used in this Agreement shall have the meanings set forth in the recitals to this Agreement or shall have the following meanings:

“Agreement” means this Agreement as may be amended in accordance with the terms hereof.

“Bond Counsel” means Kutak Rock LLP, Kansas City, Missouri, or such other firm of attorneys selected by the City with expertise in tax increment financing districts in the State.
“CID” means the Main Street Market Place Community Improvement District proposed to be established by the City pursuant to the CID Act and containing within its boundaries the real property legally described in Exhibit G attached hereto.

“CID Act” means K.S.A. 12-6a26 et seq., as amended and supplemented from time to time.

“CID Bonds” means any special obligation community improvement district revenue bonds, in one or more series, issued by the City and secured in whole or in part by the CID Sales Tax.

“CID Eligible Expenses” means actual expenses related to the CID Project, including City Expenses related thereto and the City Administrative Fee, to the extent such expenses are each a “cost” of a “project” as defined in the CID Act and provided such expenses (except for the City Administrative Fee and City Expenses) are set forth on Exhibit F, but excluding any interest expense.

“CID Project” means the project described on Exhibit F and Exhibit G attached hereto, all to the extent such improvements are financed with the CID Sales Tax and proposed or constructed within the CID.

“CID Reimbursable Project Costs Cap” means, with respect to reimbursement from CID Sales Tax, an amount not exceeding $12,500,000, excluding City Expenses, the City Administrative Fee, and costs of issuance for CID Bonds, but subject to reduction if CID Bonds are issued as provided in Section 3.03(f).

“CID Sales Tax” means the 1.0% special community improvement district sales tax proposed to be levied within the CID and collected pursuant to K.S.A. 12-6a31, as amended.

“CID Sales Tax Fund” means the Main Street Market Place Community Improvement District Sales Tax Fund created pursuant to Section 303(a) hereof.

“CID Term” shall have the meaning set forth in Section 303(c) of this Agreement.

“City” means the City of Gardner, Kansas.

“City Administrative Fee” means an amount equal to 3.0% of the CID Sales Tax collected within the CID for administration of this Agreement. The City Administrative Fee does not include, and the City shall not charge, any fee payable from Incremental Real Property Taxes for administration of this Agreement.

“City Expenses” means the reasonable outside expenses actually incurred by the City (with commercially reasonable supporting documentation) in connection with the Project Plan, the TIF District, the CID, the IRBs, and the implementation of this Agreement, including, but not limited to, financial, legal, accounting or engineering consultants and appraisal fees, if any.

“Co-Developer Agreements” shall have the meaning set forth in Section 203 of this Agreement.
“Co-Developers” means the Co-Developers described in the recitals to this Agreement.

“Department of Revenue” means the Department of Revenue of the State.


“District Plan” means the District Plan described in the recitals to this Agreement.

“Event of Default” means an event of default as defined in Section 802 of this Agreement.

“Feasibility Study” means an analysis comparing the projected revenue from the Incremental Real Property Taxes and any available funds to pay the cost of the TIF Project which concludes that the revenues will meet or exceed the amount necessary to pay such costs and is performed by an independent consultant, selected by the City, who is experienced in preparing such studies and complies with the requirements of the TIF Act.

“Incremental Real Property Taxes” means the amount of real property taxes collected from real property located within Project Area One and Project Area Two that is in excess of the amount of real property taxes which is collected from the base year assessed valuation, i.e., 2018, for Project Area One and Project Area Two, and received by the City on or after the adoption of the Project Plan, all in accordance with the TIF Act and the applicable laws of the State; provided, however, that any taxes paid under protest shall not be included in Incremental Real Property Taxes until such protest is withdrawn or resolved. During the Project Plan term as described in Section 302(c), the City may consider, but shall not be required to agree to, using the amount of real property taxes collected from real property located within Project Area Three that is in excess of the amount of real property taxes which is collected from the base year assessed valuation for Project Area Three for the purpose of reimbursing TIF Eligible Expenses.

“IRB Act” means K.S.A. 12-1740 et seq., as amended and supplemented from time to time.

“IRB Project” means the facilities described on Exhibit H attached hereto.

“IRBs” means taxable industrial revenue bonds of the City issued pursuant to the IRB Act.

“Pay-Go Interest” means interest at the rate of the Prime Rate plus one percent (1%), compounded semiannually, to be reimbursed from Incremental Real Property Taxes pursuant to Section 401(f) of this Agreement.

“Permitted Delays” means any delay by a party performing its respective obligations hereunder, as a result of a condition or event outside the reasonable control and through no fault of the party so delayed, excluding conditions or events relating to the economic resources of such party or of other parties, it being the intent of this Agreement to construe the terms “Permitted Delays” to mean events such as natural disasters, fires, market conditions, failure of suppliers or subcontractors to perform in accordance with contractual obligations and similar acts beyond the
control of the parties and does not include failure of a party to obtain necessary financing, a
business decision to delay or withdraw resources to a project or similar acts related to monetary
circumstances.

“Petition” means the Petition, together with any amended petitions, requesting the
creation of a community improvement district in accordance with the CID Act that is submitted
by the Developer to the City Clerk.

“Prime Rate” means the prime rate reported in the “Money Rates” column or any
successor column of The Wall Street Journal, currently defined therein as the base rate on
corporate loans posted by at least 75% of the nation’s 30 largest banks, or any successor thereto.
If The Wall Street Journal ceases publication of the Prime Rate, then “Prime Rate” shall mean
the “prime rate” or “base rate” announced by U.S. Bank, National Association, Kansas City,
Missouri.

“Project” means, collectively, (i) those portions of the TIF Project, CID Project and IRB
Project within Project Area One and (ii) the Project Area Three Improvements.

“Project Area One” means the area owned by the Developer legally described on
Exhibit D to this Agreement and shown via a sketch on Exhibit E to this Agreement, and as it
may be amended, with the approval of the City.

“Project Area Three” means the area shown via a sketch on Exhibit E to this
Agreement, as it may be amended from time to time with the approval of the City.

“Project Area Three Improvements” means the following scope of work to be
completed by or at the direction of the Developer within Project Area Three:

- Adding storm sewer inlets to provide local drainage in the parking lot South of the
  existing Project Area Three retail building;
- Installing storm sewer piping network to connect to the proposed stormwater
  detention system in Project Area One;
- Milling and overlaying pavement where necessary to provide positive drainage
  system and repair pavement where necessary;
- Installing new LED parking lot lighting and poles;
- Removing existing building cloth canopies and replacing with two metal
  architectural canopies consistent in size, shape, color, and material with
  architectural canopies being installed on the new grocery store in Project Area
  One; and
- Providing engineering plans and specifications for all improvements on
  Project Area Three and obtaining all necessary permits.
“Project Area Two” means the area shown via a sketch on Exhibit E to this Agreement, as it may be amended from time to time with the approval of the City.

“Project Plan” means the Redevelopment TIF Project Plan, Main Street Market Place Redevelopment District, Project Area One, described on Exhibit C to this Agreement as may be modified with the written consent of the Developer and in accordance with the procedures of the TIF Act, and as may be amended or modified, with the approval of the City.

“Project Plan Term” shall have the meaning set forth in Section 302(c) of this Agreement.

“State” means the State of Kansas.

“TIF Act” means K.S.A. 12-1770 et seq., as amended.

“TIF District” means the tax increment redevelopment district described in the recitals to this Agreement.

“TIF District Fund” means Main Street Market Place TIF District Fund maintained by the City in accordance with K.S.A. 12-1775(b)(2) that derives its revenues from the tax increment generated in the TIF District and that is used to finance capital improvement projects in the TIF District.

“TIF Eligible Expenses” means actual expenses related to the TIF Project, including City Expenses related thereto, to the extent such expenses are “redevelopment project costs” as defined in the TIF Act and provided such expenses (except for City Expenses) are set forth on Exhibit F, together with Pay-Go Interest.

“TIF Project” means the acquisition of the land and the construction by Developer (or its assigns) of the improvements and supporting infrastructure described on Exhibit F which improvements are expected to generate the Incremental Real Property Taxes described in the Feasibility Study; provided, that the TIF Project shall be modified, if necessary, to conform with any final development plan or plans approved by the City.

“TIF Reimbursable Project Costs Cap” means, with respect to reimbursement from Incremental Real Property Taxes, an amount not exceeding $3,200,000, plus City Expenses and Pay-Go Interest.

Section 102. Rules of Construction. The following rules of construction shall apply in construing the provisions of this Agreement except as otherwise expressly provided or unless the context otherwise requires:

A. The terms defined in this Article and throughout the Agreement include the plural as well as the singular.

B. All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted governmental accounting principles.
C. All references herein to “generally accepted governmental accounting principles” refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.

D. All references in this Agreement to designated “Articles,” “Sections” and other subdivisions are to be the designated Articles, Sections and other subdivisions of this Agreement as originally executed.

E. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

F. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

ARTICLE II
REDEVELOPMENT STRUCTURE

Section 201. Scope of Agreement. This Agreement applies to the redevelopment of Project Area One utilizing Incremental Real Property Taxes, CID Sales Tax, IRBs and funds of the Developer.

Section 202. Overview of Redevelopment; Contingent on CID Proceedings. Subject to the terms of this Agreement, the parties agree that the Developer shall cause the Project to be completed pursuant to the Project Plan and this Agreement, and the Developer shall bear the costs of the development of the Project. Upon satisfaction of the conditions set forth in this Agreement, and subject to the terms herein contained, the City will reimburse the Developer for TIF Eligible Expenses for the TIF Project and CID Eligible Expenses for the CID Project; provided, however, that this Agreement shall be of no further force or effect if the Governing Body of the City has not established the CID as defined herein on or prior to March 1, 2019.

Section 203. Co-Developers and Separate Development Agreements. The parties acknowledge and agree that this Agreement may be entered and performed concurrently with separate agreements between the City and one or both of the Co-Developers with respect to certain improvements to be completed in Project Area Two and Project Area Three of the TIF District (such agreements, the “Co-Developer Agreements”). No breach or default under this Agreement shall necessarily constitute a breach or default under any Co-Developer Agreement, and no breach or default under any Co-Developer Agreement shall necessarily constitute a breach or default under this Agreement. Notwithstanding anything to the contrary herein, the Developer shall cooperate with the City and with each of the Co-Developers to construct improvements in Project Area One, Project Area Two, and Project Area Three with consistent design details, materials, and levels of finish as depicted on the attached Exhibit J.

ARTICLE III
FINANCING

Section 301. Project Costs, City Expenses and City Administrative Fee. The Developer shall be responsible for funding the Project, which costs shall not be an obligation of the City. City Expenses shall be due and payable within 30 days after the City provides the
Developer with an invoice therefor. City Expenses shall be paid from Incremental Real Property Taxes pursuant to Section 302 of this Agreement or CID Sales Tax pursuant to Section 303 of this Agreement; provided that if the Incremental Real Property Taxes and/or CID Sales Tax then on deposit are insufficient to pay City Expenses due, the Developer shall advance funds to pay the City Expenses. The City Administrative Fee shall be paid from CID Sales Tax pursuant to Section 303 of this Agreement. To the extent the Developer has advanced funds to pay the City Expenses, such amounts may be reimbursed from the Incremental Real Property Taxes in accordance with Section 302 of this Agreement and CID Sales Tax in accordance with Section 303 of this Agreement and such reimbursements shall not be counted against the TIF Reimbursable Project Costs Cap or the CID Reimbursable Project Costs Cap.

**Section 302. TIF Financing.**

(a) **TIF District Fund.** Pursuant to the TIF Act, the City shall establish the TIF District Fund as a segregated fund within the treasury of the City, which shall be held and administered by the City in accordance with this Agreement and the TIF Act. Incremental Real Property Taxes received by the City shall be deposited in the TIF District Fund and shall not be commingled with any other funds of the City.

(b) **Reimbursement of TIF Eligible Expenses.** Except as otherwise set forth herein, all Incremental Real Property Taxes shall be available for and dedicated to pay TIF Eligible Expenses for the TIF Project for the duration of the Project Plan Term or until the City’s obligations under this Agreement have been satisfied, whichever is first, and shall be utilized to reimburse the Developer for TIF Eligible Expenses paid by the Developer and/or City Expenses, according to the procedures set forth herein, in the following order of priorities:

First, to pay or reimburse the City for any City Expenses not paid by the Developer;

Second, to reimburse the Developer for Pay-Go Interest accrued on TIF Eligible Expenses; and

Third, to reimburse the Developer for TIF Eligible Expenses apart from Pay-Go Interest.

(c) **Project Plan Term.** The Project Plan term shall expire on the earlier of: (i) the date on which the Developer has been reimbursed in the amount of the TIF Reimbursable Project Costs Cap; or (ii) July 1st of the calendar year in which ten (10) years have elapsed after a certificate of occupancy is issued for the grocery store within Project Area One (the “Project Plan Term”), unless the City takes the appropriate actions required by law to terminate the Project Plan or amend the Project Plan Term. Except as provided herein or as required by law, the City shall not, under any circumstances without the written consent of the Developer, terminate or amend the Project Plan or reduce the Project Plan Term in a manner which would adversely impact or impair the ability of the Developer to be reimbursed for TIF Eligible Expenses.

(d) **“Pay As You Go” TIF Financing.** Any Incremental Real Property Taxes available to the Developer for payment of TIF Eligible Expenses shall be by reimbursement to the
Developer for TIF Eligible Expenses paid by the Developer, and no tax increment bonds shall be issued to advance funds for payment of such expenses.

Section 303. CID Financing.

(a) CID Sales Tax Fund. Pursuant to the CID Act and subject to all applicable laws, the policies and procedures of the City and approval by the Governing Body of City, the City shall establish the CID Sales Tax Fund as a segregated fund within the treasury of the City, which shall be held and administered by the City in accordance with this Agreement and the CID Act. Revenues collected from the CID Sales Tax received by the City from the Department of Revenue shall be deposited in the CID Sales Tax Fund and shall not be commingled with any other funds of the City.

(b) Reimbursement of CID Eligible Expenses. Except as otherwise set forth herein or as required by the CID Act, all CID Sales Tax shall be available for and dedicated to pay CID Eligible Expenses for the CID Project for the duration of the CID Term or until the City’s obligations under this Agreement have been satisfied, whichever is first, and shall be utilized to reimburse the Developer for CID Eligible Expenses paid by the Developer and/or the City Administrative Fee and City Expenses, according to the procedures set forth herein, in the following order of priorities:

First, to pay or reimburse the City for the City Administrative Fee and any City Expenses not paid by the Developer;

Second, to reimburse the Developer for CID Eligible Expenses.

(c) CID Term. The CID term shall expire on the earlier of: (i) the date on which the Developer has been reimbursed in the amount of the CID Reimbursable Project Costs Cap; or (ii) twenty-two (22) years from the date the Department of Revenue begins the collection of the CID Sales Tax following adoption of the ordinance of the City establishing the CID and authorizing the CID Sales Tax (the “CID Term”), unless the City takes the appropriate actions required by law to terminate the CID or amend the CID Term. Except as provided herein or as required by law, the City shall not, under any circumstances without the written consent of the Developer, terminate the CID or amend the CID Sales Tax or reduce the CID Term in a manner which would adversely impact or impair the ability of the Developer to be reimbursed for CID Eligible Expenses.

(d) CID Financing. Any CID Sales Tax available to the Developer for payment of CID Eligible Expenses shall be by reimbursement to the Developer for CID Eligible Expenses paid by the Developer and no CID Bonds shall be issued to advance funds for payment of such expenses; provided, however, that the City may consider the issuance CID Bonds subject to the conditions described in Section 304 hereof.

(e) CID Sales Tax Information Confidential. The Developer acknowledges and agrees that information obtained by the City relating to the CID Sales Tax shall be kept confidential by the City in accordance with K.S.A. 75-5113, 79-3234 and 79-3657; provided, however, that the parties shall disclose such information as is necessary to comply with
disclosure obligations relating to any CID Bonds. The Developer, on its own behalf and on behalf of its successors and assigns, consents to such disclosure.

(f) **Adjustment of CID Reimbursable Project Costs Cap.** The parties acknowledge that the amount of the CID Reimbursable Project Costs Cap was determined, in part, based on the time value of money and the understanding that it may take up to twenty-two years for the Developer to be fully reimbursed. In the event CID Bonds are issued, expediting a portion of the payback, the CID Reimbursable Project Costs Cap shall be reduced to account for this time-value of money factor based on a net present value analysis conducted at the time of the issuance of the CID Bonds and reasonably agreed upon by the parties (the “**CID Cap Reduction**”).

**Section 304. CID Bond Financing.** Subject to the following terms and conditions, the City shall consider issuing CID Bonds to implement the CID Project:

(a) Completion of the new grocery store and Project Area Three Improvements no later than December 31, 2020;

(b) Private placement of the CID Bonds rather than a public offering;

(c) Engagement of a placement agent and a bond trustee, each acceptable to the City;

(d) Completion of a bond revenue study by a firm acceptable to the City and the placement agent which study projects CID Sales Tax revenues attributable to the CID with the cost of the study paid by Developer;

(e) Developer has provided evidence to the City and placement agent demonstrating that the development and operation of the CID improvements will generate, through CID Sales Tax, amounts sufficient to pay debt service on the CID Bonds amortized to the term of the revenues pledged, with a coverage factor and reserves for the CID Bonds that the placement agent determines is necessary and that is agreed to by the City;

(f) All statutory protest periods for proceedings authorizing, implementing, or modifying the CID and the CID Bonds have run without receipt of any protest petitions;

(g) The terms of the CID Bonds, including but not limited to restricting sales and transfers to accredited investors or qualified institutional buyers, shall be acceptable to the City and Bond Counsel;

(h) The minimum denomination for any series of the CID Bonds issued by the City shall be $100,000 unless an exception is approved by the Governing Body of the City;

(i) The bonds shall be structured as supersinkers so that CID Sales Tax revenues received in excess of debt service will be used to pay down principal;

(j) The CID Bonds must include security in an amount determined in the reasonable discretion of the City to minimize any risk of default to the extent such security is allowed by State and federal tax laws;
(k) The Attorney General of the State approves the transcript of proceedings relating to the CID Bonds;

(l) Bond Counsel provides to the City an opinion to the effect that the CID Bonds have been validly issued under State law and, if applicable, that interest on the CID Bonds, or any series of CID Bonds, is exempt from State and federal income taxation, subject to the standard exceptions;

(m) the Developer is not then in default under this Agreement;

(n) If issuance of the CID Bonds causes the City to exceed the annual $10,000,000 limit for “bank qualified” tax-exempt obligations as defined in Section 265 of the Internal Revenue Code of 1986, as amended, the Developer shall compensate the City for the difference between the interest rate paid by the City on its tax-exempt obligations issued in the calendar year the bonds are issued (but excluding the CID Bonds) and the interest rate the City would have paid on such obligations had they been designated as “bank qualified,” with such compensation calculated on a present value basis and in an amount not to exceed $90,000 in any case. The City will reasonably cooperate with the Developer to attempt to avoid exceeding the “bank qualified” limit, if possible, which may include, with limitation, reasonable advance planning and, at the Developer’s election, changing the planned year of issuance of the CID Bonds to a year where the City does not anticipate exceeding the “bank qualified” limit. Notwithstanding the first sentence of this subsection, in the event the City represents to the Developer that the CID Bonds can be issued in a given year without risk of exceeding the “bank qualified” limit and the City later exceeds the limit, the Developer shall not be required to pay any compensation to the City hereunder; and

(o) The CID Cap Reduction shall have been agreed upon by the parties.

Section 305. IRB Financing. Subject to all applicable laws, the policies and procedures of the City and approval by the Governing Body of City, it is the expectation of the parties to this Agreement that the Developer will utilize IRBs to be issued by the City to finance the IRB Project for the sole purpose of obtaining a sales tax exemption on the IRB Project to the extent it is financed with the proceeds of the IRBs. All expenses related to the issuance of such IRBs, including, but not limited to, the City’s application fee, the City’s one percent (1%) origination fee, and the fees and expenses of the City’s Bond Counsel, will be the responsibility of the Developer.

ARTICLE IV
ELIGIBLE EXPENSE REIMBURSEMENT PROCEDURES

Section 401. Reimbursement of Eligible Expenses.

(a) Disbursement Times. Except as provided herein, the City agrees to (i) disburse Incremental Real Property Taxes in accordance with Section 302 of this Agreement within 45 days of receipt of such taxes by the City; provided, the City is not obligated to disburse Incremental Real Property Taxes if less than $10,000 has been received and is on deposit in the TIF District Fund from Incremental Real Property Taxes generated from Project Area One and Project Area Two (unless such disbursement is the final disbursement of Incremental Real
Property Taxes hereunder, in which event all Incremental Real Property Taxes will be disbursed in accordance with the terms hereof regardless of the amount), and (ii) disburse CID Sales Tax in accordance with Section 303 of this Agreement within 45 days after the end of each calendar quarter; provided, the City is not obligated to disburse CID Sales Tax if less than $10,000 has been received and is on deposit in the CID Sales Tax Fund (unless such disbursement is the final disbursement of CID Sales Tax, in which event all CID Sales Tax will be disbursed in accordance with the terms hereof regardless of the amount).

(b) Submission of Certification of Expenditures. The Developer shall submit to the City’s Finance Director a Certification of Expenditures (in substantially the form attached to this Agreement as Exhibit I) signed by the Developer, with supporting documentation identifying the TIF Eligible Expenses or CID Eligible Expenses for which the Developer seeks reimbursement. The supporting documentation shall be copies of invoices reflecting amounts billed, copies of checks, evidence of wire transfer or other payment of cash by the Developer for such expenses, lien waivers or other evidence that no mechanic’s liens exist with respect to the construction of the TIF Project or the CID Project for which reimbursement is sought, and such other documentation as the City shall reasonably request. Notwithstanding anything herein to the contrary, all TIF Eligible Expenses shall be submitted by the Developer under a single Certification of Expenditures, rather than in multiple Certifications of Expenditures, to facilitate administration by the City of the variable rate for Pay-Go Interest.

(c) Details of Certification; City Right to Perform Due Diligence. Each Certification of Expenditure shall contain a certification by the Developer that each TIF Eligible Expense or CID Eligible Expense submitted for reimbursement is an eligible expense, that such expense has been incurred by the Developer, and that such expense has not been previously submitted for reimbursement hereunder. The City reserves the right to have its engineer or other agents or employees inspect all work in respect of which a Certification of Expenditure is submitted, to retain an outside accountant, engineer or attorney to evaluate and assist with processing Certifications of Expenditures for compliance with this Agreement, to examine the Developer’s and other records relating to all eligible expenses to be paid, and to obtain from such parties such other information as is reasonably necessary for the City to evaluate compliance with the terms hereof.

(d) Certification of Expenditures. The City shall either accept and certify or reject each Certification of Expenditures within 45 days after the submission thereof. If the City determines that any cost identified as a TIF Eligible Expense or CID Eligible Expense is not eligible for reimbursement, the City shall so notify the Developer in writing within said 45-day period, identifying the ineligible cost and the basis for determining the cost to be ineligible, whereupon the Developer shall have the right to identify and substitute other costs of the TIF Project or CID Project as TIF Eligible Expenses or CID Eligible Expenses, as applicable, with a supplemental Certification of Expenditures. The City may also request such additional information from the Developer as may be required to process the requested certification and the time limits set forth in this paragraph shall be extended by the duration of time necessary for Developer to respond to such request by the City. The City’s identification of any ineligible costs shall not delay the City’s approval of the remaining costs on the Certification of Expenditures that the City determines to be eligible.
(e) **Conditions Precedent.** As a condition precedent to disbursement of Incremental Real Property Taxes or CID Sales Tax to the Developer, the Developer must: (i) not be in default under this Agreement (subject, however, to any applicable cure period); (ii) be current on the payment of ad valorem property taxes within the City; (iii) have submitted a Certification of Expenditure for a TIF Eligible Expense or a CID Eligible Expense, along with reasonable documents of such expenditure; and (iv) the expense identified in the Certification of Expenditure must be one that has occurred and the Developer is seeking reimbursement for. If funds are available for disbursement in the TIF District Fund or the CID Sales Tax Fund but the conditions set forth in this paragraph have not, in the reasonable judgment of the officer or agent of the City charged with disbursing such funds, been met, the City shall provide written notice of such failure to the appropriate party (a “Condition Failure Notice”) within 30 days of receipt of such taxes and shall retain the funds that would have otherwise been disbursed to such party. If the condition(s) are met to the reasonable satisfaction of such officer or agent of the City within 30 days from the date of the Conditional Failure Notice, the disbursement that was withheld shall be promptly made. If the condition(s) are not met to the reasonable satisfaction of such officer or agent of the City within the 30-day period, the retained funds shall be available for disbursement to the Co-Developers (if applicable, and provided such parties are in compliance with such conditions) in accordance with the priority set forth in Sections 302 and 303 of this Agreement; provided such disbursement shall not be made until 10 days following such 30-day period. In the event a party disagrees in good faith with the determination of such officer or agent of the City, such party may appeal the determination to the Governing Body of the City by providing written notice to the City Clerk within 10 days of the end of the 30-day period, and the retained funds shall not be disbursed until the Governing Body directs the disbursement. Such notice of appeal shall reasonably describe the basis for such appeal. The City agrees to conduct a public hearing on such appeal within 60 days of receipt of such notice and to provide the party requesting such appeal with not less than 10 days’ written notice of the hearing date, time and location. The determination of the Governing Body of the City with respect to the disbursement shall be final. Any determination by the officer or agent of the City or by the Governing Body of the City under this Section 401 that funds should not be disbursed shall apply as to that particular disbursement only and shall not impair or in any manner affect future disbursements.

(f) **Pay-Go Interest.** Pay-Go Interest shall accrue on each TIF Eligible Expense from the date the City approves and certifies the corresponding Certification of Expenditures until such expense is paid or until the Project Plan Term expires. The Prime Rate then in effect on the first day of each calendar year shall be used to calculate the Pay-Go Interest applied to the outstanding principal amount of certified TIF Eligible Expenses on such date.

**Section 402. Effect of Reimbursement If Termination.** Notwithstanding anything herein to the contrary, if this Agreement has been terminated in accordance with its terms, the City shall have no obligation to reimburse the Developer for any TIF Eligible Expenses or CID Eligible Expenses following the termination of this Agreement regardless of when the expense was submitted to the City.

**Section 403. Effect of Reimbursement If Sale of Property.** Notwithstanding anything herein to the contrary, reimbursement for any land acquisition costs approved and certified by the City as a TIF Eligible Expense or a CID Eligible Expense shall be reduced by
any proceeds received by the Developer from the sale or conveyance of all or a portion of Project Area One during the Project Plan Term or CID Term.

ARTICLE V
DEVELOPMENT OF THE PROJECT; TIMING AND APPROVALS

Section 501. Development of Project. The Developer agrees to pursue the Project in accordance with the requirements of this Agreement, the adopted Project Plan, and all City zoning and building requirements applicable to the Project. Notwithstanding any other provision of this Agreement to the contrary, but subject to Permitted Delays, if construction of the grocery store portion of the Project has not commenced by October 1, 2019, as evidenced by the issuance of building permits by the City for such improvements or if construction of the new grocery store and Project Area Three Improvements portions of the Project are not substantially completed by December 31, 2020, or if construction of the renovations to the existing grocery store within Project Area Two is not substantially completed by March 31, 2022, each as evidenced by the issuance of a certificate of occupancy by the City, then the City may elect to terminate this Agreement if, on or before 30 days after the City’s written notice to Developer of such default, Developer has not cured such default. The provisions of Section 802(b) of this Agreement relating to the ability to cure default shall not apply to the City’s option to terminate pursuant to this Section; provided, however, that with respect to the March 31, 2022 deadline, the City’s option to terminate this Agreement (or otherwise call the Developer in default) shall not be exercised (i) prior to providing the Developer an opportunity to show cause for the delay and/or (ii) if the delay is the result of a Permitted Delay.

Section 502. Plan Approval; Development Approval. The Developer shall submit to the City all engineering plans for public infrastructure and construction plans as required by the construction codes adopted by the City for the Project. Whenever this Agreement requires the Developer to submit plans, drawings or other documents to the City for approval, the City shall use its standard procedures for review and approval of such submissions so as to not unduly hinder or delay the Project.

Section 503. Insurance and Indemnification.

(a) Indemnification. The Developer agrees to defend, indemnify and hold the City, its officers, agents and employees, harmless from and against all liability for damages, costs and expenses, including attorney fees, arising out of any claim, suit, judgment or demand to the extent resulting from the negligent and/or intentional acts or omissions of the Developer, its contractors, subcontractors, agents or employees in the performance of this Agreement. The Developer shall give the City written notice of any claim, suit or demand which may be subject to this provision at the earliest feasible date.

(b) Insurance. Not in derogation of the indemnification provisions set forth herein, the Developer shall, at its sole cost and expense, throughout the term of this Agreement (to the extent the Developer has not sold Project Area One, or any portion thereof, to third parties), insure and keep insured any vertical structures built in Project Area One against direct loss or damage occasioned by fire, flood and extended coverage perils through insurers with a Best’s rating of no less than “A-” and/or that is reasonably acceptable to the City and without
co-insurance. The insurance shall be for an amount that is not less than the full replacement cost of such structures. Notwithstanding the foregoing, the requirement that Developer maintain a policy of insurance may be satisfied by Developer causing its tenant(s) to maintain such insurance.

Section 504. Local, State and Federal Laws. The Developer agrees to abide by, and the Project shall be completed in conformity with, all applicable federal, state and local laws and regulations.

Section 505. Nondiscrimination During Construction. The Developer, for itself and its successors and assigns, agrees that in the construction of the Project, the Developer shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, handicap, national origin or ancestry.

Section 506. City and Other Governmental Permits. Before commencement of construction or development of any buildings, structures or other work or improvement the Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City and any other governmental agency having jurisdiction as to such construction development or work. The City shall follow its standard procedures for providing assistance to the Developer in securing these permits.

ARTICLE VI
REAL ESTATE TAXES

Section 601. Agreement to Pay Taxes and Assessments; Right to Protest. The Developer agrees that it shall (to the extent the Developer has not sold such property, or any portion thereof, to third parties) pay, or cause to be paid, taxes and assessments for Project Area One promptly on or before the due date of such tax bills. The Developer shall have the right to pay said taxes under protest in accordance with applicable law and agrees to provide prompt written notice to the City if it elects to pay said taxes under protest or of any appeal of real estate taxes or valuation of any property within Project Area One by the County Appraiser. If, as the result of a tax protest by Developer, Cosentino Group, Inc. or any of their respective affiliates commenced after the completion of the new grocery store within Project Area One, the assessed value of the new grocery store real property and improvements in Project Area One is reduced below $2,125,000, then the duration of the Project Plan Term and the Reimbursable Project Costs Cap applicable to Incremental Real Property Taxes shall be correspondingly reduced. By way of example only, if the Project Plan Term is ten (10) years and the Reimbursable Project Costs Cap applicable to Incremental Real Property Taxes is $3,200,000, and if the aggregate assessed value of real property in Project Area One is reduced to $1,912,500 as the result of a tax protest, then the Project Plan Term shall be reduced to nine (9) years and the TIF Reimbursable Project Costs Cap shall be reduced to $2,880,000.

ARTICLE VII
USE, ASSIGNMENT, SALE AND LEASE

Section 701. Use Restrictions; Operation and Maintenance. The allowable uses on the property and within Project Area One will be subject to the lawful zoning power of the City
and will not be subject to use restrictions solely by virtue of this Agreement; provided, however, that the Developer shall (to the extent the Developer has not sold such property, or any portion thereof, to third parties) maintain Project Area One and any other property owned by the Developer within the TIF District in good condition and repair, ordinary wear and tear excepted, and in a manner consistent with comparable first-class shopping centers in the greater Kansas City metropolitan area. Such maintenance shall include, without limitation:

(a) maintaining parking and entrance surfaces in a level, smooth and evenly-covered condition;

(b) removing papers, ice and snow, mud and sand, debris, filth and refuse and sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(c) placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines;

(d) operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;

(e) maintaining all perimeter and exterior building walls, including but not limited to all retaining walls in a good condition and state of repair; and

(f) maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary.

The Developer agrees to cause a Declaration of Easements, Covenants and Restrictions to be recorded against all property within the TIF District, which includes maintenance obligations similar to those listed above in order to require that other property owners within the TIF District, and subsequent owners of property within Project Area One, adequately maintain their property. The Developer further agrees to use commercially reasonable efforts to enforce compliance with all such maintenance obligations under such Declaration.

Section 702. Restriction on Transfer. There shall be no restriction in the sale, transfer or leasing of the property within the TIF District or the CID.

Section 703. Transfer of Obligations. The rights, duties and obligations hereunder of the Developer may be assigned, in whole or in part, to another entity, subject to the approval of the Governing Body following receipt of an opinion by the City’s Bond Counsel that the assignment complies with the terms of this Agreement. Any proposed assignee shall have qualifications and financial responsibility, as reasonably determined by the Governing Body, necessary and adequate to fulfill the obligations of the Developer under this Agreement. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer under this Agreement and agree to be subject to all the applicable conditions and restrictions to which the Developer is subject. The City shall notify the Developer within 45 days of receipt by the City of a written request to approve a proposed assignment under this Section of its approval or disapproval. All written requests for approval of a proposed assignment shall include a
description of the qualifications and financial resources of the proposed assignee and the form of a proposed assignment and assumption agreement. If the City elects to disapprove a requested assignment, it will include in its notice to the Developer the basis for the disapproval. The Developer shall not be relieved from any obligations set forth herein unless and until the City specifically agrees to release the Developer. The Developer agrees to record the assignment in the office of the register of deeds of Johnson County, Kansas, in a timely manner following the execution of such agreement. Notwithstanding anything herein to the contrary, Developer may, upon prior written notice to the City (and without the need for the City’s approval), assign this Agreement, in whole or in part, to (a) an entity that is more than 50% owned or controlled by the Developer, (b) a Co-Developer, or (c) Cosentino Group, Inc., a Missouri corporation, or an affiliate thereof; provided such entity assumes in writing all applicable obligations of the Developer under this Agreement.

Section 704. Assumption of Obligations. The parties’ obligations pursuant to this Agreement, unless earlier satisfied, shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as a covenant running with the land, enforceable against the purchasers or other transferees as if such purchaser or transferee were originally a party and bound by this Agreement. Notwithstanding the foregoing, no tenant of any part of Project Area One or the CID shall be bound by any obligation of Developer solely by virtue of being a tenant; provided, however, that no transferee or owner of property within Project Area One or the CID shall be entitled to any rights whatsoever or claim upon the Incremental Real Property Taxes or the CID Sales Tax, except as specifically authorized in writing by the Developer and as provided in this Agreement.

Section 705. Change of Ownership. The Developer shall promptly provide written notice to the City of any change in the owners/members owning/comprising more than 50% of such entity.

ARTICLE VIII
BREACH, DEFAULTS AND REMEDIES

Section 801. Breach. If the Developer or City does not comply with provisions of this Agreement, including provisions of the Project Plan or the Petition, within the time limits and in the manner for the completion of the Project as herein or therein stated, except for Permitted Delays, shall constitute a breach of this Agreement and the breaching party shall be granted an opportunity to cure as provided in Section 802 prior to such breach being deemed an “Event of Default” as defined in Section 802.

Section 802. Event of Default—General. The following events shall constitute an “Event of Default” under this Agreement:

(a) Subject to the extensions of time set forth in Section 808, failure or delay by either party to perform any term or provision of this Agreement, after receiving written notice and failing to cure, as set forth in subsection (b) below, constitutes an Event of Default under this Agreement. A party claiming a breach (claimant) shall give written notice of breach to the other party, specifying the breach complained of.
(b) The claimant shall not institute proceedings against the other party, nor be entitled to damages if the other party within fourteen (14) days from receipt of such written notice, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy within thirty (30) days from the date of receipt of such notice or, if such cure, correction or remedy by its nature cannot be effected within such thirty (30) day period, such cure, correction or remedy is diligently and continuously prosecuted until completion thereof. In the event the breaching party refuses or is unable to cure, correct or remedy such breach within the time limits stated in this subsection, then such failure shall be deemed an Event of Default and the nonbreaching party shall be entitled to the remedies set forth in Section 803.

(c) If the Developer has assigned, in whole or in part, rights, duties and obligations under this Agreement to another entity in accordance with Section 703 hereof, a failure of an assignee to perform any of the duties and obligations assigned to the assignee by the Developer in accordance with Section 703 shall not constitute an “Event of Default” with respect to the Developer and will not give rise to any remedies against the Developer under this Agreement, including, but not limited to, any remedies which would adversely affect the Developer’s rights to reimbursement, whether or not such remedies are specifically directed towards the Developer.

Section 803. Remedies on Event of Default.

(a) Whenever any Event of Default by Developer shall have occurred and be continuing, subject to applicable cure periods, the City may take one or more of the following remedial steps:

(i) compel specific performance (except for performance of the construction of the Project);

(ii) withhold or apply funds from the TIF District Fund and the CID Sales Tax Fund to such extent as is necessary to protect the City from loss and/or to ensure that such portions of the Project that the City deems are in the best interest of the City are successfully implemented in a timely fashion;

(iii) refuse to approve any further reimbursements for TIF Eligible Expenses or CID Eligible Expenses and make any disbursements until such Event of Default is cured by Developer;

(iv) pursue any remedy at law and in equity; and/or

(v) terminate this Agreement.

(b) The City may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the specific performance of the duties and obligations of the Developer as set forth in this Agreement (except for specific performance of the construction of the Project), to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages as provided by State law incurred by the City resulting from such Developer default.
(c) Whenever any Event of Default by the City shall have occurred and be continuing, subject to applicable cure periods, the Developer shall have the right, but not the obligation to:

(i) terminate this Agreement; and/or

(ii) pursue any remedy at law or in equity,

(d) The Developer may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the specific performance of the duties and obligations of the City as set forth in this Agreement, to enforce or preserve any other rights or interests of the Developer under this Agreement or otherwise existing at law or in equity and to recover any damages as provided by State law incurred by the Developer resulting from such City default.

Section 804. Intentionally Omitted.

Section 805. Acceptance of Service of Process.

(a) In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law.

(b) In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made to:

    General Counsel  
    Super Market Developers, Inc.  
    5000 Kansas Avenue  
    Kansas City, Kansas 66106

as its agent to receive service of process or other legal summons for purposes of any such action or proceeding.

Section 806. Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

Section 807. Inaction Not a Waiver of Default. Any failures or delays by any party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any action or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

Section 808. Permitted Delays. Notwithstanding anything in this Agreement to the contrary, any Permitted Delays by a party performing its respective obligations hereunder shall
not render such party in default or breach hereof (or give rise to any other party’s exercise of rights or remedies hereunder, including, without limitation, the City’s termination of this Agreement) and shall result in automatic good faith extensions of any starting or completion dates affected thereby, provided such delayed party continues to exercise good faith and due diligence in attempting to resolve the cause of any such delay and to continue to perform hereunder.

ARTICLE IX
GENERAL PROVISIONS

Section 901. Time of Essence. Time is of the essence of this Agreement. Each party to this Agreement will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 902. Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, upon official action of the City’s Governing Body approving said amendment, and by the execution of said amendment by the parties to this Agreement or their successors in interest.

Section 903. Immunity of Officers, Employees and Members. No personal recourse shall be had for the payment of the cost of the Project or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Agreement against any past, present or future owner, officer, manager, member, employee or agent of a party to the Agreement, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and any liability of any such officers, members, directors, employees or agents is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement. Furthermore, no past, present or future owner, officer, manager, member, employee or agent of a party to this Agreement shall be personally liable to the City, the Developer or any successor in interest, for any default or breach by the City, Developer or any successor in interest.

Section 904. Right of Access. For the purposes of assuring compliance with this Agreement, representatives of the City shall have the right of access to the Project, without charges or fees, at normal construction hours during the period of construction for purposes strictly related to this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements. Such representatives of the City shall carry proper identification, and shall not in any manner impair, hinder or interfere with the construction activity; provided, however, nothing herein is intended to limit or restrict rights the City has to inspect or otherwise have access to the Project in the performance of its governmental role.

Section 905. No Other Agreement. Except as otherwise expressly provided herein, this Agreement and all documents incorporated herein by reference supersedes all prior agreements, negotiations and discussions, both written and oral, relative to the subject matter of this Agreement and is a full integration of the agreement of the parties.
Section 906. Severability. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable. In no such event shall the validity or enforceability of the remaining valid portions hereof be affected.

Section 907. Amendment to Carry Out Intent. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, the parties shall take such reasonable measures including but not limited to reasonable amendment of this Agreement or the Project Plan to cure such invalidity where the invalidity contradicts the clear intent of the parties in entering into this Agreement.

Section 908. Governing Law; Venue; Attorney Fees. For any claims arising out of this Agreement, performance or non-performance under this Agreement, and for any request or demand for damages resulting from the breach or default under this agreement, the sole and exclusive venue for litigation shall be the District Court in Johnson County, Kansas or the U.S. District Court for the District of Kansas in Kansas City, Kansas. In the event such litigation is filed by one party against another to enforce its rights under this Agreement, the prevailing party, as determined by the Court’s judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted, to the extent permitted by law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas without regard to conflict of laws principles.

Section 909. Notice. All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

To the City:

City of Gardner, Kansas
120 E. Main Street
Gardner, KS 66030
Attn: City Administrator

With copy to:

Kutak Rock LLP
2300 Main Street, Suite 800
Kansas City, MO 64108
Attn: Tyler Ellsworth

To the Developer:

Super Market Developers, Inc.
5000 Kansas Avenue
Kansas City, KS 66106
Attn: General Counsel
or at such other addresses as the parties may indicate in writing to the other either by personal delivery, national recognized overnight courier (e.g., FedEx), or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

**Section 910. Not a Partnership.** The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

**Section 911. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

**Section 912. Recordation of Agreement.** The parties agree to execute and deliver a memorandum of this Agreement in mutually acceptable form for recording in the real property records of Johnson County, Kansas.

**Section 913. Consent or Approval.** Except as otherwise provided in this Agreement, whenever consent or approval of either party is required, such consent or approval shall not be unreasonably withheld.

**Section 914. Survivorship.** Notwithstanding the termination of this Agreement, **Section 503(a), Section 903** and any other terms and conditions which by their nature should survive termination, shall survive the termination of this Agreement.

**Section 915. Incorporation of Exhibits.** The Exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein.

*Remainder of Page Intentionally Left Blank*
IN WITNESS WHEREOF, the City and the Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF GARDNER
a Kansas municipal corporation

By: ____________________________
    Mayor

ATTEST:

____________________________
City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS )
    ) SS.
COUNTY OF JOHNSON )

On this _____________, 201_, before me, a Notary Public in and for said County and State, came Steve Shute, Mayor of the City of Gardner, Kansas, a municipal corporation duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Kansas, and Amy Nasta, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL]

Notary Public in and for said County and State

My Commission Expires: _____________________
SUPER MARKET DEVELOPERS, INC.
a Missouri corporation

By: ____________________________________________
Name: __________________________________________
Title: __________________________________________

ACKNOWLEDGMENT

STATE OF _____________ )
COUNTY OF ____________ ) SS.

On this _____________ ___, 201_, before me appeared ____________________, to me personally known, who, being by me duly sworn did say that he/she is the _________________ of Super Market Developers, Inc., a Missouri corporation, and that said instrument was signed on behalf of said company, and said _________________ acknowledged said instrument to be the free act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL]

________________________________________
Notary Public in and for said County and State

My Commission Expires: _____________________
## EXHIBITS

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<th>Exhibit</th>
<th>Description</th>
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<td>Exhibit A</td>
<td>TIF District Area (legal description)</td>
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<td>Exhibit B</td>
<td>TIF District Plan</td>
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<tr>
<td>Exhibit C</td>
<td>TIF Project Plan for Project Area One</td>
</tr>
<tr>
<td>Exhibit D</td>
<td>TIF Project Area One (legal description)</td>
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<tr>
<td>Exhibit E</td>
<td>TIF Project Area One (map)</td>
</tr>
<tr>
<td>Exhibit F</td>
<td>TIF Project (with TIF Eligible Expenses noted) and CID Project (with CID Eligible Expenses noted)</td>
</tr>
<tr>
<td>Exhibit G</td>
<td>CID Petition, as amended</td>
</tr>
<tr>
<td>Exhibit H</td>
<td>IRB Project</td>
</tr>
<tr>
<td>Exhibit I</td>
<td>Certification of Expenditures</td>
</tr>
<tr>
<td>Exhibit J</td>
<td>Building Elevations</td>
</tr>
</tbody>
</table>
EXHIBIT A
TIF DISTRICT AREA (LEGAL DESCRIPTION)

All of Lot 47, WHITE ACRES, and a part of Lot 1, GAULTCEST REPLAT, and a part of Lot 1, MOONLIGHT PLAZA FIRST PLAT, and all of Lot 1 MOONLIGHT PLAZA CENTER, and all of Lot 1, COUNTRY MART, all being additions to the City of Gardner along with a part of the Southeast Quarter of Section 24, Township 14 South, Range 22 East, in the City of Gardner, Johnson County, Kansas, and being described as follows:

Commencing at the Northeast corner of the Southeast Quarter of said Section 24; thence S 02°07’55” E along the East line of said Southeast Quarter, 1755.65 feet to the centerline of Lincoln Lane extended; thence S 88°27’57” W along said centerline, 235.00 feet to the Northeast corner of said COUNTRY MART, said point being the Point of Beginning;

thence continuing S 88°27’57” W along said centerline extended, 1258.40 feet to a point on the East line of said WHITE ACRES;

thence S 02°05’19” E, along the East line of said WHITE ACRES, 601.53 feet to the Northeast corner of said Lot 47, WHITE ACRES;

thence S 88°04’45” W, along the North line of said Lot 47, 120.00 feet to the Northwest corner thereof;

thence S 01°53’27” E, along the West line of said Lot 47, 103.77 feet to the Southwest corner thereof;

thence N 88°04’45” E, along the South line of said Lot 47, 120.00 feet to the Southeast corner thereof;

thence S 01°53’27” E, along the East line of said WHITE ACRES and the West line of said Lot 1, GAULTCEST REPLAT, 154.00 feet to the Southwest corner of said Lot 1;

thence N 88°24’06” E, along the South line of said Lot 1, GAULTCEST REPLAT, 193.30 feet to a point on the West line of said Lot 1, QUKTRIP STORE NO. 249;

thence N 02°06’59” W, along the West line of said Lot 1, QUKTRIP STORE NO. 249, 298.13 feet to the Northwest corner thereof;

thence N 87°51’18” E, along the North line, 300.09 feet to the Northeast corner of said Lot 1, QUKTRIP STORE NO. 249, said point also being on the West line of said MOONLIGHT PLAZA CENTER;

thence S 02°07’55” E, along said West line, 268.37 feet to the Southwest corner thereof;
thence N 80°31’36” E, along the South line of said MOONLIGHT PLAZA CENTER, 45.37 feet;

thence N 02°07’55” W, along an Easterly line, of said MOONLIGHT PLAZA CENTER, 254.96 feet;

thence N 88°27’57” E, along the Southerly line, 401.00 feet to the Southeast corner of said Lot 1, MOONLIGHT PLAZA CENTER, said point also being the Southwest corner of said Lot 1, COUNTRY MART;

thence departing said Southerly line, S 02°07’55” E through a portion said Lot 1, MOONLIGHT PLAZA FIRST PLAT, 165.44 feet to a point on the US Highway 56 Northerly Right of Way line as described in Deed Book 2564 at Page 398 of the records of said Johnson County;

thence N 75°26’05” E, along said Northerly Right of Way line and Southerly line of said Lot 1, Country Mart, 322.80 feet to the Southwest corner of said COUNTY MART;

thence N 02°07’55” W, along the Easterly line of said COUNTRY MART, 294.00 feet to a corner;

thence N 87°52’05” E along said Easterly line, 5.20 feet to a corner;

thence N 02°07’55” W along said Easterly line, 363.50 feet to the POINT OF BEGINNING.

Said parcel contains 829,705 square feet, or 19.047 acres, more or less, inclusive of existing road and highway right of way.
EXHIBIT B

TIF DISTRICT PLAN

MAIN STREET MARKET PLACE REDEVELOPMENT DISTRICT,
PROJECT AREA 1 DISTRICT PLAN

In order to promote, stimulate and develop the general and economic welfare of the City of Gardner, Kansas (the “City”), the Governing Body of the City on October 15, 2018, passed Ordinance No. 2588 (the “Ordinance”) establishing a redevelopment district (the “District”) pursuant to K.S.A. 12-1770 et seq., as amended (the “Act”).

This plan is the Redevelopment Project Plan for the Main Street Market Place Redevelopment TIF Project Area 1 (the “Project Plan”), located within the District. This Project Plan sets forth the information required by K.S.A. 12-1772, as amended, as follows:

1. **Description of the Buildings and Facilities proposed to be Constructed or Improved.** The Project Plan includes the design, development and construction of: (a) a new grocery store of approximately 60,000 square feet; (b) a pad site to accommodate approximately 3,500 square feet of retail/restaurant use; (c) site improvements; and (d) public improvements, including utility relocations, an access drive, new turn lanes along Main Street, and a new traffic signal. (The herein referenced buildings and improvements are referred to collectively as the “Redevelopment Project”). The Redevelopment Project will be constructed and improved in accordance with the requirements of the City Planning Commission, the City’s Governing Body and City ordinances.

2. **Summary of the Feasibility Study.** As required by the Act, a feasibility study (the “Feasibility Study”) was prepared by Ehlers, Inc. based on projections and estimates. Based on the Feasibility Study, the City anticipates the tax increment from Project Area 1 will generate approximately $5,726,000 in tax increment revenue (over a maximum 20-year period), all or a portion of which will be available to pay Redevelopment Project costs pursuant to the District Plan (as defined herein), the Act, and the terms of a development agreement between the City and the developer of the Redevelopment Project. All Redevelopment Project costs in excess of available tax increment revenues will be paid by the developer or from other available funds. The Redevelopment Project’s benefits and tax increment revenue and other available revenues under subsection (a)(1) of K.S.A. 12-1774, as amended, are expected to exceed or be sufficient to pay for the Redevelopment Project costs. The City is under no obligation to provide financial assistance if the tax increment generated from Project Area 1 does not meet the projections. The entire Feasibility Study is on file with the City Clerk.

There are no outstanding special obligation tax increment bonds for the District and, therefore, the Redevelopment Project costs are not expected to have any effect on outstanding special obligation tax increment bonds payable from revenues described in subsection (a)(1)(D) of K.S.A. 12-1774, as amended.

3. **Redevelopment District Plan and Location of the District.** The Ordinance established the District and approved the district plan described therein (the “District Plan”).
The District is generally located at the northwest corner of E. Main Street and N. Moonlight Road within the City.

4. **Legal Description and Map of Project Area 1.** A legal description of Project Area 1 is attached as *Exhibit A* and a map of the District, with Project Area 1 labeled as “Project 1” and depicted in blue thereon, is attached as *Exhibit B*.

5. **Relocation Assistance Plan.** In the event the City acquires any real property within Project Area 1 in carrying out the provisions of the Act, and that, as a result, any persons, families and businesses move from real property located in Project Area 1 or move personal property from real property located in Project Area 1, the developer of Project Area 1 shall make at least a $500 payment to such persons, families and businesses. No persons or families residing in the District shall be displaced unless and until there is a suitable housing unit available and ready for occupancy by such displaced person or family at rents within their ability to pay. Such housing units shall be suitable to the needs of such displaced persons or families and must be decent, safe, sanitary and otherwise standard dwelling. No retailer shall be relocated from the District. Notwithstanding the foregoing, the City does not anticipate relocation of any persons, families or businesses in connection with the Redevelopment Project.

6. **Other Relevant Information.**

   a. Any reimbursement for Redevelopment Project costs will be made only from tax increment actually received by the City from the District in accordance with the Act. The City will have no responsibility for any other Redevelopment Project costs.

   b. Prior to any reimbursement to private entities for Redevelopment Project costs, such entities shall enter into one or more development agreements with the City identifying the procedure and circumstances under which the City will pay or reimburse Redevelopment Project costs and other requirements of the City pertaining to the development of Project Area 1 and the District.

   c. It is expected that the City will reimburse the developer on a pay-as-you-go basis for that portion and amount of the Redevelopment Project costs agreed upon by the City; provided, however, that the City may consider, in its discretion, the issuance of special obligation tax increment bonds.
EXHIBIT C

TIF PROJECT PLAN FOR PROJECT AREA ONE

[to be inserted]
EXHIBIT D

TIF PROJECT AREA ONE (LEGAL DESCRIPTION)

All of Lot 47, WHITE ACRES, and a part of Lot 1, Gaultcest Replat, and a part of Lot 1, Moonlight Plaza First Plat, and a part of Lot 1 MOONLIGHT PLAZA CENTER, all being additions to the City of Gardner along with a part of the Southeast Quarter of Section 24, Township 14 South, Range 22 East, in the City of Gardner, Johnson County, Kansas, and being described as follows:

Commencing at the Northeast corner of the Southeast Quarter of said Section 24; thence S 02°07’55” E along the East line of said Southeast Quarter, 1755.65 feet to the centerline of Lincoln Lane extended; thence S 88°27’57” W along said centerline, 956.45 feet to the Point of Beginning;

thence continuing S 88°27’57” W along said centerline extended, 536.95 feet to a point on the East line of said WHITE ACRES;

thence S 02°05’19” E, along the East line of said WHITE ACRES, 601.53 feet to the Northeast corner of said Lot 47, WHITE ACRES;

thence S 88°04’45” W, along the North line of said Lot 47, 120.00 feet to the Northwest corner thereof;

thence S 01°53’27” E, along the West line of said Lot 47, 103.77 feet to the Southwest corner thereof;

thence N 88°04’45” E, along the South line of said Lot 47, 120.00 feet to the Southeast corner thereof;

thence S 01°53’27” E, along the East line of said WHITE ACRES and the West line of said Lot 1, GAULTCEST REPLAT, 154.00 feet to the Southwest corner of said Lot 1;

thence N 88°24’06” E, along the South line of said Lot 1, GAULTCEST REPLAT, 193.30 feet to a point on the West line of said Lot 1, QUIKTRIP STORE NO. 249;

thence N 02°06’59” W, along the West line of said Lot 1, QUIKTRIP STORE NO. 249, 298.13 feet to the Northwest corner thereof;

thence N 87°51’18” E, along the North line, 300.09 feet to the Northeast corner of said Lot 1, QUIKTRIP STORE NO. 249, said point also being on the West line of said MOONLIGHT PLAZA CENTER;

thence S 02°07’55” E, along said West line, 268.37 feet to the Southwest corner thereof;
thence N 80°31’36” E, along the South line of said MOONLIGHT PLAZA CENTER, 45.37 feet;

thence N 02°07’55” W, along an Easterly line, of said Lot 1, MOONLIGHT PLAZA CENTER, extended, said line being 45.00 feet east of and parallel with the west line of said MOONLIGHT PLAZA CENTER, 819.86 feet to the Point of Beginning;

EXCEPT the North 40.00 feet thereof dedicated for Lincoln Lane right of way.  
Said parcel contains 361,073 square feet, or 8.289 acres, more or less, exclusive of existing Lincoln Lane right of way.
EXHIBIT E

TIF PROJECT AREA ONE (MAP)
## EXHIBIT F
### TIF PROJECT (WITH ELIGIBLE EXPENSES NOTED) AND CID PROJECT (WITH ELIGIBLE EXPENSES NOTED)

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<tr>
<th>Category</th>
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<th>CID Eligible</th>
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<td>Building Improvements &amp; Soft Costs</td>
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<td>Parking Lot and Lights</td>
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<td><strong>TOTAL PROJECTS 1, 2 AND 3:</strong></td>
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* Total TIF reimbursement shall not exceed the TIF Reimbursable Project Costs Cap and total CID reimbursement shall not exceed the CID Reimbursable Project Costs Cap. Developer may shift amounts among qualified line items but may not shift amounts to lines or columns where no amount is shown.
EXHIBIT G

CID PETITION

[to be inserted]
EXHIBIT H

IRB PROJECT

In Project Area One, the acquisition, construction and equipping of an approximately 60,000 square foot grocery store and one (1) pad site; provided, however, that proceeds of IRBs shall not be used for vertical construction on the pad site.

In Project Area Two, the redevelopment of the existing grocery store into new commercial uses and one (1) pad site; provided, however, that proceeds of IRBs shall not be used for vertical construction on the pad site.
EXHIBIT I

CERTIFICATION OF EXPENDITURES

Date: _____________________
Certificate # ______________

Governing Body of the
City of Gardner, Kansas

In accordance with the Development Agreement for Project Area One in the Main Street Market Place TIF District and CID dated as of _____________, 201_ (the “Agreement”), between the city of Gardner, Kansas (the “City”), and Super Market Developers, Inc. (the “Developer”), the Developer hereby certifies, with respect to all payment amounts requested pursuant to this Certificate to be reimbursed to the Developer, as follows:

1. To the best of my knowledge, all amounts are TIF Eligible Expenses (as defined in the Agreement) □ / CID Eligible Expenses □ (as defined in the Agreement) [check applicable box] that are reimbursable to the Developer pursuant to the Agreement and the Act (as defined in the Agreement).

2. All amounts have been advanced by the Developer for eligible expenses requested in the Certification and represent the fair value of work, materials or expenses.

3. No part of such amounts has been the basis for any previous request for reimbursement under the Agreement.

The Developer further certifies that the Developer is in compliance, in all material respects, with all further terms of the Agreement.

The total amount of reimbursement requested by this Certification is $__________ which amount is itemized on Exhibit 1 attached hereto and which Exhibit 1 includes ____ page(s), is incorporated herein by reference and has been initialed by the authorized representative of the Developer who signed this Certificate.

SUPER MARKET DEVELOPERS, INC.
a Missouri corporation

By: ________________________________
Name: ______________________________
Title: _______________________________
Date: ____________________
Certificate # __________

$__________  Amount of eligible expenses requested by this
              Certification # __________

$__________  Amount of eligible expenses for this
              Certification # __________  Disapproved

$__________  Amount of eligible expenses for this
              Certification # __________  Approved

CITY OF GARDNER, KANSAS

By: ________________________________
Name: ______________________________
Title:  City Administrator
EXHIBIT 1 TO
CERTIFICATION OF EXPENDITURES
(PROJECT AREA ONE IN THE
MAIN STREET MARKET PLACE TIF DISTRICT AND CID)
PAGE ____ OF ____

Date: ___________________
Certificate # ____________

Description of Expense (attach additional supporting documentation)  Amount of Expense

$_

$_

$_

$_

$_

Total Expenses  $_

__

Initials of Developer
Discussion Item: Consider a petition for the formation of a benefit district for a sanitary lift station and related site improvements to serve the Tuscan Farms residential development and adopt a resolution determining the advisability of certain internal improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvements in accordance with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Tuscan Farm sanitary lift station special benefit district).

Strategic Priority: Promote Economic Development, Fiscal Stewardship, Quality of Life, Infrastructure and Asset Management

Department: Finance

Staff Recommendation:
Adopt a resolution determining the advisability of certain internal improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvements in accordance with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Tuscan Farm sanitary lift station special benefit district).

Background/Description of Item:
The developer/property owner for the proposed Tuscan Farms residential development has petitioned the City for the creation of a Special Benefit District for installation of a sanitary sewer lift station and related site improvements.

Tuscan Farms is an 82 acre multi-phase residential development that at full build out will contain 208 single-family lots, 7 of the lots are over a half acre in size providing space for estate homes and 14 quads or 4 plex’s, which equates to 56 additional rental units. Amenities include a clubhouse, pool, small open space playground area and a walking trail along the west end.

The construction of the first phase includes 40 single-family lots and the clubhouse area. The home values will be starting at approximately $250,000 and will increase on the larger lots. The quad units will be maintenance provided, freeing the renter from mowing and snow removal.

To help mitigate risk to the City, the developer is providing an irrevocable letter of credit in the amount of $339,000. The letter of credit will expire after the completion of residences on twenty lots within the northern portion of the Tuscan Farm First Plat. The City can draw on all or part of the total amount of credit in the event of a delinquency in the payment of special assessments for the project.

The maximum cost of the improvements for the improvement district is $1,325,000, including the costs of issuance for temporary notes and long-term bonds and the interest expense on temporary notes. The cost of the improvements will be assessed one-hundred percent (100%) against the
improvement district and zero percent (0%) to be paid by the City at large. The proposed term of the improvement district is 15 years.

Attachments:
- Petition for Tuscan Farm Sanitary Lift Station
- Resolution No. 2012

Suggested Motion:
Adopt Resolution No. 2012 determining the advisability of certain internal improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvements in accordance with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Tuscan Farm sanitary lift station special benefit district).
TO: The City of Gardner, Kansas

The undersigned, being the owner of record of 100% of the property liable for assessment for the proposed improvements described herein to be located within the City, hereby submits a petition (the “Petition”) to the City to create a special improvement district, authorize the construction of the proposed public improvements hereinafter set forth, and collect special assessments all in the manner provided by K.S.A §12-6a01 et seq. (the “Act”). In furtherance of such request, the petitioner states as follows:

(A) The improvement proposed to be made in the City of Gardner, Kansas, is as follows:

The project includes (i) installation of sanitary sewer lift station, approximately 2,540 L.F. of 8” force main, wet well, electrical generator and power lines, manhole(s), meters, and related improvements, and (ii) 12’ wide gravel access road, fencing, gates, seeding, restoration, and all related improvements; City administrative costs; and legal fees (collectively, the “Improvements”).

(B) The maximum cost of the Improvements attributable to the proposed improvement district is $1,325,000, including the costs of issuance of temporary notes and long-term bonds and the interest expense on temporary notes.

(C) The extent of the improvement district proposed to be assessed for the costs of the proposed Improvements is: See legal description and boundary map attached as Exhibit A.

(D) The method of assessment is: the costs of the Improvements shall be assessed against all of the property in the improvement district equally per square foot excluding those areas dedicated as public right of way, public parks, storm water retention or detention areas, association common areas, publicly owned easements or similar areas not containing residences. The proposed term of the improvement district is 15 years.

(E) The apportionment of the cost of the improvements, between the improvement district and the city-at-large, is: one-hundred percent (100%) to be assessed against the improvement district and zero percent (0%) to be paid by the city-at-large.

The undersigned acknowledge that:

(1) This Petition is submitted pursuant to subsection (c) of K.S.A. 12-6a04 and amendments thereto;

(2) The proposed improvement district does not include all properties which may be deemed to benefit from the proposed improvements; and
(3) The name(s) of the undersigned may not be withdrawn from this Petition by the undersigned after the governing body commences consideration of the petition or later than seven (7) days after the filing of the Petition with the City Clerk, whichever occurs first.

The undersigned requests that the improvements be made without notice and hearing as provided by K.S.A. 12-6a04(c)(7), as amended.

The remainder of this page is intentionally left blank. Signature pages follow.
IN WITNESS WHEREOF, the undersigned petitioner(s) has executed the above this Petition to create the Improvement District on the date recorded below.

<table>
<thead>
<tr>
<th>Signature</th>
<th>Printed or Typed Name</th>
<th>Residence</th>
<th>Date of Signature</th>
<th>Property Owned Within Improvement District</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Signature]</td>
<td>Chad Burkdoll</td>
<td>4146 Hamilton Rd., Rantoul, KS 66079</td>
<td>2-11-19</td>
<td>Parcel Nos. CF221502-3001, CF221502-3011, CF221502-3013, 2F221502-4009, 2F221502-4007, 2F221502-4001</td>
</tr>
</tbody>
</table>

Verification

The undersigned hereby certifies that I circulated the petition and personally witnessed the signing of the petition by each person whose name appears thereon.

[Signature]

Subscribed and sworn to before me this 11th day of February, 2019.

[Seal]
Notary Public in and for said County and State

My Commission Expires: 12-7-20

THIS PETITION filed in my office the ___ day of __________, 2019.

THIS PETITION examined, considered and found sufficient by the governing body of the City of Gardner, Kansas, this ____ day of __________, 2019.

[Seal]
City Clerk

*************

---

091187/575891-61279194.3
Legal Description: Tuscan Farm

All that part of Section 2, Township 15, Range 22 in the City of Gardner, Johnson County, Kansas, described as follows:

Commencing at the Southeast corner of the Southeast quarter of said Section 2; thence North 2 degrees 49 minutes 15 seconds West, along the East Line of the Southeast quarter of said Section 2, a distance of 1321.88 feet to the point of beginning; thence South 88 degrees 19 minutes 16 seconds West, along the North lines of Lot 9, Freunds and Neighbors II, a subdivision in Johnson County, Kansas and Lots 4 through 8, Freunds and Neighbors, a subdivision in Johnson County, Kansas, a distance of 2,655.23 feet, to a point on the West Line of said Section 2; thence North 2 degrees 22 minutes 48 seconds West, along said West Line, a distance of 1318.21 feet, to a point on KDOT right-of-way; thence North 54 degrees 23 minutes 53 seconds East, along said KDot Right-of-way, a distance of 18.47 feet; thence North 52 degrees 01 minutes 54 seconds East, along said KDot Right-of-way, a distance of 292.85 feet; thence North 46 degrees 59 minutes 42 seconds East, along said KDot Right-of-way, a distance of 20.94 feet; thence North 34 degrees 47 minutes 25 seconds East, along said KDot Right-of-way, a distance 108.18 feet; thence North 89 degrees 00 minutes 13 seconds East, a distance of 1,376.19 feet, to a point on the West line of Nike School, a subdivision in the City of Gardner, Johnson County, Kansas; thence South 2 degrees 48 minutes 54 seconds East, along said West Line of Nike School, a distance of 608.79 feet; thence North 87 degrees 11 minutes 06 seconds East, along the South Line of said Nike School, a distance of 932.13, to a point on the East Line of said Section 2; thence South 2 degrees 49 minutes 15 seconds East, along said East Line of Section 2, a distance of 996.18 feet, to the point of beginning, containing 82.80 acres more or less.
RESOLUTION NO. 2012

A RESOLUTION DETERMINING THE ADVISABILITY OF CERTAIN INTERNAL IMPROVEMENTS IN THE CITY OF GARDNER, KANSAS, AND AUTHORIZING AND PROVIDING FOR THE MAKING OF SUCH IMPROVEMENTS IN ACCORDANCE WITH THE FINDINGS OF THE GOVERNING BODY AND K.S.A. 12-6a01 ET SEQ. (TUSCAN FARM SANITARY LIFT STATION SPECIAL BENEFIT DISTRICT)

WHEREAS, K.S.A. 12-6a02 authorizes the governing body of any city to make or cause to be made municipal works or improvements which confer a special benefit upon property within a definable area of the city and to levy and collect special assessments upon property in the area deemed by the governing body to be benefited by such improvements for special benefits conferred upon such property by any such improvements and to provide for the payment of all or any part of the costs of the improvements with the proceeds of such special assessments;

WHEREAS, a petition, executed by 100% of the owners of property within the proposed improvement district, has been filed with the City Clerk of the City of Gardner, Kansas (the “City”), requesting certain improvements be made in accordance with K.S.A. 12-6a01 et seq.;

WHEREAS, K.S.A. 12-6a04(d) provides that upon receipt of a petition filed with the City Clerk in accordance with K.S.A. 12-6a04(c), the Governing Body of the City may (a) make findings by resolution as to the advisability of the improvements requested in the petition, the nature of the improvements, the estimated cost, the boundaries of the improvement district, the method of assessment and apportionment of cost, if any, between the improvement district and the city-at-large and (b) order the improvements without notice or public hearing; and

WHEREAS, the Governing Body finds it necessary to make its final findings by resolution as to the advisability of the proposed improvements and finds and determines it necessary to authorize the improvements;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:

SECTION 1. The Governing Body finds and finally determines that:

(a) It is advisable to make the following improvements:

(i) installation of sanitary sewer lift station, approximately 2,540 L.F. of 8” force main, wet well, electrical generator and power lines, manhole(s), meters, and related improvements, and (ii) 12’ wide gravel access road, fencing, gates, seeding, restoration, and all related improvements; City administrative costs; and legal fees.
(b) The maximum estimated or probable cost of the proposed improvements is: $1,325,000, including the costs of issuance of temporary notes and long-term bonds and the interest expense on temporary notes.

(c) The boundaries of the proposed improvement district are as described on the attached Exhibit A.

(d) The method of assessment is: the costs of the improvements shall be assessed against all of the property in the improvement district equally per square foot excluding those areas dedicated as public right of way, public parks, storm water retention or detention areas, association common areas, publicly owned easements or similar areas not containing residences.

(e) The apportionment of the cost of the improvements, between the improvement district and the city-at-large, is: 100% to be assessed against the improvement district and 0% to be paid by the city-at-large.

(f) The improvement district does not include all the property which may be deemed to be benefited by the proposed improvements.

(g) The persons or entities who signed the petition are willing to pay the costs of the proposed improvements as set forth in the petition.

SECTION 2. The improvements are authorized and ordered to be made in accordance with the findings of the Governing Body as set forth in Section 1 of this Resolution. General obligation bonds or notes are authorized to be issued in an aggregate amount not exceeding the estimated cost of the improvements, and the proceeds from such notes or bonds may be used to reimburse expenditures made by the City 60 days before and during the time after the date of this Resolution in accordance with United States Treasury Regulation 1.150-2.

SECTION 3. This Resolution shall be published one time in the official City newspaper, and shall also be filed of record in the office of the Register of Deeds of Johnson County, Kansas.

[remainder of page left blank intentionally]
ADOPTED by the Governing Body of the City of Gardner, Kansas, on February 18, 2019.

CITY OF GARDNER, KANSAS

(Seal)

ATTEST:

______________________________
City Clerk

______________________________
Mayor
EXHIBIT A

BOUNDARIES OF PROPOSED IMPROVEMENT DISTRICT

All that part of Section 2, Township 15, Range 22 in the City of Gardner, Johnson County, Kansas, described as follows:

Commencing at the Southeast corner of the Southeast quarter of said Section 2; thence North 2 degrees 49 minutes 15 seconds West, along the East Line of the Southeast quarter of said Section 2, a distance of 1321.88 feet to the point of beginning; thence South 88 degrees 19 minutes 16 seconds West, along the North lines of Lot 9, Freunds and Neighbors II, a subdivision in Johnson County, Kansas and Lots 4 through 8, Freunds and Neighbors, a subdivision in Johnson County, Kansas, a distance of 2,655.23 feet, to a point on the West Line of said Section 2; thence North 2 degrees 22 minutes 48 seconds West, along said West Line, a distance of 1318.21 feet, to a point on KDOT right-of-way; thence North 54 degrees 23 minutes 53 seconds East, along said KDOT Right-of-way, a distance of 18.47 feet; thence North 52 degrees 01 minutes 54 seconds East, along said KDOT Right-of-way, a distance of 292.85 feet; thence North 46 degrees 59 minutes 42 seconds East, along said KDOT Right-of-way, a distance of 20.94 feet; thence North 34 degrees 47 minutes 25 seconds East, along said KDOT Right-of-way, a distance of 108.18 feet; thence North 89 degrees 00 minutes 13 seconds East, a distance of 1,376.19 feet, to a point on the West line of Nike School, a subdivision in the City of Gardner, Johnson County, Kansas; thence South 2 degrees 48 minutes 54 seconds East, along said West Line of Nike School, a distance of 608.79 feet; thence North 87 degrees 11 minutes 06 seconds East, along the South Line of said Nike School, a distance of 932.13, to a point on the East Line of said Section 2; thence South 2 degrees 49 minutes 15 seconds East, along said East Line of Section 2; a distance of 996.18 feet, to the point of beginning; containing 82.80 acres more or less.
COUNCIL ACTION FORM

MEETING DATE: FEBRUARY 18, 2019
STAFF CONTACT: MATTHEW WOLFF, CPFO
Finance Director

NEW BUSINESS ITEM NO. 5

Discussion Item: Consider a petition for the formation of a benefit district for certain infrastructure improvements to serve the Tuscan Farms residential development and adopt a resolution determining the advisability of certain internal improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvement in accordance with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Tuscan Farm Phase I Infrastructure special benefit district)

Strategic Priority: Promote Economic Development, Fiscal Stewardship, Quality of Life, Infrastructure and Asset Management

Department: Finance

Staff Recommendation:
Adopt a resolution determining the advisability of the making of certain internal improvements in the City of Gardner, Kansas setting forth certain findings in accordance with K.S.A. 12-6a04: authorizing and providing for the making of improvement in accordance with the findings of the Governing Body in the improvement district.

Background/Description of Item:
The developer/property owner for the proposed Tuscan Farms residential development has petitioned the City for the creation of a special benefit district for construction of an internal collector and local streets shown on Tuscan Farm First Plat, which will include curbs and gutters; asphaltic pavement surfacing, sidewalks; sanitary sewers; storm drainage facilities; water mains; electric utilities; and other site related improvements.

Tuscan Farms is an 82 acre multi-phase residential development that at full build out will contain 208 single-family lots, 7 of the lots are over a half acre in size providing space for estate homes and 14 quads or 4plex’s, which equates to 56 additional rental units. Amenities include a clubhouse, pool, small open space playground area and a walking trail along the west end.

The construction of the first phase includes 40 single-family lots and the clubhouse area. The home values will be starting at approximately $250,000 and will increase on the larger lots. The quad units will be maintenance provided, freeing the renter from mowing and snow removal.

To help mitigate risk to the City, the developer is providing an irrevocable letter of credit in the amount of $339,000. The letter of credit will expire after the completion of residences on twenty lots within the northern portion of the Tuscan Farm First Plat. The City can draw on all or part of the total amount of credit in the event of a delinquency in the payment of special assessments for the project.

The maximum cost of the improvements for the improvement district is $2,620,000, including the costs of issuance for temporary notes and long-term bonds and the interest expense on temporary
notes. The cost of the improvements will be assessed one-hundred percent (100%) against the improvement district and zero percent (0%) to be paid by the City at large. The proposed term of the improvement district is 15 years.

Attachments:
- Petition for Tuscan Farm Phase I Infrastructure
- Resolution No. 2013

Suggested Motion:
Adopt Resolution No. 2013 determining the advisability of certain internal improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvement in accordance with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Tuscan Farm Phase I Infrastructure special benefit district
TO: The City of Gardner, Kansas

The undersigned, being the owner of record of 100% of the property liable for assessment for the proposed improvements described herein to be located within the City, hereby submits a petition (the “Petition”) to the City to create a special improvement district, authorize the construction of the proposed public improvements hereinafter set forth, and collect special assessments all in the manner provided by K.S.A §12-6a01 et seq. (the “Act”). In furtherance of such request, the petitioner states as follows:

(A) The improvement proposed to be made in the City of Gardner, Kansas, is as follows:

Construction of internal collector and local streets shown on Tuscan Farm First Plat, which will include curbs and gutters; asphaltic pavement surfacing; sidewalks; sanitary sewers; storm drainage facilities; water mains; electric utilities; preliminary and final engineering; survey; staking; grading; erosion control; construction supervision/inspection; testing; and other related improvements; City administrative costs; and legal fees (collectively, the “Improvements”).

(B) The maximum cost of the Improvements attributable to the proposed improvement district is $2,620,000, including the costs of issuance of temporary notes and long-term bonds and the interest expense on temporary notes.

(C) The extent of the improvement district proposed to be assessed for the costs of the proposed Improvements is: See legal description and boundary map attached as Exhibit A.

(D) The method of assessment is: the costs of the Improvements shall be assessed against all of the property in the improvement district equally per square foot excluding those areas dedicated as public right of way, public parks, storm water retention or detention areas, association common areas, publicly owned easements or similar areas not containing residences. The proposed term of the improvement district is 15 years.

(E) The apportionment of the cost of the improvements, between the improvement district and the city-at-large, is: one-hundred percent (100%) to be assessed against the improvement district and zero percent (0%) to be paid by the city-at-large.

The undersigned acknowledge that:

(1) This Petition is submitted pursuant to subsection (c) of K.S.A. 12-6a04 and amendments thereto;

(2) The proposed improvement district does not include all properties which may be deemed to benefit from the proposed improvements; and
(3) The name(s) of the undersigned may not be withdrawn from this Petition by the undersigned after the governing body commences consideration of the petition or later than seven (7) days after the filing of the Petition with the City Clerk, whichever occurs first.

The undersigned requests that the improvements be made without notice and hearing as provided by K.S.A. 12-6a04(c)(7), as amended.

The remainder of this page is intentionally left blank. Signature pages follow.
IN WITNESS WHEREOF, the undersigned petitioner(s) has executed the above this Petition to create the Improvement District on the date recorded below.

<table>
<thead>
<tr>
<th>Signature</th>
<th>Printed or Typed Name</th>
<th>Residence</th>
<th>Date of Signature</th>
<th>Property Owned Within Improvement District</th>
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</tr>
</tbody>
</table>

Verification

The undersigned hereby certifies that I circulated the petition and personally witnessed the signing of the petition by each person whose name appears thereon.

Signature

Subscribed and sworn to before me this 11th day of February, 2019.

Notary Public in and for said County and State

[Seal] My Commission Expires: 12-7-20

THIS PETITION filed in my office the ___ day of __________, 2019.

THIS PETITION examined, considered and found sufficient by the governing body of the City of Gardner, Kansas, this ___ day of __________, 2019.

City Clerk

*******************************************************************************
Exhibit A

Legal Description and Boundary Map

Tuscan Farm 1st Plat – Phase 1

Legal Description

This is a survey and subdivision of a part of the Southeast Quarter of Section 02, Township 15, Range 22 East, now in the City of Gardner, Johnson County, Kansas, described as follows: Commencing at the Southeast corner of the Southeast quarter of said Section 2; thence North 02 degrees 49 minutes 15 seconds West, along the East line of the Southeast Quarter of said Section 2, a distance of 1992.91 feet, to the Point of Beginning; thence South 87 degrees 10 minutes 45 seconds West, a distance of 153.10 feet; thence South 87 degrees 10 minutes 45 seconds West, a distance of 570.70 feet; thence South 85 degrees 33 minutes 26 seconds West, a distance of 57.92 feet; thence South 64 degrees 49 minutes 17 seconds West, a distance of 261.37 feet; thence on a northwesterly curve having an initial tangent bearing North 26 degrees 43 minutes 38 Seconds West, Delta 11 degrees 35 minutes 31 seconds, a radius of 600.00 feet, a distance of 121.39 feet; thence on a curve to the Northeast having a radius of 14.00 feet, delta 93 degrees 01 minutes 26 seconds, a distance of 22.73 feet; thence North 42 degrees 39 minutes 45 seconds West, a distance of 50.32 feet; thence on northeasterly curve, having an initial tangent bearing of North 53 degrees 02 minutes 52 seconds East, a delta of 12 degrees 24 minutes 32 seconds, a radius of 225.00 feet, a distance of 48.73 feet; thence North 65 degrees 27 minutes 27 seconds East, a distance of 27.99 feet; thence North 27 degrees 32 minutes 02 seconds West, a distance of 156.08 feet; thence North 10 degrees 18 minutes 17 seconds West, a distance of 96.95 feet; thence North 28 degrees 35 minutes 10 seconds East, a distance of 40.98 feet; thence North 2 degrees 48 minutes 54 seconds West, a distance of 210.39 feet; thence North 87 degrees 11 minutes 06 seconds East, a distance of 39.85 feet; thence North 2 degrees 48 minutes 54 seconds West, a distance of 135.42 feet; thence South 86 degrees 47 minutes 30 seconds West, a distance of 68.13 feet; thence North 79 degrees 11 minutes 42 seconds West, a distance of 57.04 feet; thence North 1 degree 35 minutes 08 seconds West, a distance of 203.83 feet; thence North 89 degrees 00 minutes 13 seconds East, a distance of 386.77 feet, to a point on the West line of Nike School, a subdivision in the City of Gardner, Johnson County, Kansas; thence South 2 degrees 48 minutes 54 seconds East, along the West line of said Nike School a distance of 608.79 feet; thence North 87 degrees 11 minutes 06 seconds East, along the South line of said Nike School, a distance of 932.13, to a point on the East line of the said Southeast Quarter of Section 2; thence South 2 degrees 49 minutes 15 seconds East, along said East Line of Section 2, a distance of 325.16 feet, to the point of beginning, having 13.79 acres more or less.
RESOLUTION NO. 2013

A RESOLUTION DETERMINING THE ADVISABILITY OF CERTAIN INTERNAL IMPROVEMENTS IN THE CITY OF GARDNER, KANSAS, AND AUTHORIZING AND PROVIDING FOR THE MAKING OF SUCH IMPROVEMENTS IN ACCORDANCE WITH THE FINDINGS OF THE GOVERNING BODY AND K.S.A. 12-6a01 ET SEQ. (TUSCAN FARM PHASE I INFRASTRUCTURE SPECIAL BENEFIT DISTRICT)

WHEREAS, K.S.A. 12-6a02 authorizes the governing body of any city to make or cause to be made municipal works or improvements which confer a special benefit upon property within a definable area of the city and to levy and collect special assessments upon property in the area deemed by the governing body to be benefited by such improvements for special benefits conferred upon such property by any such improvements and to provide for the payment of all or any part of the costs of the improvements with the proceeds of such special assessments;

WHEREAS, a petition, executed by 100% of the owners of property within the proposed improvement district, has been filed with the City Clerk of the City of Gardner, Kansas (the “City”), requesting certain improvements be made in accordance with K.S.A. 12-6a01 et seq.;

WHEREAS, K.S.A. 12-6a04(d) provides that upon receipt of a petition filed with the City Clerk in accordance with K.S.A. 12-6a04(c), the Governing Body of the City may (a) make findings by resolution as to the advisability of the improvements requested in the petition, the nature of the improvements, the estimated cost, the boundaries of the improvement district, the method of assessment and apportionment of cost, if any, between the improvement district and the city-at-large and (b) order the improvements without notice or public hearing; and

WHEREAS, the Governing Body finds it necessary to make its final findings by resolution as to the advisability of the proposed improvements and finds and determines it necessary to authorize the improvements;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:

SECTION 1. The Governing Body finds and finally determines that:

(a) It is advisable to make the following improvements:

Construction of internal collector and local streets shown on Tuscan Farm First Plat, which will include curbs and gutters; asphaltic pavement surfacing; sidewalks; sanitary sewers; storm drainage facilities; water mains; electric utilities; preliminary and final engineering; survey; staking; grading; erosion control; construction supervision/inspection; testing; and other related improvements; City administrative costs; and legal fees.
(b) The maximum estimated or probable cost of the proposed improvements is: $2,620,000, including the costs of issuance of temporary notes and long-term bonds and the interest expense on temporary notes.

(c) The boundaries of the proposed improvement district are as described on the attached Exhibit A.

(d) The method of assessment is: the costs of the improvements shall be assessed against all of the property in the improvement district equally per square foot excluding those areas dedicated as public right of way, public parks, storm water retention or detention areas, association common areas, publicly owned easements or similar areas not containing residences.

(e) The apportionment of the cost of the improvements, between the improvement district and the city-at-large, is: 100% to be assessed against the improvement district and 0% to be paid by the city-at-large.

(f) The improvement district does not include all the property which may be deemed to be benefited by the proposed improvements.

(g) The persons or entities who signed the petition are willing to pay the costs of the proposed improvements as set forth in the petition.

SECTION 2. The improvements are authorized and ordered to be made in accordance with the findings of the Governing Body as set forth in Section 1 of this Resolution. General obligation bonds or notes are authorized to be issued in an aggregate amount not exceeding the estimated cost of the improvements, and the proceeds from such notes or bonds may be used to reimburse expenditures made by the City 60 days before and during the time after the date of this Resolution in accordance with United States Treasury Regulation 1.150-2.

SECTION 3. This Resolution shall be published one time in the official City newspaper, and shall also be filed of record in the office of the Register of Deeds of Johnson County, Kansas.

[remainder of page left blank intentionally]
ADOPTED by the Governing Body of the City of Gardner, Kansas, on February 18, 2019.

CITY OF GARDNER, KANSAS

(Seal)

ATTEST:

____________________________________
City Clerk
EXHIBIT A

BOUNDARIES OF PROPOSED IMPROVEMENT DISTRICT

This is a survey and subdivision of a part of the Southeast Quarter of Section 02, Township 15, Range 22 East, now in the City of Gardner, Johnson County, Kansas, described as follows: Commencing at the Southeast corner of the Southeast quarter of said Section 2; thence North 02 degrees 49 minutes 15 seconds West, along the East line of the Southeast Quarter of said Section 2, a distance of 1992.91 feet, to the Point of Beginning; thence South 87 degrees 10 minutes 45 seconds West, a distance of 153.10 feet; thence North 86 degrees 42 minutes 20 seconds West, a distance of 140.80 feet; thence South 87 degrees 10 minutes 45 seconds West, a distance of 570.70 feet; thence South 85 degrees 33 minutes 26 seconds West, a distance of 57.92 feet; thence South 64 degrees 49 minutes 17 seconds West, a distance of 261.37 feet; thence on a northwesterly curve having an initial tangent bearing North 26 degrees 43 minutes 38 Seconds West, Delta 11 degrees 35 minutes 31 seconds, a radius of 600.00 feet, a distance of 121.39 feet; thence on a curve to the Northeast having a radius of 14.00 feet, delta 93 degrees 01 minutes 26 seconds, a distance of 22.73 feet; thence North 42 degrees 39 minutes 45 seconds West, a distance of 50.32 feet; thence on northeasterly curve, having an initial tangent bearing of North 53 degrees 02 minutes 52 seconds East, a delta of 12 degrees 24 minutes 32 seconds, a radius of 225.00 feet, a distance of 48.73 feet; thence North 65 degrees 27 minutes 27 seconds East, a distance of 27.99 feet; thence North 27 degrees 32 minutes 02 seconds West, a distance of 156.08 feet; thence North 10 degrees 18 minutes 17 seconds West, a distance of 96.95 feet; thence North 28 degrees 35 minutes 10 seconds East, a distance of 40.98 feet; thence North 2 degrees 48 minutes 54 seconds West, a distance of 210.39 feet; thence North 87 degrees 11 minutes 06 seconds East, a distance of 39.85 feet; thence North 2 degrees 48 minutes 54 seconds West, a distance of 135.42 feet; thence South 86 degrees 47 minutes 30 seconds West, a distance of 68.13 feet; thence North 79 degrees 11 minutes 42 seconds West, a distance of 57.04 feet; thence North 1 degree 35 minutes 08 seconds West, a distance of 203.83 feet; thence North 89 degrees 00 minutes 13 seconds East, a distance of 386.77 feet, to a point on the West line of Nike School, a subdivision in the City of Gardner, Johnson County, Kansas; thence South 2 degrees 48 minutes 54 seconds East, along the West line of said Nike School a distance of 608.79 feet; thence North 87 degrees 11 minutes 06 seconds East, along the South line of said Nike School, a distance of 932.13, to a point on the East line of the said Southeast Quarter of Section 2; thence South 2 degrees 49 minutes 15 seconds East, along said East Line of Section 2, a distance of 325.16 feet, to the point of beginning, having 13.79 acres more or less.
COUNCIL ACTION FORM

NEW BUSINESS ITEM NO. 6

MEETING DATE: FEBRUARY 18, 2019
STAFF CONTACT: MATTHEW WOLFF, CPFO
FINANCE DIRECTOR

Agenda Item: Consider adopting a resolution establishing an account with the State of Kansas Municipal Investment Pool and repealing all other resolutions not in conformity herewith.

Department: Finance

Staff Recommendation:
Adopt a resolution of the establishing an account with the State of Kansas Municipal Investment Pool and repealing all other resolutions not in conformity herewith.

Background/Description of Item:
The City of Gardner uses the State of Kansas Municipal Investment Pool for the purpose of investing debt proceeds. When establishing or making changes to an account, the State requires the City to designate by resolution the persons authorized to conduct business for the City.

Due to the appointment of Matthew Wolff as the Finance Director for the City of Gardner, the persons authorized to conduct business on behalf of the City have changed, necessitating an update to the current resolution.

The proposed resolution identifies three authorized individuals: Senior Accountant Jackie Schulz, Fiscal Services Manager Nancy Torneden, and Finance Director Matthew Wolff.

This resolution will supersede all previous resolutions not in conformity herewith.

Attachments:
- Resolution 2014

Suggested Motion:
Adopt Resolution 2014 a resolution of the City of Gardner, Kansas establishing an account with the State of Kansas Municipal Investment Pool and repealing all other resolutions not in conformity herewith.
Resolution No. 2014

A RESOLUTION OF THE CITY OF GARDNER, KANSAS ESTABLISHING AN ACCOUNT WITH THE STATE OF KANSAS MUNICIPAL INVESTMENT POOL AND REPEALING ALL OTHER RESOLUTIONS NOT IN CONFORMITY HEREWITH

WHEREAS, the undersigned is a municipality (the “Depositor”), as defined in K.S.A. 12-1675, as amended, and from time to time has funds on hand in excess of current needs; and

WHEREAS, it is the best interest of the Depositor and its inhabitants to invest funds in investments that yield a favorable rate of return while providing the necessary liquidity and protection of the principal; and

WHEREAS, the Pooled Money Investment Board (the “PMIB”) operates the Municipal Investment Pool (MIP), a public funds investment pool, pursuant to Chapter 254 of the 1996 Session Laws of Kansas, and amendments thereto

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GARDNER KANSAS, AS FOLLOWS:

SECTION 1.

A. The Municipality designated below approves the establishment of an account in its name in the MIP for the purpose of transmitting funds for investment, subject to the MIP Participation Policy adopted by the Pooled Money Investment Board, and municipality acknowledges it has received a current copy of such Participation Policy. The Depositor’s taxpayer identification number assigned by the Internal Revenue Service is 48-6033380.

B. The following individuals, whose signatures appear directly below, are officers or employees of the Depositor and are each hereby authorized to transfer funds for investment in the MIP and are each authorized to withdraw funds, to issue letters of instruction, and to take all other actions deemed necessary or appropriate for the investment of funds.

Name: _____Jackie Schulz_______  Title: ____Senior Accountant____

Signature:____________________________________

Name: _____Nancy Torneden______  Title: ____Fiscal Services Manager____

Signature:____________________________________

Name: _____Matthew Wolff_______  Title: ____Finance Director____

Signature:____________________________________

C. Notice required by the PMIB’s Municipal Investment Pool Participant Policy shall be provided to:

Contact Person:_____ Jackie Schulz_________________
D. That this Resolution and its authorization shall continue in full force and effect until amended or revoked by the Participant and until the PMIB receives a copy of any such amendment or revocation, the PMIB is entitled to rely on the same.

SECTION 2.

A. All other Resolutions not in conformity herewith are hereby repealed.

ADOPTED by the Governing Body of the City of Gardner, Kansas, on February 18, 2019

CITY OF GARDNER, KANSAS

By_________________________________
   Steve Shute, Mayor
(SEAL)

Attest:

___________________________________
Amy Nasta, City Clerk
Agenda Item: Consider adopting an ordinance amending Title 14 – Floodplain and Stormwater Management, adopting Chapter 14.01 and repealing Chapter 14.10, relating to floodplain and stormwater management, of the Gardner Municipal Code

Strategic Priority: Infrastructure and Asset Management

Department: Public Works

Staff Recommendation:
Staff recommends that the City Council approve an ordinance amending Title 14 – Floodplain and Stormwater Management, adopting Chapter 14.01 and repealing Chapter 14.10, relating to floodplain and stormwater management, of the Gardner Municipal Code

Background/Description of Item:
The U.S. Environmental Protection Agency (EPA) requires all cities with population greater than 10,000 to meet the Phase II requirements of the National Pollutant Discharge Elimination System (NPDES). The NPDES is administered locally by the Kansas Department of Health and Environment (KDHE). In 2015 the City of Gardner applied for and was issued a “General Municipal Separate Storm Sewer System Permit” by KDHE which authorizes stormwater discharge into waters of the state from the City’s stormwater collection system.

As a new permittee, the City has several requirements to satisfy the permit that are phased in over a multi-year period. One of the requirements of the permit is for the City to adopt an ordinance that addresses construction stormwater management and post-construction stormwater management. This ordinance provides the necessary tools for the City to minimize adverse water quality impacts resulting from stormwater runoff from construction sites. It also provides requirements for new development and redevelopment sites to provide ongoing stormwater management.

Attachments included:
- Ordinance 2603

Suggested Motion:
ORDINANCE NO. 2603

AN ORDINANCE AMENDING TITLE 14 – FLOODPLAIN AND STORMWATER MANAGEMENT, ADOPTING CHAPTER 14.01 AND REPEALING CHAPTER 14.10, RELATING TO FLOODPLAIN AND STORMWATER MANAGEMENT, OF THE GARDNER MUNICIPAL CODE.

WHEREAS, the Governing Body of the City of Gardner, Kansas has determined that it is necessary to amend existing regulations and adopt additional regulations for stream corridor, stormwater management, erosion and sediment control and land improvements affecting and related to stormwater management; and

WHEREAS, the Governing Body of the City of Gardner, Kansas, has determined that it is in the public interest to adopt the Stormwater Management Ordinance to properly balance productive land use of land and the preservation of a safe and beneficial environment to promote the public health, safety, and welfare of the residents of the City of Gardner, Kansas; and

WHEREAS, the Governing Body of the City of Gardner, Kansas, finds that the adoption of the Stormwater Management Ordinance and corresponding amendments to and updating of the provisions of Title 14 of the Municipal Code of the City of Gardner meet the goals and requirements of the Clean Water Act and further the public health, safety and welfare as more fully described herein below.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:

SECTION 1: Chapter 14.01, Stormwater Management, of the Code of the City of Gardner, Kansas, shall be adopted to provide as follows:

Chapter 14.01
STORMWATER MANAGEMENT

Sections:

14.01.100 General
14.01.200 Stormwater Management System
14.01.300 Stream Corridor Requirements
14.01.400 Stormwater Management Plans
14.01.500 Design Criteria and Performance Standards
14.01.600 Land Disturbance and Erosion and Sediment Control
14.01.700 Post Construction Stormwater Treatment

14.01.100 General.

These regulations shall hereafter be known, cited, and referred to as the “Stormwater Management Ordinance” of the City.

14.01.101 Applicability.

The provisions of this Chapter shall extend and apply to all land within the corporate limits of the City. Any Person, firm, corporation or business proposing to construct buildings or develop land within the City shall make application to the City Engineer for approval of a Stormwater Management Plan and issuance of a Land Disturbance Permit as specified in this Chapter.

14.01.102 Interpretations.

The provisions of this Chapter are intended to supplement existing zoning and land use ordinances of the City. The provisions herein shall be interpreted and applied as the minimum requirements for the promotion of the public health, safety and general welfare in the City.

In addition to the provisions of this Chapter, any development or land disturbance within the regulatory Floodplain as shown on the National Flood Insurance Program maps as developed for the City by the Federal Emergency Management Agency (FEMA) shall meet the requirements of Chapter 14.05 Floodplain Management.

14.01.103 Definitions.

For purposes of this Chapter, the following words and phrases shall have the meaning given herein:

“Active Stream Zone” is the area of the Stream that lies between the Ordinary High-Water Mark established on each side.

“Applicant” means a Property Owner or agent of a Property Owner who has filed an application for a permit that is subject to the requirements of this Chapter.

“Best Management Practices (BMP’s)” mean the utilization physical facilities, schedules of activities, prohibition of practices, maintenance procedures, and other management practices that have been demonstrated to be the most effective and reliable methods to prevent or reduce the pollution of and minimize adverse impacts on Surface Waters or the City’s MS4.
“Centralized Stormwater Treatment Facility” means a system built to manage the peak flow and settlement of Pollutants by efficiently transporting runoff through directly-connected conduits (curbs, gutters, roadways, pipe systems, etc.) to a centralized facility, which controls the outflow at pre-developed levels or at levels determined by the responsible agency. Multiple stages are used at detention facilities to control the outflow at pre-developed levels. “CFR” means Code of Federal Regulations.

“Certified Professional in Erosion and Sediment Control (CPESC)” means an individual who is currently holding such certification as issued by CPESC, Inc., or other Person holding a State license authorizing them to prepare and submit an Erosion and Sediment Control Plan.

“Certificate of Occupancy” means a document issued by the proper authority allowing for the occupancy or use of a building and certifying that the structure or use has been constructed or will be used in compliance with all the applicable codes and ordinances of the City of Gardner.

“Channel” means a Watercourse of perceptible extent which periodically or continuously contains moving water or which forms a connecting link between two bodies of water.

“City” means the City of Gardner, Kansas.

“City Engineer” means the City Engineer for the City of Gardner, Kansas, or duly designated representative.


“Detention” means a Stormwater management technique of which the primary function is to control the peak rate of Surface Water Runoff by utilizing temporary storage and a controlled rate of release. This may include, but not be limited to, the use of reservoirs, roof tops, parking areas, holding tanks, in-pipe and in-channel storage.

“Developer” means a Person who engages in Development of real estate, regardless of whether that Person is the Landowner.

“Development” means any man-made change to improved or unimproved real property including the construction or reconstruction of buildings or structures; paving, excavation, grading, filling or similar operations; or the filing and recording of a subdivision Plat.

“Director” means the Director of Public Works or his or her authorized representative.
“Discharge” means the addition or introduction, directly or indirectly, of any Pollutant, Stormwater, or any other substance into the MS4 or Surface Waters.

“Distributed Stormwater Treatment Facility” means a system built to manage the peak flow and settlement of Pollutants at their source and focuses on disconnecting impervious surfaces. Distributed Stormwater practices include bio-retention areas, green roofs, vegetation swales, pervious pavement, etc. The focus on this type of Stormwater treatment is to create a hydrologically functional landscape that mimics pre-developed runoff conditions.

“Domestic Sewage” means human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other Wastewater from household drains, and waterborne Waste normally Discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, retail and commercial establishments, factories, and institutions, that is free from Industrial Waste.

“EPA” means Environmental Protection Agency.

“Erosion” means the wearing away of land by the action of wind, water, gravity or ice or a combination thereof.

“Erosion and Sediment Control (ESC) Plan” means a Plan for the control of soil erosion and sedimentation resulting from land disturbing activity, and may include, without being limited to, the drawings, specifications, construction documents, schedules, or other related documents which establish the Best Management Practices (BMPs) on a project. The Plan shall include any information required to review the design of the BMPs and to ensure proper installation, maintenance, inspection, and removal of the BMPs, along with the details required to construct any portion of the final Storm Sewer System that was impeded by a BMP.

“Floodplain” means a land area adjoining a river, Stream, Watercourse, or lake which is likely to be flooded in a one-hundred-year flood.

“Governing Body” means the City Council for the City of Gardner, Kansas.

“Impervious Cover” means those surfaces that cannot effectively permit the Infiltration of rainfall, including, but not limited to, building rooftops, pavement, sidewalks, driveways, and the like.

“Industrial Waste” means any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or business.

“Infiltration” means the process of percolating Stormwater into the subsoil.
“KDHE” means Kansas Department of Health and Environment.

“Land Disturbance Activity” means any activity that changes the physical conditions of landform, vegetation and 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 or owners of a lot or tract. The holder of a contract to purchase or other Person having an enforceable proprietary interest in a lot or tract shall be deemed a landowner.

“MARC” means Mid-America Regional Council.

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

“Municipal Separate Storm Sewer System” (MS4) means the system of conveyances, (including roads with drainage systems, municipal streets, private streets, catch basins, curbs, gutters, ditches, man-made Channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying Stormwater, and which is not used for collecting or conveying Sewage.

“NPDES” means the National Pollutant Discharge Elimination System. It is the program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 318, 402 and 405 of the federal Clean Water Act.

“NPDES Permit” means a permit issued by United States Environmental Protection Agency (EPA) or the State of Kansas that authorizes the Discharge of Pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

“Off-Site Facility” means a Stormwater treatment facility located outside the subject property boundary described in the permit application for land Development activity, including facilities that may accept Runoff from multiple projects.

“Oil” means any kind of oil in any form, including but not limited to: petroleum, fuel oil, crude oil, synthetic oil, motor oil, bio-fuel, cooking oil, grease, sludge, oil refuse, and oil mixed with Waste.

“Ordinary High-Water Mark” is the line on the shore established by the fluctuation of water indicated by a physical characteristic such as a clear natural line impressed on the bank, shelving,
changes in the character of the soil, destruction of terrestrial vegetation, presence of litter or debris, or other appropriate means.

“Person” means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns, including all federal, State, and local governmental entities.

“Pesticide” means a substance or mixture of substances intended to prevent, destroy, repel, or migrate any pest, or substances intended for use as a plant regulator, defoliant, or desiccant.

“Planning Commission” means the Planning Commission for the City of Gardner, Kansas.

“Plat” means a legally recorded plan of a parcel of land showing the location and dimension of such features as streets, lots, easements, and other elements pertinent to a subdivision.

“Pollutant” means any substance or material which contaminates or adversely alters the physical, chemical or biological properties of the waters including changes in temperature, taste, odor, turbidity, or color of the water. Such substance or material may include but is not limited to, dredged spoil, spoil Waste, incinerator residue, Sewage, pet and livestock Waste, garbage, Sewage sludge, munitions, chemical Waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, yard Waste, hazardous household wastes, Oil, petroleum products, used motor Oil, anti-freeze, litter, Pesticides, and industrial, municipal, and agricultural Waste Discharged into water.

“Property Owner” means the named property owner as indicated by the records of the Johnson County, Kansas Records and Tax Administration.

“Redevelopment” means Development on a tract of land with existing structures where all or most of the existing structures would be razed and a new structure or structures built.

“Sanitary Sewer” means the system of pipes, conduits, and other conveyances which carry Industrial Waste and Domestic Sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to a Sewage treatment plant and to which Stormwater, Surface Water, and groundwater are not intentionally admitted.

“Sediment” means any solid material, organic, or inorganic, that has been deposited in water, is in suspension in water, is being transported or has been removed from its site of origin by wind, water, ice or gravity as result of soil erosion. Sedimentation is the process by which eroded material is transported and deposited by the action of wind, water, ice or gravity.
“Sewage” means the Domestic Sewage and/or Industrial Waste that is Discharged into the Sanitary Sewer system and passes through the Sanitary Sewer system to a sewage treatment plant for treatment.

“Stop Work Order” means an order issued by the City or other authorized regulatory or governmental agency which requires that all Land Disturbance Activity or construction activity on a site be stopped.

“Storm Sewer System” means any conveyance or system of conveyances for Stormwater, including road with drainage systems, streets, catch basins, curbs, gutters, ditches, man-made Channels, or storm drains, as well as any system that meets the definition of a municipal separate Storm Sewer System or “MS4” as defined by the Environmental Protection Agency in 40 CFR 122.26.

“Stormwater” means storm water Runoff, snow melt Runoff, and surface Runoff and drainage.

"Stormwater Pollution Prevention Plan (SWPPP)” means the plan required by the Kansas Department of Health and Environment (KDHE) and for which contents are specified by the Kansas Water Pollution Control and NPDES Stormwater Runoff from Construction Activities General Permit. The purpose of the SWPPP is to help identify the sources of pollution that affect the quality of Stormwater Discharges from a site and to describe and ensure the implementation of practices to reduce Pollutants in Stormwater Discharges and includes the Erosion and Sediment Control Plan as well as plans to prevent pollution from other construction site sources such as, but not limited to concrete washout, litter, and sanitary Waste.

“Stormwater Runoff” or “Runoff” means water resulting from precipitation which is not absorbed by the soil, evaporated into the atmosphere, or entrapped by ground surface depressions and vegetation and which flows over the surface.

“Stormwater Treatment Facilities” means all structures, plantings, natural features, or other physical elements that are designed, constructed and maintained in accordance with this Chapter and which are provided to prevent or reduce Stormwater pollution or to control Stormwater Runoff volume and Discharges.

“Stream” is a body of running water moving over the earth’s surface in a Channel or bed, such as a creek, rivulet or river that flows at least part of the year. Streams are dynamic in nature and their structure is maintained through build up and loss of Sediment. Streams are typically formed by natural forces but also include drainage ways, outside of street right-of-way, which were formed by man in the past. Storm Sewer Systems and roadside ditches in street right-of-way are not considered Streams.
“Surface Waters” means any body of water classified as “Surface Waters” by the State of Kansas, including streams, rivers, creeks, brooks, sloughs, draws, arroyos, canals, springs, seeps, cavern Streams, alluvial aquifers associated with these Surface Waters, lakes, man-made reservoirs, oxbow lakes, ponds, and wetlands, as well as any other body of water classified by the federal government as a “water of the United States”.

“Tributary” or “Tributary area” means all the area contributing Stormwater Runoff to a given point.

“Waste” means any garbage, refuse, sludge or other discarded material which is abandoned or committed to treatment, storage or disposal, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, commercial mining, community and agricultural activities. Waste does not include solid or dissolved materials in Domestic Sewage or irrigation return flows or solid or dissolved materials or industrial Discharges which are point sources subject to permits under the State of Kansas.

“Water Bodies” means Surface Waters including rivers, Streams, lakes, ponds and wetlands, including all areas designated by the federal government as water of the United States.

“Watercourse” means any Stream, creek, brook, branch, depression, reservoir, lake, pond, or drainageway in or into which Stormwater Runoff flows. It is a permanent or intermittent Stream or other body of water, either natural or man-made, which gathers or carries Surface Water.

**14.01.104 Purpose and Findings**

To promote the public health, safety, and general welfare of the citizens of the City, this Stormwater Management Ordinance is enacted for the general purpose of assuring the proper balance between human use of land and the preservation of a safe and beneficial environment.

A. The purpose of this ordinance and the provisions of these regulations are intended to:

1. Reduce property damage and to minimize the hazards of personal injury and loss of life due to flooding and Erosion;

2. Protect the overall health and stability of the City’s Water Bodies;

3. Minimize and prevent adverse water quality impacts from developed land into the Surface Waters of the City by establishing reasonable requirements for the treatment of Stormwater Runoff from new Development and Redevelopment activities;
4. Establish acceptable minimum requirements to preserve and protect Stream corridors and other valuable aquatic riparian resources within the City;

5. Minimize Erosion and prevent sediment from entering the City’s Surface Waters or Stormwater collection system; and,

6. Be consistent with the goals of and meet the requirements set forth by the Clean Water Act and the NPDES under the State of Kansas NDPES Permit.

B. These objectives will be accomplished through the following:

1. Establishment of a Stormwater management system pursuant to Section 14.01.200;

2. Definition and establishment of Stormwater management practices pursuant to this Chapter;

3. Establishment of methods and guidelines for attenuating or avoiding flooding within the City from the cumulative effects of increased volume and peak Discharge of Surface Water Runoff;

4. Pursuant to Sections 14.01.300, 14.01.600, and 14.01.700, establishment of requirements for construction site Erosion control, natural Stream Corridor preservation and protection, site post-construction Stormwater treatment, and prevention of illicit Discharges to the City’s Municipal Separate Storm Sewer System (MS4) pursuant to Chapter 14.20 Illicit Discharges;

5. Assigning the Board of Building Code Appeals, as established by and set forth in Chapter 2.60 of the Gardner Municipal Code and vesting the authority in the Board of Building Code Appeals to review decisions of the City Engineer and to mediate disputes regarding the interpretation and implementation of the provisions of this Chapter.

14.01.105 Relationship to other laws.

These regulations shall not be construed as abating any action now pending under, or by virtue of, prior existing regulations, or as discontinuing, abating, modifying or altering any penalty accruing or about to accrue, or as affecting the liability of any Person, firm or corporation, or as vacating or annulling any rights obtained by any Person, firm, or corporation, by lawful action of the City, except as shall be expressly provided for in these regulations.

14.01.106 Disclaimer of liability.

The performance standards and design criteria set forth in this Chapter establish minimum requirements which must be implemented with good engineering practice and workmanship. Use
of the requirements contained herein shall not constitute a representation, guarantee or warranty of any kind by the City, or its officers and employees, of the adequacy or safety of any Stormwater Treatment Facility or use of land nor shall the approval of a Stormwater Treatment Facility, Stormwater Management Plan, or the issuance of a Land Disturbance Permit or other permit or plan approval imply that land uses permitted will be free from damages caused by Stormwater Runoff. The degree of protection required by these regulations is considered reasonable for regulatory purposes and is based on historical records, engineering, and scientific methods of study. Larger storms may occur, or Stormwater Runoff heights may be increased by man-made or natural causes. These regulations therefore shall not create liability on the part of the City or any employee or officer of the City with respect to any legislative or administrative decision lawfully made hereunder.

14.01.107 Appeals.

Any Person aggrieved by a decision of the City Engineer in the enforcement of this Chapter shall have the right to appeal any such order, requirement, decision or determination to the Board of Building Code Appeals, as established by Chapter 2.60 of the Gardner Municipal Code, in accordance with the following procedures:

A. Any Person aggrieved by a final order, requirement, decision or determination of the City Engineer may file a written application for appeal within thirty (30) days of the issuance of such final order, requirement, decision or determination for hearing before the Board of Building Code Appeals.

B. A hearing before the Board of Building Code Appeals shall be held within thirty (30) days of the filing of an application for appeal by any person aggrieved by a final order, requirement, decision or determination of the City Engineer, or as soon thereafter as the matter Board may be convened and the matter heard. The Board shall consider any information offered by the aggrieved Person bearing on the dispute and shall recommend to the City Engineer as appropriate: reversal, modification or confirmation, subject to the provisions of Chapter 2.60 of the Gardner Municipal Code. The City Engineer, who shall be present at the meeting, shall act upon the recommendation in a manner consistent with his/her responsibilities under these regulations.

C. Any Person aggrieved by any final decision of the City Engineer, following review by the Board of Building Code Appeals, may seek review by a court of competent jurisdiction in the manner provided by the laws of the State.

14.01.108 Penalty for violations – actions.
The violation of any provision of this Chapter is a misdemeanor, and any Person, firm, association, partnership or corporation convicted thereof shall be punished by a fine not to exceed Five Hundred Dollars ($500.00); and the City shall further have the authority to maintain suits or actions in any court of competent jurisdiction for the purpose of enforcing any provisions of this Chapter and to abate nuisances maintained in violation thereof; and in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation, or to prevent the occupancy of the building, structure, or land. Each day any violation of this Chapter shall continue shall constitute a separate offense.

14.01.109 Severability.

If any section, subsection, paragraph, sentence, clause or phrase in this Chapter or any part thereof is held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Chapter.

14.01.200 Stormwater Management System

14.01.201 General.

This Chapter establishes the Stormwater management system of the City and the Stormwater management controls, standards, and practices applicable to any Development or Redevelopment within the corporate limits of the City of Gardner.

14.01.202 Stormwater Management Controls

All Development, Redevelopment, and improvements with respect to managing Stormwater Runoff within the City of Gardner shall comply with the provisions of this Chapter and utilize Stormwater management controls consistent with the Stormwater Treatment Standards adopted by the City Engineer as authorized in Section 14.01.502 of this Chapter, subject to the exceptions or exemptions and limitations set forth in this Chapter.

14.01.203 Public and Private Responsibilities under the Stormwater Management System.

A. Public Responsibilities. The City Engineer, or his or her designee, will administer the regulations and requirements contained in this Chapter. In addition, where designated herein or upon the designation of the City Engineer, Department of Public Works and the Department of Business and Economic Development shall also be responsible for the administration of the provisions of this Chapter.
B. Private Responsibilities. Any Developer of land within the City has the responsibility to provide on such property all approved Stormwater Treatment Facilities to ensure the adequate drainage, conveyance and control of Stormwater both during and after construction of such Facilities.

C. Maintenance.

1. Publicly owned Stormwater Treatment Facilities. The City Department of Public Works shall be responsible for the maintenance of all Stormwater Treatment Facilities and improved Watercourses which are under City ownership or are within public right-of-way; provided that, the City may, enter into an agreement to permit limited privately owned and maintained Stormwater Treatment Facilities within the public right-of-way, in limited circumstances in which such Facilities do not unduly interfere with the use of the public right-of-way and subject to the provisions of Chapter 12.05 of the Gardner Municipal Code. The City does not assert jurisdiction under this Chapter over any construction work on State right-of-way.

2. Privately owned Stormwater Treatment Facilities. Stormwater Treatment Facilities shall be maintained by the Landowner, Developer, occupant, homes or business association, or agent in charge of such property as required herein.

3. Failure to maintain. If a Property Owner or responsible party fails to properly maintain a Stormwater Treatment Facility or refuses to meet the requirements of the Maintenance Agreement, the City Engineer, after reasonable notice, may correct such violation of the Stormwater Treatment Standards or Maintenance Agreement by performing all necessary work to place the Stormwater Treatment Facility in proper working condition. The City may assess the Property Owner(s) of the Facility or responsible party for said Facility for the cost of repair work and any penalties provided in this Chapter; and the cost of the work shall be a lien on the property, or prorated against the beneficial users of the property, and may be placed on the tax bill and collected as taxes by the County in compliance with K.S.A. 12-1617e.

14.01.300 Stream Corridor Requirements.

14.01.301 Purpose and Findings.

A. Purpose. This Chapter is created to establish acceptable minimum requirements to preserve and protect Stream corridors and other valuable aquatic riparian resources within the City.
B. Findings. The Governing Body finds that Stream corridors provide multiple benefits to the residents of Gardner which include:

1. Preservation of habitat for plants and animals;
2. Protection of water quality and base flow potential through Infiltration, filtration, Runoff velocity control and Sediment retention;
3. Stabilization of Stream banks thus minimizing bank erosion, Stream migration and property damage due to Stream bank instability;
4. Temporary storage and velocity reduction of flood waters;
5. Recreational and educational opportunities;
6. Beautification and aesthetic enhancement of the City;
7. Effective visual and auditory screening between adjoining land uses;
8. Enhance property value;
9. Proper management of Stream corridors will continue to enhance the quality of life for the citizens of Gardner and that conservation and preservation of Stream corridors is necessary to protect the public health, safety and welfare;
10. Regulation of Stream corridors by establishing acceptable minimum standards is an important component of the City’s overall Stormwater management strategy and that such regulation is consistent with the provisions and goals of the Clean Water Act, the National Pollutant Discharge Elimination System, and other federal, state, and local requirements for water quality and environmental preservation; and

11. Natural Channels migrate in response to a variety of factors, including changes in upstream and downstream land uses, and Property Owners must consider the potential for migration when locating facilities.

14.01.302 Scope.

No land shall be disturbed, nor structure built, located, converted or altered within the corporate limits of the City without full compliance with this Section of this Chapter (14.01.300, et seq.).

14.01.303 Designation of Stream Corridor.
The Stream corridor shall consist of the Stream and all lands adjacent to the Stream on both sides for the minimum distance from the Ordinary High-Water Mark specified below:

<table>
<thead>
<tr>
<th>Stream Tributary area:</th>
<th>Minimum distance from Ordinary High-Water Mark to the limit of Stream corridor on each side:</th>
</tr>
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<tbody>
<tr>
<td>Less than 25 acres</td>
<td>See Section 14.01.303 B</td>
</tr>
<tr>
<td>Including 25 acres up to 40 acres</td>
<td>30 feet (See Section 14.01.303 C)</td>
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<tr>
<td>Including 40 acres up to 160 acres</td>
<td>60 feet</td>
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<tr>
<td>Including 160 acres up to 5000 acres</td>
<td>100 feet</td>
</tr>
<tr>
<td>5000 acres and greater</td>
<td>120 feet</td>
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</tbody>
</table>

*Distances in excess of the minimum may be required as indicated in Section 14.01.303 A and Section 14.01.305.

A. A Stream corridor shall be designated along Streams with a Tributary drainage area of 40 acres or more with the following exceptions:

1. Streams of less than 300 feet in length measured along the center of the Active Stream Zone and which are between portions of an existing Storm Sewer System may be enclosed within a pipe or box structure.

2. Streams adjoining an existing Storm Sewer System may be enclosed within a pipe or box structure, if the application of this Chapter would otherwise leave a Stream remnant less than 300 feet in length measured along the center of the Active Stream Zone.

B. Streams with Tributary areas less than 25 acres may construct a Storm Sewer System. If a Storm Sewer System is not constructed, a Stream corridor may be delineated which may be variable in width but is generally not less than 15 feet from “Ordinary High-Water Mark” to the limit of stream corridor on each side. The actual corridor width shall be adequate to provide for: Stream geomorphology, Stream bank stability, preservation of tree canopy, flood control and maintenance access.

C. Streams with Tributary areas including 25 acres up to 40 acres may construct a Storm Sewer System. If a Storm Sewer System is not constructed, a Stream corridor shall be delineated of not less than 30 feet from “Ordinary High-Water Mark” to the limit of the Stream corridor on each side.
D. Stream corridors shall be terminated when a Stream Discharges into a pond, lake or other body of water and shall resume at the outlet from the Water Body. Property reserved for the pond, lake or other body of water shall include at a minimum all areas that would have been reserved for a Stream corridor had there been no pond, lake or body of water.

E. Stream corridor delineation is not required for man-made ditches within street right-of-way or farm swales.

F. Stream corridor designation is not required for construction projects which are undertaken to explicitly protect existing buildings or property from flooding and/or erosion caused by actions such as Channel migration or bank instability.

G. Regardless of the Stream or Stream corridor size, buildings must maintain a minimum distance of 40 feet from the Ordinary High-Water Mark of a Stream.

H. Delineation of Stream corridors under this Chapter is based on the existing location of the Stream. Relocation of existing Streams to new locations is not authorized by this Chapter.

All Developments, which do not dedicate a Stream corridor in accordance with this Chapter, shall construct Storm Sewer Systems to meet the requirements of the City of Gardner. In the event an approved application for development or redevelopment showing the construction of a Storm Sewer System cannot obtain a permit from the appropriate state or federal agencies, then the owner of such property is required to comply with this Chapter and reapply or resubmit the required application, as appropriate.

14.01.304 Delineation of the Stream Corridor.

The Stream corridor shall be delineated on preliminary and final Plats, site plans, and preliminary and final development plans. The boundary of the Stream corridor shall be documented by a legal boundary description in such instrument as the City Engineer may require, which could include, but is not limited to, a separate tract of land, a conservation easement, or dedication on the final Plat. The City Engineer may adopt written regulations to implement the provisions of this Section. The instrument used to document the boundary must also identify the area as a “Natural Stream Preservation Corridor” and shall stipulate that these areas are subject to the restrictions and protections provided for in this Chapter. The instrument shall further stipulate that restrictions and protections are subject to change by action of the Governing Body in accordance with the provisions of this Chapter.

14.01.305 Stream Bank Stability.
A. To minimize the need for future bank stability measures, the City Engineer may require geotechnical or geomorphological studies of Streams prior to approval of Development plans or building permits for any structure to be located adjacent to a Stream. Such studies may be used to increase the Stream corridor width requirement and could include the delineation of the maximum expected natural Channel migration, analyses of slope stability, and foundation analysis of adjacent structures. At a minimum, for slope stability and foundation analysis purposes, it will be assumed Streams migrate at least one half the distance of the minimum Stream corridor indicated in 14.01.303; provided, however, the same studies may also be required to be performed assuming the maximum Channel migration has occurred. The City Engineer is authorized but not required to issue technical guidance to assist Applicants in making this estimate of Channel migration potential.

B. The use of rip-rap, retaining walls, gabions, revetments or other bank armoring techniques shall not be used to reduce the Stream corridor boundaries established in 14.01.303. Such activities are allowed only when the City Engineer determines them to be necessary to protect structures, primarily when Stream migration has exceeded the original estimate of natural Channel migration. The City Engineer may allow bank stabilization measures that are designed to incorporate natural Channel features and vegetation in situations where projects will enhance the value of the Stream corridor and minimize the likelihood of more extreme measures being needed in the future.

14.01.306 Floodplain.

Additional restrictions to activities within the Stream corridor shall be applied in accordance with Chapter 14.05.

14.01.307 Allowable Uses.

A. “Active Stream Zone” allowable uses should utilize Best Management Practices to minimize disturbance to and impacts on the Stream corridor and include:

1. Sanitary Sewer line crossings.
2. Other utilities crossings as approved by the City Engineer.
3. Roadway crossings limited to minimum required to provide access for orderly Development.
4. Crossings for foot, bicycle, golf cart, and similar uses.
5. Flood control structures.

7. Storm sewer pipe Discharge.

8. Stream gauging and water quality monitoring.

9. Pump stations and structures required to transport water from the Stream.

Crossing the Active Stream Zone shall be minimized, crossing at skewed angles shall be avoided, and the length and area disturbed shall be reasonably minimized.

B. “Stream corridor” allowable uses shall utilize best management practices to minimize disturbance or impacts to the Stream corridor and include:

1. All activities allowed in the “Active Stream Zone.”

2. Paved or unpaved paths for foot, bike, golf carts, and other similar uses. Paths must be constructed near natural grade to minimize clearing, filling and grading.

3. Utility installations are allowed provided it is demonstrated installing the utility outside the Stream corridor isn’t feasible. Storm sewer pipes may Discharge into the Active Stream Zone or Stream corridor if appropriate measures to prevent erosion and scouring are taken. Utility easements will be dedicated on the subdivision Plat, or by separate document after platting if City Engineer approval is obtained for the utility location. The City Engineer may establish minimum standards for utility construction in the Stream corridor.

4. Other uses approved by the City Engineer that meet the intent of this Chapter. Allowable uses in the Stream corridor are limited to low-impact passive uses that require little or no disturbance, grading, clearing, or filling of the existing native vegetation, and are related to recreation, public enjoyment, and protection of the Stream and Stream corridor. These uses may include small non-habitable structures ancillary to the approved use. Examples of allowable structures include play equipment, gazebos and picnic shelters. Allowable uses do not include parking facilities or private Detention basins.

5. Recreational fields, public parklands and golf course fairways which may encroach into the Stream corridor, contingent upon submittal and approval of a site plan and other necessary documentation to show that there is no negative impact to the Stream corridor.

6. Existing agricultural uses.
14.01.308  Maintenance of the Stream Corridor.

A. Allowed maintenance includes:

1. Removal of dead trees/brush and trash.
2. Removal of debris that could cause flooding.
3. Selective City-approved tree trimming or tree removal to mitigate safety hazards or that could cause flooding.
4. Selective (spot) chemical spraying for noxious weeds.
5. Periodic mowing and/or burning to enhance natural conditions.
6. Maintenance of all City-approved improvements.
7. Maintenance of City-approved bank stabilization measures.

B. Prohibited Maintenance

1. Regular mowing outside of recreational use areas.
2. Non-selective chemical spraying

C. Stream Corridor Maintenance Agreement. A Stream Corridor Maintenance Agreement shall be submitted with all final development plans, site plans, and final Plats approved by the City. At a minimum, the Maintenance Agreement should:

1. Identify the responsible party for maintaining the Stream corridor, or segment thereof, the boundaries of which are identified as an attachment to the Maintenance Agreement.
2. Establish the minimum frequency and levels of maintenance to be done.
3. Establish the frequency of inspection.
4. Identify resources available to provide maintenance.
5. Identify prohibited practices and Homes Association’s enforcement process for restoration.
6. Identify the City’s rights if the responsible party fails or is unable to perform any of the obligations in the Maintenance Agreement.

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7. Clarify how modifications or additions can be made to the Maintenance Agreement.

8. Be filed as a covenant to the recorded deeds of all lots to enforce the imposition of any special tax assessment that may be necessary to maintain the Stream corridor if the responsible party fails or is unable to perform any of the obligations in the Maintenance Agreement.

9. The Property Owner or Developer shall form a homes and/or business association, or such other ongoing business, association or trust as the responsible party for maintaining the Stream Corridor, enforcing the Maintenance Agreement and which shall be responsible for implementation and enforcement of said Maintenance Agreement prior to the sales of any lots, and the homes and/or business association covenants shall include the provisions of the approved Maintenance Agreement. Should a homes and/or business no longer exist, or be viable, the City Engineer shall have the option to require adjacent Property Owners to provide maintenance of the Stream corridor as set forth in this Chapter.

10. Approval of all site plans, final development plans, and final Plats shall be subject to the City’s receipt of an acceptable Stream Corridor Maintenance Agreement. The final Plat and homes and/or business association deed restrictions shall contain language approved by the City Engineer which identifies the homes and/or business association as the entity which will have permanent responsibility and authority to enter upon the Stream corridor to fully perform all obligations pursuant to the Stream Corridor Maintenance Agreement. Said homes and/or business association deed restrictions shall be recorded with the Johnson County Records and Tax Administration concurrent or prior to recording of the final Plat. The following title and Plat notification requirements concerning Stream corridors and associated Development and use restrictions shall be required:

   a. Notice on Plat. For all subdivision proposals within the Stream Corridor, the Applicant shall include a notice on the face of the Plat. The notice shall be substantially as set forth below:

      Notice: This site lies within a protected Stream Corridor, as defined and regulated in the City of Gardner Municipal Code. Restrictions on the use or alteration of the Stream Corridor may apply. This property is also subject to the obligations and requirements of the Stream Corridor Maintenance Agreement approved by the City.

   b. Notice on Title. The owner of any property within a Stream Corridor, upon the approval of a Development Application covering property containing a Stream Corridor (which does
not involve the approval of a final Plat), shall record a notice of presence for each Stream Corridor with the Johnson County Records and Tax Administration. This recording shall contain notice of the Stream Corridor requirements, as found in Section 14.01.300, *et seq.*, of the Gardner Municipal Code, as applied to the property, and the limitations on actions in or affecting such Stream Corridor. The Applicant must submit proof that the notice has been legally recorded before final approval of the Development is granted. The notice shall run with the land and failure to provide this notice to any purchaser prior to transferring any interest in the property shall be in violation of this Chapter. The notice shall be substantially as set forth below:

**STREAM CORRIDOR NOTICE**

Legal Description:

Present Owner:

Notice: This property is located within or contains the following Stream Corridor, as defined and regulated in the City of Gardner, Kansas Municipal Code. Restrictions on the use or alteration of land within the Stream Corridor may apply. This property is also subject to the obligations and requirements of the Stream Corridor Maintenance Agreement approved by the City.

Application #___ filed on (Date).

Signature of owner(s).

Notarization:

STATE OF KANSAS )
 ) ss:
JOHNSON COUNTY)

On this day personally appeared before me to me known to be the individual(s) described in and who executed the within and foregoing instrument and acknowledged that they freely and voluntarily signed the same for the uses and purposes therein stated.

Given under my hand and official seal this ___day of ___.

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Notary Public in and for the state of Kansas, residing at ___.

D. A Stream Corridor Maintenance Agreement is not required if the Property Owner decides to dedicate the Stream corridor to the City and the City agrees to accept the Stream corridor for recreational purposes.

14.01.309 Deviations.

A. The Planning Commission or Governing Body may, in the process of approving preliminary Plats, final Plats, site plans, preliminary development plans or final development plans, approve deviations from the specific terms of Section 14.01.300 (Sections 14.01.300-14.01.309) of this Chapter which would not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of Sections 14.01.300-14.01.309 of this Chapter would result in unnecessary hardship for the Applicant, and provided that the spirit of this ordinance shall be observed, the public safety and welfare secured and substantial justice done for the Applicants.

B. An application for a deviation may only be granted upon a finding that all the following conditions have been met:

1. That the granting of the deviation will not adversely affect the rights of adjacent Landowners.

2. That the strict application of the provisions of this ordinance would constitute unnecessary hardship upon the Landowner represented in the application.

3. That the deviation desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

4. That granting the deviation will comply with the general spirit and intent of this Chapter.

5. That it has been determined the granting of a deviation will not result in extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local, federal, or state laws.

Upon consideration of the factors listed above and the purposes of this Chapter, the City may attach such conditions to the granting of deviations as it deems necessary to further the purpose of this Chapter.
C. In considering deviation applications, the City has the discretion of using any or all the following project evaluations when, in the judgment of the Planning Commission or Governing Body, these evaluations are relevant and appropriate. No individual or combination of evaluations are necessarily required for an application to be approved, and the Planning Commission or Governing Body may weigh these evaluations in light of all relevant considerations in determining whether to approve an application.

1. Any increase in danger to life and property due to flooding or erosion damage.

2. The susceptibility of the proposed facility to damage from factors such as flooding, Stream bank erosion and Channel migration and the effect of such damage on the individual owner.

3. The availability of alternative locations for the proposed Development.

4. The compatibility of the proposed Development with the comprehensive plan.

5. The deviation is the minimum necessary to afford relief.

6. Any decrease in the average width of the Stream corridor set aside. Any increase to bank instability or bank erosion and the resulting effects on other properties.

7. The extent to which the proposed Development retains the natural terrain within the Stream corridor while avoiding such activities such as filling, grading and constructing retaining walls.

8. The extent to which the proposed Development provides protection from negative impacts to: water quality, base flow potential through Infiltration, Runoff velocity, temporary storage area for flood waters and Sediment retention capability which is compatible with the intent of this Chapter.

9. The extent to which the proposed Development provides aesthetic enhancement, preservation of habitat for plants and animals, recreational opportunities, educational value and effective screening from adjoining land uses which are compatible with the intent of this Chapter.

14.01.400 Stormwater Management Plans.

14.01.401 General.

No Development shall increase the quantity and rates of Stormwater emanating from said land areas except in accordance with an approved Stormwater Management Plan as provided in this
Chapter. The Stormwater Management Plan shall be prepared by a Professional Engineer licensed by the State. No building permits shall be issued prior to the approval of the final Stormwater Management Plan by the City Engineer.


A. A preliminary Stormwater Management Plan shall accompany all preliminary applications or submittals for land Development or Redevelopment. The preliminary Stormwater Management Plan must include conceptual Stormwater Management Plans, sufficient information to evaluate the existing hydrologic and environmental characteristics of the Development, impacts of the proposed Development, preliminary sizing for Detention and Stormwater Treatment Facilities, and locations of any existing or proposed Stream Corridors, Floodplains, access easements, conservation easements, or tracts, and a description of the maintenance responsibility for proposed private Stormwater Facilities. The City Engineer may set additional minimum submittal requirements.

B. Following the receipt of the preliminary Stormwater Management Plan, a general review meeting shall be conducted and shall include the City Engineer, Business and Economic Development Department staff, representatives of the Developer and the Developer’s engineer. The purpose of this review shall be to jointly agree on the conceptual methods proposed to be utilized and the possible effects of the proposed Development on existing or future adjacent Developments.

14.01.403 Final Stormwater Management Plan.

A. Following the review of the preliminary Stormwater Management Plan and after the general approval of the preliminary plan by the City Engineer, a final Stormwater Management Plan shall be prepared for each phase of the proposed Development as each phase is developed. The submittal of the final plan shall coincide with the application for final approval of the Development and shall constitute a refinement of the concepts approved in the preliminary plan. If a Development is to be phased, the total area of the Development is to be considered in all calculations and Facilities should be designed for each phase which would be compatible with those of the total Development plan.

B. The final Stormwater Management Plan, in addition to the information from the preliminary Stormwater Management Plan, shall include all the information required in the Stormwater Treatment Standards established in Section 14.01.500 and any other submittal requirements as
determined by the City Engineer, including but not limited to the following minimum Landscape and Stabilization Requirements:

1. A list of vegetative stabilization and management techniques to be used at a site after construction is completed.
2. An explanation of how the site will be stabilized after construction.
3. Identify the responsible party for the maintenance of vegetation at the site.
4. Identify the practices that will be employed to ensure adequate vegetative cover is preserved.
5. The name and address of the State registered landscape architect who prepared the design.

C. The final Stormwater Management Plan shall be reviewed by the City Engineer. If it is determined that it meets the criteria and performance standards of the MARC BMP Manual adopted by the City as set forth in this Chapter, (Section 14.01.500-14.01.504), and the Gardner Technical Specifications for Public Improvement Projects and Design Criteria for Public Improvement Projects and will not be detrimental to the public health, safety, and general welfare, the City Engineer shall approve the plan or conditionally approve the plan, setting forth the conditions for such approval.

If it is determined that Stormwater Management Plan submitted with and for the proposed Development will not control Stormwater Runoff in accordance with these regulations, the City Engineer shall not approve the Stormwater Management Plan. If not approved, the Stormwater Management Plan shall be returned to the Applicant for corrective action and resubmittal.

14.01.500 Design Criteria and Performance Standards.

14.01.501 General.

This Chapter sets forth the rules that shall govern the design Stormwater Treatment Facilities and design of improvements with respect to managing Stormwater Runoff within the City of Gardner.

14.01.502 Stormwater Treatment Criteria.

A. The City Engineer shall adopt and maintain Stormwater Treatment Standards to implement and interpret the provisions of this Chapter. The 2012 edition of the Mid-America Regional Council and American Public Works Association Manual of Best Management Practices for Stormwater Quality (MARC BMP Manual), and all appendices, shall be the basis of these Stormwater Treatment Standards. Additional technical guidance or exceptions to the MARC BMP Manual will be included in the Gardner Technical Specifications for Public Improvement Projects and Design Criteria for Public Improvements. The additional guidance or exceptions may include,
but not be limited to, modified BMPs, design criteria, construction specifications, or standard
details. Copies of all adopted standards shall be on file and available in the City’s Public Works
Department.

B. All Stormwater Treatment Facilities shall be designed to provide a combination of Pollutant
removal and water volume control that satisfies the level of service and value rating calculations
set forth in the Stormwater Treatment Standards (MARC BMP Manual) and other requirements
established by City approved watershed management plans or studies.

C. Non-structural Stormwater treatment practices are encouraged to minimize the reliance on
structural practices. Applicants wishing to obtain credit for using non-structural practices must
ensure that these practices are documented and will remain unaltered by subsequent Property
Owners by locating the facility in a conservation easement, separate tract dedicated for Stormwater
Treatment Facilities or similar instrument as approved by the City Engineer.

14.01.503 Stormwater Conveyance and Detention Criteria.

A. All drainage components shall be designed in accordance with the Gardner Technical
Specifications for Public Improvement Projects and Design Criteria for Public Improvement
Projects and the MARC BMP Manual.

B. Stormwater Detention Standards. The Gardner Technical Specifications for Public
Improvement Projects and Design Criteria for Public Improvement Projects and MARC BMP
Manual contains the complete requirements for Detention.

C. Permanent easements for the Detention and conveyance of Stormwater, including easements
of access to structures shall be dedicated to the City. Any restrictions shall be clearly indicated on
the Plat.

14.01.504 Modifications and Appeals to Standard Criteria.

A. The City Engineer may modify or reduce requirements on Redevelopment projects in the City.

B. The City Engineer may waive or modify any of the Stormwater Treatment Standards to allow
the implementation of alternative or innovative practices that implement the intent of the standards
and provide equivalent public benefits without significant adverse impacts on surrounding
Developments. Such modifications may be granted for issues including, but not limited to:

1. Approval of alternate materials, devices, techniques, details or specifications for individual
Stormwater Treatment Facilities that would be expected to provide equivalent or better
performance.
2. Evaluations of credits, ratings, or level of service calculations to account for unique or special technical considerations.

3. Corrections, clarifications or modifications to requirements which the City Engineer has found to give inadequate or undesirable performance.

C. Appeals of decisions made by the City Engineer related to the Stormwater Treatment Standards shall be made to the Board of Building Code Appeals as set forth in this Chapter.

14.01.600 Land Disturbance and Erosion and Sediment Control

14.01.601 Purpose

The Congress of the United States amended the Clean Water Act of 1972 to reduce the discharge of Pollutants into the waters of the United States by extending NPDES requirements to regulate Stormwater and urban Runoff discharge from Land Disturbance Activity. The City of Gardner is subject to the NPDES requirements and is therefore obligated by federal law to develop, implement, and enforce minimum Erosion and Sediment control standards in compliance with the City’s Kansas Water Pollution Control General MS4 Permit to regulate Stormwater and urban Runoff discharge from Land Disturbance Activity and construction activities into the City’s Storm Sewer Systems.

The purpose of this Section of this Chapter is to implement and require construction-related procedures and practices or other Land Disturbance Activity that will minimize Erosion and prevent Sediment from entering the City's Surface Waters and/or Stormwater collection system.

14.01.602 General Provisions

A. No Person shall authorize or maintain a Land Disturbance Activity or construction site that fails to comply with the City of Gardner Technical Specifications, latest edition, and the requirements of this Chapter.

B. No Person shall authorize or initiate any Land Disturbance Activity without an LDP approved by the City Engineer, or the City Engineer’s authorized representative prior to any construction activity or Land Disturbance Activity.

C. No Person shall fail to immediately take all action necessary to completely abate any violation of this chapter including but not limited to the establishment or restoration of ESC BMPs as required by this chapter and remedial action to clean and/or remove Sediment and other Pollutants.
14.01.603 Land Disturbance Permit (LDP)

A. The issuance of an LDP is contingent upon compliance with this Section of this Chapter and all other City permits, specifications, and regulations. The LDP may be revoked or withdrawn by the City Engineer, or his or her designee, upon a failure to comply with the requirements stated in this Chapter, and such failure shall be unlawful and shall constitute a violation of this Chapter.

B. The LDP application, SWPPP, ESC Plans, and all other technical documents shall be prepared and sealed by a Professional Engineer or Landscape Architect licensed in the State of Kansas, include any plans, studies or certifications reasonably required by the City Engineer, and include application fee upon submission.

C. The Landowner of the real property upon which activity takes place shall be responsible for obtaining the LDP except for work conducted in the right-of-way or utility easements. The Person or construction site operator conducting Land Disturbance Activities in the right-of-way or in a utility easement shall be responsible for obtaining the LDP.

D. An LDP shall be obtained from the City Engineer prior to commencement of any activity that changes the physical conditions of landform, affects 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.

E. An LDP is not required for the following:

1. Land Disturbance Activities that disturb 5,000 square feet or less. Land Disturbance Activities disturbing activities that are part of a larger phased, staged, or common plan of Development shall be considered a single site for the purpose of calculating the disturbed area.

2. Work to correct or remedy emergencies, including situations that pose an immediate danger to life or property.

3. Agricultural uses.

4. Land Disturbance Activities specifically authorized by a Public Improvement Permit which includes an ESC Plan covering the entire area of disturbance.

5. Linear utility projects with less than 1,000 feet of cumulative open trench construction that are located outside the boundaries of a Development project.
F. An LDP shall not be required for Land Disturbance Activities resulting from development or redevelopment projects for which applications for said development or redevelopment projects has been approved prior to adoption of this Chapter and applications for development or redevelopment projects that have been submitted prior to adoption of this Chapter; provided that:

1. This exemption does not apply to withdrawn or denied applications.

2. In the case of requests to revise previously approved applications, this exemption does not apply to revisions that require Planning Commission or Governing Body approval but does apply to revisions that can be administratively approved pursuant to Chapter 17.03 of the Gardner Municipal Code.

3. In the case of requests to revise previously submitted but not approved applications, this exemption does not apply to revisions that require Planning Commission or Governing Body approval but does apply to revisions that can be administratively approved pursuant to Chapter 17.03 of the Gardner Municipal Code.

G. A Landowner or Developer exempted from obtaining an LDP under the provisions of this Chapter must nonetheless comply with basic Erosion control practices defined in the City of Gardner Technical Specifications and NDPES requirements.

H. An LDP application shall be submitted on the City’s forms and shall include the minimum requirements set forth and provided by the City.

I. The City Engineer shall establish an expiration date for each LDP and shall consider the final City inspection and approval of the work undertaken. Requests for extension of the LDP must be made to the City Engineer in writing prior to the expiration of the LDP and are subject to the approval of the City Engineer.

J. The LDP holder shall keep a copy of the most current SWPPP and/or ESC Plan at the site and any approved extension, if applicable, until the LDP is closed.

K. The LDP holder shall notify the City Engineer, or his or her designee, prior to commencing any Land Disturbance Activity and/or construction activity.

L. The Person(s) responsible for compliance with this Chapter shall include, jointly and severally:

1. The Landowner of the site upon which a Land Disturbance Activity takes place. When an LDP is issued to a Person, such Person shall remain responsible for Land Disturbance
Activities notwithstanding a transfer of the site unless the City approves, in writing, an assignment of the Person’s obligations; and

2. If the Landowner is not the LDP holder, the Person to whom an LDP is issued for a site upon which a Land Disturbance Activity takes place is jointly and severally liable along with the Landowner of the site for compliance with this Chapter; and

3. Any Person who undertakes Land Disturbance Activities but fails to obtain an LDP or ensure that an LDP has been issued by the City for such Land Disturbance Activities.

14.01.604 Financial Security

Prior to issuance of the LDP, the permittee must provide financial security sufficient as surety for performance of the work, in addition to any required performance or maintenance bonds or other insurance or sureties otherwise required in this Chapter or set forth within the Gardner Municipal Code. The form of the securities shall be as follows:

A. Land disturbances greater than or equal to one (1) acre shall require a $3,000.00 deposit and either a letter of credit or abatement bond. The total performance surety shall be at least equal to the cost to replace the ESC measures proscribed by the SWPPP and as estimated by the project designer and approved by the City Engineer.

B. Land disturbances less than one (1) acre but greater than 5,000 square feet shall require a $1,000.00 deposit to the City.

The financial security will be released when the site has been approved as stabilized following the final inspection by the City and all temporary Erosion control measures have been removed.

14.01.605 Inspections

A. Maintenance of Erosion Control Measures. All ESC measures set forth in the SWPPP, ESC Plan and as required by the LDP shall be maintained in good order at all times during and after construction and/or Land Disturbance Activities until the LDP is closed.

B. Initial Inspection. The LDP holder shall notify the City Engineer when initial ESC measures are installed in accordance with the approved plan. No Land Disturbance Activities shall begin prior to approval from the City Engineer that all pre-construction ESC measures are correctly installed per the approved plan.

C. Routine Inspection. It shall be the duty of the LDP holder to maintain effective ESC measures and to provide or obtain routine inspections of the site performed by a qualified erosion control...
specialist at least once per week. The LDP holder shall keep a log shall of routine inspections by a qualified erosion control specialist as a part of the SWPPP which shall be produced for review by City staff upon request. City staff may perform inspections at any time to confirm that all prescribed ESC measures are being maintained in good order and in compliance with all permits and associated documents. Any deficiencies shall be noted in a report of the inspection and include the required actions to correct the deficiencies.

D. Final Inspection. Once the site is stabilized, the LDP holder shall request a final inspection by the City. The site shall be considered stabilized when perennial vegetation, pavement, buildings, and/or structures cover all areas that have been disturbed. An LDP shall not be closed until a final inspection has been completed and approval of the site stabilization is issued by the City. No final Certificate of Occupancy shall be issued until the site is stabilized, restored, and the LDP’s requirements have been satisfied and the permit closed.

14.01.606 Enforcement

The Department of Public Works and the Department of Business and Economic Development shall enforce the provisions of this Section through routine activities that include inspecting the site and communicating with the contractor, permittee or Landowner to resolve issues of non-compliance. If remedial action is not taken by the end of the following business day after being notified of violations, the City Engineer, or his or her designee, may proceed with any or all the following enforcement measures listed below.

A. Refusal of Inspection. Request for an inspection of any permitted construction activity or Land Disturbance Activity may be denied if it is found that ESC measures have not been implemented, maintained, or are found to be ineffective. No further inspections will be performed until the ESC measures have been implemented or violations of this Chapter abated.

B. Stop Work Order. The City Engineer is authorized to issue a Stop Work Order for any or all construction activity and/or Land Disturbance Activity within the established boundary of the LDP. The Stop Work Order shall be in writing and shall be given to the Landowner of the property, the owner’s agent, LDP holder, or the Person performing the work. Upon issuance of a Stop Work Order, the cited work shall immediately cease.

1. The City Engineer may issue a Stop Work Order if any one (1) or more of the following conditions exist:
   a. Inspection by the Department of Public Works, the Department of Business and Economic Development, the City Engineer, or City staff reveals the LDP or the Land Disturbance Activity conducted pursuant to the LDP is not in substantial compliance
with the SWPPP and/or ESC Plan as determined by the City Engineer, or his or her designee; or

b. Failure to comply with a written order from the City Engineer, or his or her designee, to bring the site into compliance with the LDP, correct a violation of this Chapter or restore a disturbed area within the time limits defined by the City Engineer; or

c. Failure to pay a required fee; or

d. Failure to submit reports in accordance with the City of Gardner Technical Specifications and NDPES requirements; or

e. Any other violation of this Chapter.

2. It shall be a violation of this Chapter for a Person to undertake, allow, consent or permit another to undertake work or Land Disturbing Activity upon a site subject to a Stop Work Order.

3. If the Stop Work Order is not cured within a reasonable period, the LDP may be revoked by the City Engineer, and thereafter no Person shall continue any work described in the LDP without first obtaining a new LDP and paying a new LDP fee as required by this Chapter.

4. The Landowner and LDP holder are responsible for City expenditures, and administrative costs to correct or abate the site shall be billed to the LDP holder and the Landowner in the event the City must make such corrections or abatements following a Stop Work Order.

C. Abatement. The City Engineer is authorized to correct or abate violations and may authorize the use of either City departments or external contractors to perform such abatement. City expenditures and administrative costs to correct or abate a violation, including but not limited to the expenses for any contractors or sub-contractors, shall be billed to the LDP holder. If the City does not receive payment within 30 days, the City will draw upon any and all financial securities to cover the costs. If the City’s expenditures and costs exceed the financial securities provided by the Landowner and/or LDP holder, the City Engineer shall report the costs of such abatement and related work to the City Clerk. The City Clerk shall comply with the provisions of K.S.A. 12-1617e to collect the City’s cost, including mailing a statement of costs to the last-known address of the Property Owner, occupant or agent in charge of the property and if such costs are not paid to the City within ten (10) days of such notice, the Governing Body shall pass an ordinance levying a special assessment for such costs against the property on which the Facility exists or abuts, and the City Clerk shall certify such assessment to the County Clerk.
for collection and payment to the City the same as other assessments and taxes are collected and paid.

D. Violations and penalties.

1. Any Person who violates a provision of this Section of this Chapter, fails to comply with the requirements of this Chapter regarding Land Disturbance Activity, or fails to comply with a Stop Work Order or an authorized directive issued by the City Engineer is guilty of a public offense and shall be subject to the penalties as provided in sub-section 14.01.108 of this Chapter.

2. The City Engineer is authorized to cite the Landowner, LDP holder and any other Persons identified on an LDP as responsible to the City for violations of the LDP or any provisions of this Chapter relating to Land Disturbance Activities.

14.01.607 Fees

A. Prior to the issuance of the LDP, upon submission of an application for an LDP, each applicant shall pay to the City a fee as established by the City Council. Fees paid for an LDP which is subsequently revoked by the City Engineer, are not refundable. A Person operating in compliance with the regulations of this Chapter shall not be charged a permit fee when obtaining an LDP for Land Disturbance Activities, construction or renovation of City-owned and City-financed capital improvement projects.

B. Any Person who permits, authorizes, or maintains a Land Disturbance Activity without first obtaining a valid LDP required by this chapter, shall pay additional permit fees as established by the City Council.

14.01.608 Miscellaneous

A. Other Laws. Neither this Section of this Chapter nor any administrative decision made under it exempts the LDP holder or any other Person from other requirements of this Chapter, state and federal laws, provisions of the Gardner Municipal Code, or from procuring other required permits, including any state or federal Stormwater permits authorized under the NPDES, or limits the right of any Person to maintain, at any time, any appropriate action at law or in equity, for relief or damages against the LDP holder or any Person arising from the activity regulated by this Section of this Chapter.

B. Severability. If any section, subsection, paragraph, sentence, clause or phrase in this Section of this Chapter or any part thereof is held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction or administrative or regulatory agency lawfully acting in a
judicial or quasi-judicial capacity, such decision shall not affect the validity or effectiveness of the remaining portions of this Chapter.

14.01.700 Post-Construction Stormwater Treatment.

14.01.701 Purpose and Findings

A. The purpose of this Chapter is to minimize and prevent adverse water quality impacts from developed land into the Surface Waters of the City by establishing reasonable requirements for the treatment of Stormwater Runoff from new Development and Redevelopment activities.

B. The Governing Body finds:

1. Land Development and the associated increases in Impervious Cover can increase the quantity and nature of Pollutants carried by Stormwater Runoff, increase Stormwater Runoff rates and volumes, aggravate Stream Channel Erosion and Sediment transport, and impact the Surface Waters of the City and downstream Water Bodies.

2. Stormwater Treatment Facilities and requirements can minimize and prevent adverse water quality impacts from developed land and remove or reduce the concentrations of Pollutants carried in Stormwater Runoff, reduce Erosion, reduce Stream bank Erosion, and maintain Stormwater Runoff rates and volumes to closer pre-Development levels.

14.01.702 Applicability

No land shall be developed in the City without full compliance with the provisions of this Chapter, unless such Development is exempted as set forth herein; provided that, the City does not assert jurisdiction under this Chapter over any construction work on State right-of-way.

A. Projects meeting any of the following criteria are exempt from the provisions of this Chapter:

1. Land Disturbances of less than one acre that are not part of a common plan for Development that will cumulatively disturb more than one acre.

2. Expansions and modifications to previously constructed Developments otherwise subject to this Chapter where the proposed increase in Impervious Surface is less than 5,000 square feet.

3. Land Disturbances for linear utility construction and City-administered street projects.

4. Agricultural land uses.
5. Single lot residential Developments that are not part of a larger common plan for Development.

6. Repairs to any Stormwater Management Facility or practice conducted by the City or a contractor on behalf of the City as deemed necessary by the City Engineer.

B. Applications for development or redevelopment projects that are approved prior to adoption of this Chapter and applications for development or redevelopment projects that are submitted prior to adoption of this Chapter are exempt from the provisions of this Section of this Chapter (GMC 14.01.700-14.01.710), subject to the following:

1. This exemption does not apply to withdrawn or denied applications.

2. In the case of requests to revise previously approved applications, this exemption does not apply to revisions that require Planning Commission or Governing Body approval but does apply to revisions that can be administratively approved pursuant to Chapter 17.03 of the Gardner Municipal Code.

3. In the case of requests to revise previously submitted but not approved applications, this exemption does not apply to revisions that require Planning Commission or Governing Body approval but does apply to revisions that can be administratively approved pursuant to Chapter 17.03 of the Gardner Municipal Code.

14.01.703 Performance Criteria.

Stormwater Treatment Facilities shall be designed in accordance with the criteria and standards set forth in Section 14.01.500, *et seq.*, of this Chapter.

14.01.704 Site Location and Placement

Stormwater Treatment Facilities’ locations shall be approved by the City Engineer, and ownership and maintenance responsibility established in accordance with Section 14.01.708. All Stormwater Treatment Facilities will be shown on final construction plans and reflected and Maintenance Agreement and any required maintenance plan(s).

A. Centralized Stormwater Treatment Facilities. All Centralized Stormwater Treatment Facilities for Stormwater management will be shown on preliminary Plats, preliminary plans, final plans and final Plats. The Facility shall be documented in the form of a separate tract.

B. Distributed Stormwater Treatment Facilities. If a Distributed Stormwater Treatment Facility cannot be described practically as a tract, the Facility’s location shall be documented on the
preliminary plans, final plans and Maintenance Agreement and properly recorded with Johnson County, Kansas Records and Tax Administration.

C. Residential Single-Family and Two-Family Areas. Generally, Stormwater Treatment Facilities for residential single-family and two-family Developments shall be Centralized and located on a common tract, to be owned and maintained by a homes and/or business association, or such other ongoing business, association or trust as the responsible party for maintaining Stormwater Treatment Facilities, enforcing the Maintenance Agreement, and responsible for implementation of and compliance with said Maintenance Agreement consistent with the provisions of this Chapter. The City Engineer may allow a limited number of Distributed Stormwater Treatment Facilities on individual residential tracts, provided the Applicant demonstrates that adequate provisions are in place to ensure long-term operation, maintenance and inspection of such Facilities without undue burden on the City for tracking or monitoring compliance.

D. Private Facilities in the Public Street Right-of-Way. Privately owned and operated Stormwater Treatment Facilities shall be located outside of the public street right-of-way unless approved in writing by the City Engineer. A corresponding right-of-way Maintenance Agreement shall be recorded with the Johnson County Records and Tax Administration that provides for private maintenance responsibility of said Stormwater Treatment Facility.

E. Coordination with Utility Easements. Stormwater Treatment Facilities shall not be co-located within utility easements unless approved by the City Engineer.

F. Detention Ponds. When Detention facilities for peak flood control are required under the provisions of Section 14.01.500 such Facilities may be co-located with Stormwater Treatment Facilities, provided that the Facilities are designed to meet the requirements of both uses.

G. Off-Site Facilities. The City Engineer may consider proposals to manage Stormwater Runoff in Off-Site Facilities that treat Runoff from the proposed Development and comply with the Stormwater Treatment Standards. The Off-Site Facility shall be in place prior to or concurrently with the proposed Development. Long-term operations and maintenance responsibilities for the Facilities must be established by legal agreements, approved by the City and recorded with Johnson County Records and Tax Administration.

H. Stream Corridors as required in Section 14.01.300 of this Chapter are considered a beneficial Stormwater Treatment Facility, therefore credit will be granted by the Stormwater Treatment Standards.

**14.01.705 Deviations**
A. The City Engineer may approve deviations from specific terms of this Chapter owing to special circumstances as described in sub-section B. Upon consideration of the factors listed in Sub-section B below and the purposes of this Chapter, the City may attach such conditions to the granting of deviations as it deems necessary or appropriate to further the purpose of this Chapter.

B. The City Engineer may approve deviations from the specific terms of this Chapter upon a finding that all the following conditions have been met:

1. The granting of the deviation will not adversely affect the rights of adjacent Landowners.

2. The strict application of the provisions of this Chapter would constitute unnecessary and undue hardship upon the Landowner.

3. The deviation will not adversely affect the public health, safety, order, convenience, prosperity or general welfare.

4. Granting the deviation will comply with the spirit and intent of this Chapter.

5. Granting of a deviation will not result in significant public expense, create a nuisance, cause fraud on or victimization of the public, place a burden upon others, or conflict with existing local, federal, or state laws.

C. In considering deviation applications, the City Engineer has the discretion to use any or all the following considerations or project evaluations when, in his or her judgment, these evaluations are relevant and appropriate.

1. That alternative standards for Stormwater management, water quality protection, and ecological preservation have been established, and/or that mitigation measures are undertaken.

2. That existing physical or natural characteristics of the site make strict application of the Chapter infeasible.

3. That concerns for flooding, Stream bank Erosion, Stream instability, and maintenance of culverts, bridges or other structures are addressed.

4. That the deviation is the minimum necessary to afford relief.

5. No individual or combination of evaluations are necessarily required for an application to be approved and the City Engineer may weigh these evaluations in light of all relevant considerations in determining whether to approve an application.

14.01.706 Bonds and Assurances for Stormwater Treatment Facilities
A. Public Improvements.

1. Performance Bond. Upon approval of the final Stormwater Management Plan, but before the issuance of a Land Disturbance Permit, the City Engineer shall require the Applicant to post a performance bond for and in the amount of the work to be done pursuant to the approved Stormwater Management Plan for Stormwater Treatment Facilities dedicated to the public.

2. Maintenance Bond. A two-year maintenance bond against defects in workmanship will be required by the City for any portion of the Stormwater Treatment Facilities dedicated to the public.

B. Private Improvements. The City Engineer shall have the authority to set minimum construction plan submittal requirements.

1. Performance Bond.

a. The City Engineer shall require the submittal of a performance bond. The amount of the performance bond shall be 1.25 times the total construction cost of the Stormwater Treatment Facilities as estimated by the Developer’s engineer and approved by the City Engineer.

b. If Stormwater Treatment Facilities only serve a single building lot and a building is being constructed, a performance bond may be waived by the City Engineer provided all Stormwater Treatment Facilities are constructed and certified prior to issuance of a Certificate of Occupancy.

c. When seasonal or environmental conditions cause a delay in constructing the Stormwater Treatment Facilities, the City Engineer may approve issuing a Certificate of Occupancy provided a performance bond is posted in accordance with this section.

d. The performance bond will be released only when all the following conditions have been met:

   i. At least 80% of the land area served by the Stormwater Treatment Facilities has permanent stabilization in place.
   
   ii. All of the Stormwater Treatment Facilities covered by the bond have been constructed and certified in accordance with this Chapter.
   
   iii. If the Stormwater Treatment Facility is constructed prior to final stabilization of at least 80% of the land area served by the Facility, and the most recent certification of the Facility is more than ninety (90) days old, an updated certification by the City Engineer shall be required to verify that the Facility is fully functional.

2. Maintenance Bond.
a. Prior to issuance of a Land Disturbance Permit for construction of a Stormwater Treatment Facility, the Developer and/or contractor shall submit a maintenance bond.

b. The Developer and/or contractor shall be responsible for all regular maintenance and repairs to the Stormwater Treatment Facility while the maintenance bond is in effect including, but not limited to, repairs necessary due to damage caused by intentional or unintentional acts of others.

c. The maintenance bond shall be in the amount of 100% of the construction cost of the Facilities and can be utilized for any maintenance or rehabilitation costs associated with the Stormwater Treatment Facility deemed necessary by the City, including, but not limited to, removal of siltation, mowing, replacement of vegetation, piping repairs, replacement of underdrains, other repairs to the Facility, and any administrative or engineering costs associated with such maintenance and repairs.

d. The maintenance bond shall remain in effect for a period of two (2) years following initial certification of the Stormwater Treatment Facility.

3. Stormwater Treatment Facilities shall be constructed as early as feasible during the Development process. However, since some commonly used Stormwater Treatment Facilities are sensitive to construction generated silt when upstream areas are under construction, the following provisions are allowable for timing of such Facility construction:

a. For a Stormwater Treatment Facility serving a single building lot, the Facility shall be constructed concurrently with the Development of the site and building, subject to exceptions set forward in Section 14.01.702 A. 2., of this Chapter.

b. When Stormwater Treatment Facilities serve multiple Development lots within a common plan of Development, a Stormwater Treatment Facility can be final graded, and permanent vegetation installed only after 80% of the land area served by the Facility has achieved permanent stabilization unless the City Engineer approves a shortened schedule. Additionally, Stormwater Treatment Facilities must be installed and certified within six (6) months of permanent stabilization of the entire land area served by the Facility. Land area served by the Facility shall mean those areas served by the Facility within the common plan of Development and shall not include Off-Site Facilities even if the Off-Site Facilities are Tributary to the Facility.

c. For Stormwater Treatment Facilities serving multiple Development lots within a common plan of Development, no Certificate of Occupancy shall be issued for any building or site unless a Land Disturbance Permit has been issued authorizing construction of required Facility to serve the building or site.
4. When construction of a Stormwater Treatment Facility is delayed beyond the limits as provided in this Section, the City Engineer may utilize any or all the following enforcement mechanisms to ensure timely construction of the Facility:

   a. Draw upon performance bond funds as necessary to construct the Stormwater Treatment Facility. If the performance bond funds are not adequate to cover all costs associated with construction of said Facility, the City Engineer may assess the Property Owners for any additional costs in accordance with this Chapter.
   b. Withhold issuance of building permits for properties proposed to be served by such Stormwater Treatment Facility.
   c. Withhold issuance of Certificates of occupancy for permitted work that is proposed to be served by such Stormwater Treatment Facility.
   d. Issue Stop Work Orders for permitted work for any or all property that is proposed to be served by such Stormwater Treatment Facility.

14.01.707  Construction Inspections

A. Inspections. Regular inspections of the Stormwater Management System construction shall be the responsibility of the Developer’s engineer or other Property Owner’s representative who has been approved by the City Engineer and inspection results forwarded to the City. For certain types and locations of Stormwater Treatment Facilities, the City Engineer may at her/his discretion require additional or parallel inspections by City staff. A final inspection by the City is required before the release of any performance bonds can occur.

B. As-Built Plans. All Applicants are required to submit “as-built” plans for any constructed Stormwater Treatment Facilities. The plan must show the locations and details of all Stormwater Treatment Facilities and must be certified by the Developer’s engineer. The City Engineer will determine required elements of the as-built plans.

C. Certification. Prior to refunding of performance bonds, the Developer’s engineer, or other party approved by the City Engineer, must certify that the Stormwater Treatment Facility is fully functional and has been installed in accordance with the approved plans. For Developments not requiring a performance bond, the certification shall be made prior to issuance of a Certificate of Occupancy.

14.01.708  Maintenance

A. Required Maintenance Agreement. Prior to issuance of any Permit that includes construction of a Stormwater Treatment Facility, the Applicant or Property Owner of the site shall provide a
Maintenance Agreement for approval by the City Engineer. At a minimum, the Maintenance Agreement shall:

1. Identify the responsible party for maintaining all Stormwater Treatment Facilities.
2. Include an attachment showing the locations of all Stormwater Treatment Facilities.
3. Provide access easements reserved for the responsible party to access and maintain all Stormwater Treatment Facilities, as well as right of access to the City as provided in other sections of this Chapter.
4. Establish a maintenance plan, minimum frequency and levels of maintenance and inspections to be done. Identify and itemize anticipated annual maintenance expenditures that will be required during each of the first five (5) years of operation after termination of the contractor maintenance period, so that the responsible party may better plan for future maintenance costs.
5. Identify resources available to provide maintenance.
6. Identify prohibited practices and homes and/or business association enforcement process for restoration.
7. Identify the City’s rights if the responsible party fails to or is unable to perform any of the obligations of the Maintenance Agreement.
8. Clarify how modifications or additions can be made to the Maintenance Agreement.
9. Be filed as a covenant to the recorded deeds of all lots to enforce the imposition of any special tax assessment that may be necessary to maintain Stormwater Treatment Facilities if the responsible party fails to or is unable to perform any of the obligations in the Maintenance Agreement.

B. Formation of Homes or Business Association. The Property Owner or Developer shall form a homes or business association, or such other ongoing business, association or trust as the responsible party for maintaining the Stormwater Treatment Facility and responsible for implementation and enforcement of said Maintenance Agreement prior to the sale of any lots, and the homes or business association covenants shall include, or reference, the provisions of the approved Maintenance Agreement. The homes association or business association or such responsible party shall include covenants establishing provisions for collecting maintenance costs for Stormwater Treatment Facilities.
C. Notice on Plat or Title. The final Plat and homes or business association deed restrictions shall contain language approved by the City Engineer to provide notice of facility presence and maintenance obligations. Said deed restriction shall be recorded with the Johnson County, Kansas Records and Tax Administration concurrent with or prior to recording of the final Plat or approval of final plans. The notice shall run with the land and failure to provide this notice to any purchaser prior to transferring any interest in the property shall be in violation of this Chapter and state law. The notice shall be in a form approved by the City Engineer and substantially as set forth below:

“Notice: This site includes Stormwater Treatment Facilities, as defined and regulated in the Gardner Municipal Code. Restrictions on the use or alteration of the said Facilities may apply. This property is also subject to the obligations and requirements of the Stormwater Treatment Facility Maintenance Agreement approved by the City.”

When the proposal involves a final Plat, this notice shall appear on the Plat, as recorded. When the proposals do not involve a final Plat, the notice shall be in the form of a Notice of Presence recorded with the Johnson County, Kansas Records and Tax Administration. The notice shall include the legal description of the property, the current Property Owner, the application date, and the notarized signature of the Property Owner or Owners.

D. City Inspection of Stormwater Treatment Facilities. The City may perform routine inspections and random inspections. 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. The City may also perform the following additional inspections:

1. Inspections based upon complaints or other notice of possible violations;
2. Inspection of drainage basins or areas identified as higher than typical sources of Sediment or other contaminants or Pollutants;
3. Inspections of businesses or industries of a type associated with higher than usual Discharges of contaminants or Pollutants or with Discharges of a type which are more likely than the typical Discharge to cause violations of State or federal water or Sediment quality standards or the NPDES Stormwater Permit; and
4. Joint inspections with other agencies inspecting under environmental or safety laws.

E. Right of Entry for Inspection. When any Stormwater Treatment Facility is installed on private property, or when any new connection is made between private property and a public Storm Sewer System, the Property Owner shall grant to the City in a manner and form acceptable to the City Engineer, the right to enter the property at reasonable times and in a reasonable manner for the
purpose of inspection. This includes the right to enter a property when the City Engineer has a reasonable basis to believe that a violation of this Chapter is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this Chapter.

F. Records of Installation and Maintenance Activities. Parties responsible for the operation and maintenance of a Stormwater Treatment Facility shall make records of the installation and of all maintenance and repairs and shall retain the records for at least five (5) years. These records shall be made available to the City Engineer during inspection of the Facility and at other reasonable times upon request.

G. Failure to Maintain Practices. If a Property Owner or responsible party fails to or refuses to meet the requirements of the Maintenance Agreement or to properly maintain a Stormwater Treatment Facility, the City Engineer, after reasonable notice, may correct a violation of the Standards or maintenance needs by performing all necessary work to place the Stormwater Treatment Facility in proper working condition. If the Stormwater Treatment Facility becomes a danger to public safety or public health, the City Engineer shall notify the party responsible for maintenance of the Stormwater Treatment Facility in writing. Upon receipt of that notice, the responsible Person shall have thirty (30) days to affect maintenance and repair of the Facility in an approved manner. In the event of an emergency, when the City Engineer determines that the Facility poses an immediate danger to life or property, no notification period shall be required prior to beginning mitigation work. After proper notice, the City Engineer will enforce the maintenance provisions of this Chapter with any or all the following enforcement measures:

1. Notice of Violation. The City Engineer is authorized to serve a notice of violation or order on any Person or entity responsible for maintaining the Facility. Such notice shall order abatement of the violation by the responsible Person or entity.

2. Lien on Property. The City Engineer may proceed to cause the necessary remedial work to be performed and shall report the costs of such remedial work to the City Clerk. The City Clerk shall follow the provisions of K.S.A. 12-1617e to collect the City’s cost, including mailing a statement of costs to the last-known address of the Property Owner, occupant or agent in charge of the property and if such costs are not paid to the City within ten (10) days of such notice, the Governing Body shall pass an ordinance levying a special assessment for such costs against the property on which the Facility exists or abuts, and the City Clerk shall certify such assessment to the County Clerk for collection and payment to the City the same as other assessments and taxes are collected and paid.

14.01.709 Enforcement and Penalties
A. Violations. Any Person or entity violating any provision of this Chapter is guilty of a public offense and shall be subject to penalties as provided in Section 14.01.106 of this Chapter. The City Engineer shall be permitted to cite the Property Owner, or any/all Persons identified on the Permit as being legally responsible to the City for any violations of this Chapter pertaining to that Permit.

B. Restoration of Lands. Any violator may be required to restore land to its undisturbed condition. If restoration is not undertaken within a reasonable time after notice, the City Engineer may take necessary corrective action, of which the cost to the City shall become a lien upon the property until paid.

14.01.710 Miscellaneous

A. Compatibility with Other Permit and Title Requirements. This Chapter is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this Chapter should be considered minimum requirements, and where any provision of this Chapter imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

B. Authority. The City Engineer shall be responsible for the administration and enforcement of this Chapter. The City Engineer shall have the authority to adopt regulations, policies and procedures as necessary for the enforcement of this Chapter.

SECTION 2: Chapter 14.10, Stream Corridor Requirements, of the Municipal Code of the City of Gardner is hereby repealed, as the amended provisions of same are hereby incorporated into Section 14.01.300, et seq. of Chapter 14.01, Stormwater Management, as set forth herein above.

SECTION 3: All other ordinances not in conformity herewith are hereby repealed or amended to conform hereto.

SECTION 4: This ordinance shall take effect and be in force from and after its passage, approval and publication as provided by law.

PASSED by the City Council this _____ day of _________, 2019.

APPROVED by the Mayor this _____ day of _________, 2019.
CITY OF GARDNER, KANSAS

__________________________
Steve Shute, Mayor

Attest:

__________________________
Amy Nasta, City Clerk

Approved as to form:

__________________________
Ryan B. Denk, City Attorney
The City Council took the following actions at the February 19, 2019, meeting:

1. Held a public hearing on the proposed Community Improvement District (Main Street Market Place) (Passed unanimously)
2. Approved the minutes as written for the regular meeting on February 4, 2019 (Passed unanimously)
3. Approved the City expenditures prepared January 30, 2019, in the amount of $322,041.91; January 31, 2019, in the amount of $359,288.66; February 8, 2019 in the amount of $207,973.07 (Passed unanimously)
4. Authorized a Position Title Change in the Parks and Recreation Department (Passed unanimously)
5. Authorized the Mayor and City Administrator to sign KDOT Form 1302 for the Center Street Sidewalk project (Passed unanimously)
6. Accepted ingress/egress and utility easement dedications by separate instruments for Mid America Bank (Passed unanimously)
7. Authorized the City Administrator to enter into a contract agreement with US Foods to provide certain concessions supplies to Gardner Parks and Recreation Department (Passed unanimously)
8. Adopted Ordinance 2600 changing the zoning classifications or districts of certain lands located in the City of Gardner, Kansas, under the authority granted by Title 17 of the Municipal Code of the City of Gardner, Kansas (Passed unanimously)
9. Entered into executive session for consultation with an attorney which is deemed to be privileged in the attorney-client relationship for ten minutes (Passed unanimously)
10. Adopted Resolution No. 2010 declaring the intent of the City of Gardner, Kansas, to issue Industrial Revenue Bonds, in the approximate principal amount of $19,390,000, for the purpose of financing a portion of the costs of the acquisition, construction and equipping of a commercial facility within the City (Main Street Market Place) (Passed unanimously; 1 abstention)
11. Adopted Ordinance 2602 approving and adopting a redevelopment project plan for a redevelopment district in the City of Gardner, Kansas (Main Street Market Place Redevelopment District, Project Area 1) (Passed unanimously; 1 abstention)
12. Adopted Resolution 2011 approving the execution and delivery of a development agreement for a development project within the City (Main Street Market Place) (Passed unanimously; 1 abstention)
13. Adopted Resolution No. 2012 determining the advisability of certain internal improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvements in accordance with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Tuscan Farm sanitary lift station special benefit district) (Passed unanimously)
14. Adopted Resolution No. 2013 determining the advisability of certain internal improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvement in accordance with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Tuscan Farm Phase I Infrastructure special benefit district) (Passed unanimously; 1 not present for vote)
15. Adopted Resolution 2014 a resolution of the City of Gardner, Kansas establishing an account with the State of Kansas Municipal Investment Pool and repealing all other resolutions not in conformity herewith (Passed unanimously)
16. Adopted Ordinance No. 2603, an ordinance amending Title 14 – Floodplain and Stormwater Management, adopting Chapter 14.01 and repealing Chapter 14.10, relating to floodplain and stormwater management, of the Gardner Municipal Code (Passed unanimously)