AGENDA
GARDNER CITY COUNCIL
City Hall – 120 East Main Street -- Gardner, Kansas
Monday, April 15, 2019
7:00 p.m.

CALL TO ORDER
PLEDGE OF ALLEGIANCE

PRESENTATION
1. Proclaim April, 2019 as Autism Awareness Month in the City of Gardner
2. Proclaim April 26, 2019 as Arbor Day in the City of Gardner

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 April 1, 2019
2. Standing approval of City expenditures prepared March 29, 2019, in the amount of $1,923,762.19; April 5, 2019, in the amount of $284,791.66
3. Consider authorizing the City Administrator to execute a contract with Gardner Disposal, Inc. for the 2019 City-wide clean up
4. Consider approving the Airport Design & Planning Grant Agreement between the Kansas Department of Transportation and the City of Gardner
5. Consider approving the Airport Modernization Grant Agreement between the Kansas Department of Transportation and the City of Gardner
6. Consider the purchase of an aerial drone for the Gardner Police Department
7. Consider authorizing the City Administrator to enter into a three-year agreement with Incident Response Technologies Inc. for the Rhodium Incident Management Suite
8. Authorize the Interim City Administrator to execute an agreement with Information Matrix
9. Authorize the Interim City Administrator to execute an extension of the agreement for professional services with dPlanit, LLC (David Knopick, Owner)
10. Consider authorizing the purchase of a Skid Steer Loader from KC Bobcat and lease purchase financing from Arvest Bank

COMMITTEE RECOMMENDATIONS
1. Consider adopting 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
2. Consider adopting a resolution establishing the date and time limitations for the discharge of fireworks within the City limits of Gardner for the observance of the July 4th holiday

OLD BUSINESS

NEW BUSINESS
1. Consider adopting a resolution authorizing the public sale of approximately $3,820,000 principal amount of General Obligation Temporary Notes and approximately $2,020,000 principal amount of General Obligation Bonds of the City of Gardner, Kansas.
2. Consider approving the City’s contribution to health, dental and vision insurance premiums for the 2019-2020 plan year
3. Approve and authorize the Mayor to sign an agreement with James Pruettting for the position of City Administrator
4. Consider appointment of James Pruettting as City Administrator

COUNCIL UPDATE – Oral presentation unless otherwise noted

ADJOURNMENT

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.
PROCLAMATION

WHEREAS, Autism is a complex developmental disability; signs typically appear during early childhood and affect an individual's ability to communicate, process sensory input and interact with others; and,

WHEREAS, Autism is the third most common developmental disability, affecting 3.5 million individuals nationwide; and,

WHEREAS, As more health professionals become proficient in diagnosing autism, more children are being diagnosed on the Autism spectrum, resulting in rates as high as 1 in 59 children nationally, and,

WHEREAS, Accurate, early diagnosis, and the resulting appropriate education and intervention are vital to the future growth and development of the individual; and,

WHEREAS, Parents, Self Advocates, and Providers have dedicated years of service in their ongoing efforts to advocate for the rights, humane treatment, and appropriate education of all persons with Autism; and,

WHEREAS, These groups remain committed to awareness and to educating families, professionals, and the general public to better understand this lifelong disability; and,

WHEREAS, Autism Society, now celebrating 54 years of service to the autism community, is spearheading an awareness effort in order to educate parents, professionals, and the general public about creating a better world for autism.

NOW, THEREFORE BE IT RESOLVED, that I, Steve Shute, Mayor of the City of Gardner, Kansas, do hereby proclaim April, 2019 as Autism Awareness and Acceptance Month

In Gardner, Kansas, and urge all employees and residents to participate in our municipality's National Autism Awareness Month activities, in order to become better educated about autism and create a better community for individuals with autism.

In witness whereof, I have hereunto set my hand and caused the Seal of the City of Gardner, Kansas to be affixed this 15th day of April 2019.

CITY OF GARDNER, KANSAS

______________________________
Steve Shute, Mayor

(SEAL)

Attest:

______________________________
Amy Nasta, City Clerk
PROCLAMATION

WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special
day be set aside for the planting of trees; and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million
trees in Nebraska; and

WHEREAS, Arbor Day is now observed throughout the nation and the world; and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and
cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife;
and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and
countless other wood products; and

WHEREAS, trees in our City increase property values, enhance the economic vitality of business areas,
and beautify our community; and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal.

NOW, THEREFORE BE IT RESOLVED, that I, Steve Shute, Mayor of the City of Gardner, Kansas, do
hereby proclaim April 26, 2019 as

Arbor Day

in the City of Gardner, Kansas and urge all citizens to celebrate and support efforts to protect our trees
and woodlands.

In witness whereof, I have hereunto set my hand and caused the Seal of the City of Gardner, Kansas to
be affixed this 15th day of April 2019.

CITY OF GARDNER, KANSAS

__________________________
Steve Shute, Mayor

(SEAL)

Attest:

_____________________
Amy Nasta, City Clerk
The City Council of the City of Gardner, Kansas met in regular session on April 1, 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, Lee Moore, and Todd Winters. City staff present were Interim City Administrator Laura Gourley; Police Chief James Pruetting; Business & Economic Development Director Larry Powell; Utilities Director Gonzalo Garcia; Public Works Director Michael Kramer; Parks and Recreation Director Jason Bruce; Finance Director Matthew Wolff; City Clerk Amy Nasta; and City Attorney Ryan Denk. Others present included those listed on the attached sign-in sheet and others who did not sign in. Councilmember Rich Melton was absent, but participated in all Executive sessions via telephone.

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.

PUBLIC COMMENTS
Walt Hudsel of 15645 Gardner East Road stated he owns a lot on Gardner Lake that is one hundred and fifty feet long that he would like to sell part of to a neighbor so that both parties can have property on the lake. He said he would like to propose that the City Council issue a dock permit and a construction permit once the property is split and allow the new owner to build a new dock. He said this should not be considered a second tier lot as it has direct access to Gardner Lake without crossing any other properties.

Bill Pflumm of 15635 Gardner East Road stated the lot mentioned by Mr. Hudsel has direct lake access. He said he had spoken with Johnson County Development and they were willing to split the lot without issues. He said he would like to install a nice dock that adheres to the parameters specified by the City.

Larry Desmarteau of 15510 Lake Road 10 stated he is the President of the Gardner Lake Association (GLA). He said the goal of the GLA is to enhance and help to beautify the lake. He said old docks may fall in, tear off, or float away. He said the GLA will soon be cutting trees off the dam, as they may tear up the dam, and is willing to do whatever they can to enhance and beautify the lake. He said the GLA would like to have a relationship with the City Council. He said new people are moving to the lake, buying homes, building nice homes, and helping to beautify the area. He said he hopes to resolve past issues and is willing to have one-on-one discussions with anyone. He asked that people visit the website for the lake to submit any pictures they may have and to view upcoming events.

Chuck Lawrence of 15500 Lake Road 4 stated he is the Vice President of the GLA. He said the GLA wants a nice lake that is cleaned up. He said a good start to this would be allowing second tier docks to obtain construction permits so they can be cleaned up.

CONSENT AGENDA
1. Standing approval of the minutes as written for the regular meeting on March 18, 2019
2. Standing approval of City expenditures prepared March 15, 2019, in the amount of $309,311.09; March 21, 2019, in the amount of $855,276.10; March 22, 2019 in the amount of $1,995.80
3. Consider authorizing the Mayor to enter into the Eastern Kansas Multi-County Task Force Reciprocal Investigation Inter-Governmental Local Agreement
4. Consider a one year renewal of a service contract with Asplundh Tree Expert Company for the Electric Line Tree Trimming Program
5. Consider a recommendation to rebuild a pump as part of the High Service #3 Pump Rebuild Project, CIP #WA1904 (UAC vote: 4-0)
6. Consider authorizing the City Administrator to execute an agreement with Johnson County to administer the Stormwater BMP Cost-Share Program in the City of Gardner

7. Consider the appointment of Gary Williams to the Utility Advisory Commission

8. Consider the appointment of Barbara Coleman to the Utility Advisory Commission

Councilmember Gregorcyk asked to remove item 4 from the Consent Agenda

Councilmember Moore made a motion to approve the Consent Agenda items 1-3 and 5-8

Councilmember Winters Seconded.

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

**Discussion of Consent Agenda Item 4**

Councilmember Gregorcyk stated he is in support of the contract as it has been in place for many years. He asked if this was still a viable program for keeping trees out of the electric lines. Utilities Director Gonzalo Garcia stated that each year different sections of the line were done to ensure trees were not interfering with the lines. Mr. Garcia said previous large charges had been caused by the need to catch up with maintenance that had not been conducted in years past, but the program was now focused on prevention.

Councilmember Gregorcyk made a motion to approve the Consent Agenda item 4.

Councilmember Baldwin Seconded.

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

**COMMITTEE RECOMMENDATIONS**

1. Consider awarding an Engineering Services contract to the Joint Venture Group of Burns & McDonnell and CAS Constructors, LLC., for Preliminary Design of the Hillsdale Water Treatment Plant Expansion Project, CIP Project #WA2002

Utilities Director Gonzalo Garcia provided a review of the events that had led to this contract. He said in July, 2017, there had been a presentation of the water master plan during which a connection with Water One was recommended. He said in December of 2017 it was learned that the water chemistry of the City of Gardner was not compatible with the water chemistry for Water One and a bench corrosion test would be needed at a cost of $100,000, at which time he was directed to look into other alternatives. He said Larkin Lamp Rynearson had provided a water and wastewater presentation in July of 2018 during which the need for a Hillsdale expansion by 2021 was identified. He said a worksession had been held in November of 2018 following the summer's water restrictions, and the Council had been presented with alternatives for a 2MGD plant and a 6MGD plant. He said staff had been directed to move forward with the 2MGD plant.

Mr. Garcia stated a Request for Qualifications had been advertised on January 4, 2019, with three companies responding. He said the selection committee had interviewed all three companies and had unanimously chosen the Joint Venture Group of Burns & McDonnell and CAS Constructors, LLC., as they were a local company with experience, in-depth knowledge of the local labor market, and had offered an accelerated schedule to deliver 1MGD by 2020. He said this was the first phase of a two phase project, and that Water 7 had retained Larkin Lamp Rynearson to evaluate the impact of taking part in the project.

Councilmember Winters asked if the 2MGD plant would be upgradable. Mr. Garcia stated it would be upgradable to 6MGD. Councilmember Winters asked what the potential involvement of Water 7 would be. Mr. Garcia stated staff had met with Water 7 late last year to ask if they would like to be involved in the project or would like to purchase water wholesale. Councilmember Winters asked if Water 7’s decision would affect the amount of MGD needed. Mr. Garcia stated another 1 MGD would likely be needed. Councilmember Winters asked if the City would
need to move directly to 4MGD at that point. Mr. Garcia stated that if Water 7 were involved, the City should move directly to 4MGD. He said this decision would need to be made within 30-60 days and that Water 7 was aware of the deadline.

Mayor Shute stated he had spoken with Water 7 and they were very interested in having a partnership and doing cost sharing. He said Water 7 was currently conducting a cost benefit analysis. He said from a standpoint of leveraging economies of scale for water capacity it made sense for Water 7 and Miami County to be involved in the project. He said this would be advantageous to Gardner in terms of keeping water rates low. Councilmember Gregorcyk stated higher capacity will help to prevent shortages in the future.

Councilmember Gregorcyk made a motion to authorize the City Administrator to execute an Engineering Services contract with the Joint Venture Group of Burns & McDonnell and CAS Constructors, LLC., for the preliminary design of the Hillsdale Water Treatment Plant Expansion Project, CIP Project #WA2002, in the amount of $312,582.00

Councilmember Winters Seconded.

OLDBUSINESS
NEW BUSINESS

1. Consider adopting a resolution approving the execution of a funding agreement related to a proposed economic development project located within the city (Plaza South Project)

Councilmember Moore made a motion to adopt Resolution No. 2015, a resolution of the City of Gardner, Kansas, approving the execution of a funding agreement related to a proposed economic development project located within the city (Plaza South Project)

Councilmember Gregorcyk Seconded.

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

2. Consider adopting an ordinance adopting a revised City of Gardner base salary structure Fiscal Year 2019-2020 (per biennial budget)

Human Resources Manager Alan Abramovitz discussed the benefits of career ladders and stated the City would like to add a Police Officer 2 position. He said other nearby cities such as Lenexa and Shawnee have Police Officer 2 positions, while Lenexa and Merriam have a similar position called Master Police Officer. He said in order to earn the Police Officer 2 designation, an officer would need to have a minimum of five (5) years’ experience and a minimum performance rating of “Exceptional” on his/her most recent annual performance evaluation. He said the title change would remain in the same paygrade, but would receive a five percent pay increase.

Councilmember Moore asked why the title of Police Officer 2 had been chosen rather than Master Police Officer. Police Chief James Pruetting stated a Master Police Officer sometimes has additional responsibilities and he did not wish to confuse the terms. Councilmember Gregorcyk asked how many current officers this would impact. Chief Pruetting stated 29 officers would be eligible based on length of service, but that an “Exceptional” rating would still need to be obtained. Mayor Shute stated this will help to retain good officers.
Councilmember Moore made a motion to adopt Ordinance No. 2611, an ordinance adopting a revised City of Gardner base salary structure Fiscal Year 2019-2020

Councilmember Winters Seconded.

With all of the Councilmembers voting in favor of the motion, the Ordinance passed and was assigned Ordinance number 2611

Baldwin: Yes
Gregorczyk: Yes
Melton: Absent
Moore: Yes
Winters: Yes


Human Resources Manager Alan Abramovitz stated that employees accrue more sick leave than vacation until reaching 4-5 years of employment, encouraging employees to utilize sick leave rather than vacation. He said the City’s vacation leave is also inadequate compared to other area municipalities, especially Johnson County and Olathe. He said staff recommends changing accruals in five year brackets in order to become more competitive and to aid with retention and recruitment. Mr. Abramovitz stated staff was also recommending increasing the maximum accrual of comp time from 24 hours to 48 hours as the current accrual rate is below that of other area municipalities.

Mr. Abramovitz stated career ladders for utilities were based on earning state certifications. He said there are currently four levels of certification and that these levels are cumulative. He said each time an employee attains a new level of certification, the employee will receive a five percent pay increase within his or her current pay grade. He said the introduction of these career ladders will help with recruitment, motivation, and retention.

Councilmember Winters asked how the changes in classification for water and wastewater would be determined. Mr. Abramovitz stated there would not be a title change, and that when an employee obtained the next level of certification the pay increase would be processed providing his or her work was satisfactory. He said obtaining the next level of certification is not automatic or easy and requires a great deal of time and study. He said this is an element of continuing education managed by the state.

Councilmember Moore asked if there was any consideration given to PTO rather than separate sick leave and vacation. Mr. Abramovitz stated this was considered and was a system the City may switch to in the future. He said PTO costs the City more as all of the leave is in one bucket so employees get more of it when leaving. He said this is a major change for employees and that only one City in the metro area utilizes this system. Mayor Shute stated PTO also accrues holiday pay up front, which would need to be paid out when employees leave.

Councilmember Gregorczyk asked if employees currently had to use their vacation pay or lose it. Interim City Administrator Laura Gourley stated employees can have up to 1.5 times their annual accrual rate. Mayor Shute stated employees also have an option to donate their time.

City Attorney Denk stated an additional issue for municipalities to consider for PTO that is different from the private sector is comp time, as this could result in employees having a large bank of PTO and a bank of comp time.

Councilmember Baldwin stated he did not see a comparison of Gardner’s sick leave against the sick leave of other municipalities. Ms. Gourley stated the sick leave accrual rate is 3.692 hours per pay period. Attorney Denk stated approximately one day per month is typical for municipalities.

Councilmember Baldwin asked why utility workers did not have to have an “exceptional” review in order to be eligible for a pay increase while Police Officers did. Mr. Abramovitz stated a review of at least “Satisfactory” was necessary. He said for Police Officers, there was no burden of passing a test. Mayor Shute stated utility workers needed to demonstrate competency. Councilmember Baldwin stated he was looking at this as a bonus and as demonstrated additional improvement. Mayor Shute stated adding the need to get an “exceptional” review in addition to
certification was a high bar versus other municipalities. Councilmember Baldwin stated employees were already expected to obtain these certifications. Mr. Abramovitz stated there was no requirement to obtain these certifications. Councilmember Winters stated he felt this was fair as employees were being asked to increase competencies.

Councilmember Baldwin asked if the City should consider adding additional bonuses if he employees passed the certification and also earned an “exemplary” review. Mr. Abramovitz stated the change for Police Officers was a special case. He said adding bonuses for other departments would necessitate looking into this for other employees as well. He said the best way to handle this was with merit increases during the budget process. Mayor Shute stated Police Officers would be getting a title as well. Mr. Abramovitz said water and wastewater employees would keep the same titles.

Councilmember Gregorcyk asked if the City should consider a tenure bonus program as a means of further bridging the recruiting and retention gap. Mayor Shute stated the City already has a tenure bonus program. Councilmember Gregorcyk stated the program is not very robust. Ms. Gourley stated the bonus is currently $1 per month of tenure, with a floor of $50.

Councilmember Winters made a motion to adopt Resolution No. 2016, a resolution providing for the adoption of a revision to sections 5-104.1, 5-106.9, and 6-106.1 of the Personnel Policies and Procedures, 2018 Edition, for the City of Gardner, Kansas

Councilmember Moore Seconded.

With all of the Councilmembers voting in favor of the motion, the Resolution passed and was assigned Resolution number 2016

Gregorcyk: Yes
Melton: Absent
Moore: Yes
Winters: Yes
Baldwin: Yes

4. Initiate action to change the Land Development Code allowing for the designation of the Planning Commission as the City’s Board of Zoning Appeals

Business and Economic Development Director Larry Powell stated this was a process that started last fall. He said this would allow the text amendment to go to the Planning Commission in April and come back to the Council in May. He said three Planning Commission members have terms expiring at the end of May, 2019, and three Board of Zoning Appeals (BZA) members have terms expiring at the end of July. He said the process needed to be initiated in order to keep on track to have a full Planning Commission after the end of May.

Mayor Shute stated this action is to take the existing set of Planning Commission members (other than those with expiring terms) and automatically place them on the new commission. He said the normal process would be utilized to fill the remaining positions. Councilmember Gregorcyk asked for clarification that this was not to eliminate the current members who had been recently appointed. Mayor Shute stated this was correct and had been discussed for some time as a means of streamlining the process. He said there would be no personnel changes on the planning commission aside from those with expiring terms.

Councilmember Baldwin asked why the three members of the BZA could not be utilized to fill the three Planning Commission positions until the end of July. Mr. Powell stated the BZA members had not indicated an interest in doing this. Councilmember Baldwin asked what was being streamlined as BZA meetings were routinely cancelled. Mr. Powell stated the first Tuesday of the month was scheduled for the Council Chambers, and this could then be opened for the City as a whole. He said this would also allow all business to take place on one night by adjourning, and then starting the BZA meeting. He said separate agendas and minutes would be used.

Mayor Shute stated the BZA's role by statute was very limited. He said the BZA was only allowed to consider variances on items that do not fit the code while the Planning Commission could only discuss items inside the scope
of the code. He said there is no conflict of interest. Mr. Powell stated that state law requires two separate committees but allows them to have the same members. Attorney Denk stated the fact that the legislature allows this shows there is no conflict of interest.

Councilmember Moore made a motion to initiate a text amendment to the Land Development Code to change the number of members who serve on the Board of Zoning Appeals

Councilmember Winters Seconded.

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

COUNCIL UPDATES

Police Chief James Pruetting stated that staff had looked into the NRA’s Eddie Eagle program at Councilmember Baldwin’s request. He said the City had applied for and received a grant for the program and had purchased the necessary costume and materials. He said Officer Adam Taylor had returned after eighteen months of deployment.

Utilities Director Gonzalo Garcia stated Dave Francq had retired the previous Friday after 42 years of service. He thanked him for his knowledge, experience, and expertise. Mayor Shute said he wished Mr. Francq well.

Business and Economic Director Larry Powell stated the parklet was scheduled to return to the parking lot behind City Hall on April 5th. He said the City has received numerous calls about potholes on private property and staff was reviewing that calls and would be talking to property owners to resolve the issues.

Public Works Director Michael Kramer stated the Council had received information regarding the Gardner Lake in the Friday Minute Memo and a discussion regarding the lake had been held at the March 4, 2019 City Council meeting, at which time the Council had provided direction to leave the tier 2 docks alone. He said the GLA would like to have major repairs and replacements of tier 2 docks allowed, as well as the addition of a limited number of new tier 2 docks. He asked if the Governing Body had any additional direction after hearing the public comments earlier in the meeting.

Mayor Shute stated he had no problem allowing for the beautification and repair of legacy docks, and did not think building new docks was a problem so long as the Council was amenable. Councilmember Baldwin stated he would like to know the history of why tier 2 docks should be removed instead of repaired. Mr. Kramer stated he believed the decision had been to limit the total number of docks and to ensure the only access to docks was not through the private property of others. Councilmember Baldwin asked how many docks were too many and if there were specifications on the distance between docks. Mr. Kramer stated he would look into this. Mayor Shute asked if this could be looked at from the standpoint of the permitting process. Mr. Kramer stated that he wished to clarify that the regulations for tier 2 docks are included in the Gardner Municipal Code, meaning a code revision would be needed for any changes.

Councilmember Gregorcyk asked how many docks were failing at the present time. Mr. Kramer stated he was unsure, but there were currently 17-20 tier 2 docks, as well as some additional docks that were likely tier 2. He said staff would be conducting inspections over the summer. Councilmember Gregorcyk stated eliminating failing docks would open up space that could be considered during the permitting process. Mayor Shute stated those with failing docks should be given the opportunity to fix them. Councilmember Gregorcyk stated there should be an option to meet the requirements or remove the dock.

Councilmember Moore stated that his understanding was that tier 2 docks were for land without adjacent property. Mr. Kramer stated the property that had been discussed earlier had not been considered buildable for a home, meaning any docks attached would be tier 2 because the resident could not live on the water. Councilmember Moore stated he thought access was the criteria. Mr. Kramer stated this is how the criteria had historically been applied. Mayor Shute stated he believed this was pushing the definition as the person who owns the dock lives directly across the road. Mr. Kramer stated if the only criteria was ownership is was possible a
dock could be placed on a very small piece of property and this concern was avoided with the application of the residency definition.

Mayor Shute stated the development code could be worded to allow for docks with property of a certain size. Councilmember Gregorcyk asked what the current frontage ratio to dock size was. Mr. Kramer stated he would look into this but that 30x20 was the dock size generally allowed, with sizes of up to 30x30 allowed.

Councilmember Winters asked if the GLA was set up in a manner that would allow them to monitor the docks. Mr. Kramer stated he did not believe they had HOA authority.

Councilmember Baldwin stated he would like to look at the issue from a permitting standpoint. He said if roads were removed from consideration the property in question would be a tier 1 dock. He said he would like to know the history and the detail of what is too many docks. Mayor Shute said he would like to take out some of the subjective criteria and get some options.

Interim City Administrator Laura Gourley asked if there was consensus from the Council to consider the property in question, discussed by Mr. Hudsel and Mr. Pflumm during public comments, as a tier 1 dock.

A majority of the Council provided consensus, with Councilmembers Gregorcyk, Moore, and Winters providing consensus.

Mayor Shute asked staff to come up with a specific objective policy regarding lake oversaturation moving forward. Mr. Kramer stated there had been a meeting with KDOT on March 31 regarding Gardner Road. He said no issues had been identified that couldn’t be resolved during the final design. He said the final design would go to KDOT for review in September, bid advertisements would take place in November, and bids would be considered in December. He said construction would begin in spring of 2020. Mayor Shute asked if the second phase would begin in 2021. Mr. Kramer stated he believed phase 2 would begin in 2022 or 2023. Mayor Shute stated it was possible KDOT would have the money to push this up.

Mr. Kramer provided an update on the sewer at the Gardner Municipal Airport. He said he was hopeful that airspace clearance would be received by the FAA soon. He said the signed plans and calculations for the sewer had been sent to KDHE for review. He said the City had received a grant from KDOT for the sewer extension. He said the grant would be for 90% of the project.

Councilmember Moore stated there was a fly-in at the Gardner Municipal Airport on the first Saturday of every month.

Councilmember Winters stated he was sad to see David Francq retire and that he would be missed. Councilmembers Gregorcyk and Baldwin agreed, as did Mayor Shute.

Councilmember Baldwin thanked Chief Pruettting for his pursuit of the Eddie Eagle program.

EXECUTIVE SESSION

1. Consider entering into executive session to discuss matters related to non-elected personnel

Councilmember Gregorcyk made a motion to recess into executive session pursuant to K.S.A. 75-4319 (b) (1), to discuss personnel matters related to non-elected personnel beginning at 08:40 p.m.; and returning to regular session at 08:55 p.m.

Councilmember Moore Seconded.

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

Councilmember Moore made a motion to resume regular session at 08:55 p.m.

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

Councilmember Moore made a motion to recess into executive session pursuant to K.S.A. 75-4319 (b) (1), to discuss personnel matters related to non-elected personnel beginning at 08:56 p.m.; and returning to regular session at 09:11 p.m.

Councilmember Baldwin Seconded.

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

Councilmember Moore made a motion to resume regular session at 09:12 p.m.;
Councilmember Baldwin Seconded.

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

Councilmember Moore made a motion to recess into executive session pursuant to K.S.A. 75-4319 (b) (1), to discuss personnel matters related to non-elected personnel beginning at 09:13 p.m.; and returning to regular session at 09:28 p.m.

Councilmember Baldwin Seconded.

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

Councilmember Moore made a motion to resume regular session at 09:28 p.m.;
Councilmember Winters Seconded.

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

**ADJOURNMENT**

There being no further business to come before the Council, on a motion duly made by Councilmember Moore and seconded by Councilmember Baldwin the meeting adjourned at 09:29 p.m.

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**EFT/EDPAY TOTAL***

**TOTAL EXPENDITURES ****

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

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**VENDOR TOTAL**: 262.32

**EFT/EPAY TOTAL**: 262.32

**TOTAL EXPENDITURES**: 23,334.30

**GRAND TOTAL**: 284,791.66
Agenda Item: Consider authorizing the City Administrator to execute a contract with Gardner Disposal, Inc. for the 2019 City-wide clean up

Staff Recommendation:  
Authorize the City Administrator to execute a contract with Gardner Disposal, Inc. for the 2019 City-wide clean up for the unit price bid amount of $150 per ton.

Background/Description of Item:  
Invitations to bid were sent to two (2) disposal companies for the 2019 City-Wide clean up. Bidders were asked to submit a price per ton to provide curbside collection and disposal of residential debris on Saturday, May 11, 2019, or the nearest available date. Two bids were received by March 28th 2019, and are noted below:

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<td>$175/ton</td>
<td>Will begin June 8, returning June 15 for completion.</td>
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The bid specifications limit the pick up to residential debris such as furniture, appliances, bicycles, magazines, and miscellaneous household items with a size and weight restriction. Hazardous waste, tires, limbs and brush will not be picked up, similar to previous years’ clean-up.

Gardner Disposal was contracted in 2018. They collected 250 tons of curb side debris, at $150/ ton, totaling $37,500.00.

Financial Impact:  
The 2019 Budget includes $36,000.00 for the clean-up. The staff estimate for the clean-up is not less than 200 tons, but the actual cost of the clean-up will be based on the amount of debris collected. Funding for this contract is available from the 2019 Street Department Budget, Line Item 001-3120-431.40-02.

Suggested Motion:  
Authorize the City Administrator to execute a contract with Gardner Disposal, Inc. for the 2019 City-wide Clean Up for the unit price bid amount of $150 per ton.
Agenda Item: Consider approving the Airport Design & Planning Grant Agreement between the Kansas Department of Transportation and the City of Gardner

Strategic Priority: Infrastructure and Asset Management
Fiscal Stewardship

Department: Public Works

Staff Recommendation:
Accept and sign the agreement between KDOT and the City of Gardner for planning and design costs for infrastructure improvements to the Gardner Municipal Airport and approve the expenditure of $781.25 of revenues in the City's Airport Fund as detailed in the agreement.

Background/Description of Item:
In October 2018, the City of Gardner applied for grant funds from KDOT’s Kansas Airport Improvement Program (KAIP) to make infrastructure improvements to the Gardner Municipal Airport.

Due to a complete failure of the existing septic system at the airport, a sanitary sewer main extension that serves the terminal building is required. In the spring of 2017, lateral field failures with the existing on-site sanitary sewer system led to the closure of the restrooms at the airport offices and terminal building, and the subsequent installation of temporary, portable toilet facilities. Currently, there are no restrooms (other than the portable toilets) located at the airport. The installation of a gravity sanitary sewer is feasible and provides a permanent, long-term solution for sanitary sewer service at the airport.

The project is being designed under an agreement with Professional Engineering Consultants. The sanitary sewer plans are completed, and have been submitted for permitting to the Kansas Department of Health and Environment (KDHE). The sanitary sewer is currently under mandatory FAA review of Obstruction Evaluation / Airport Airspace Analysis.

Preliminary Design and Engineering work performed to date will be eligible for reimbursement through the grant.

KDOT has awarded funds for the planning and design of the installation of a gravity sanitary sewer at the airport terminal building. KDOT will reimburse the City ninety-five percent (95%) of the total Planning / Engineering budget of $15,625.00.

Financial Impact:
Funds for the projects will come from:
   KDOT- $14,843.75
   City of Gardner Airport Fund- $781.25
Attachments Included:
- Award Letter from KDOT
- Grant Agreement

Suggested Motion:
Accept the agreement between KDOT and the City of Gardner for the Airport Design and Planning of the sewer installation project, approve the expenditure of $781.25 of revenues in the City’s Airport Fund for the required matching funds, and authorize the Mayor to sign the agreement.
March 18, 2019

Mr. Michael Kramer
Gardner Municipal Airport
120 E. Main
Gardner, KS 66030

RE: KDOT Grant Offer – Project Number AV-2019-37

Dear Mr. Kramer

Congratulations, you have been approved for FY 2019 Kansas Airport Improvement Program (KAIP) funding to support the project described in your KAIP application as design terminal utilities.

To complete this process, I have attached the following documents for your action:
1. Grant Payee Information sheet (fill out)
2. Airport Project Agreement specific to your project (two copies, review and sign)

If the grant is acceptable, please return all the following items as soon as possible:
1. Completed Grant Payee Information sheet
2. Both copies of the agreement, bearing original signatures of the sponsor

I would like to call to your attention that Article IV, Paragraph 1 of the agreement requires you take action and return the signed agreements within 120 days of the date on this letter. This grant offer will expire on July 16, 2019.

An original copy of the signed agreement will be provided upon completion.

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

Sincerely,

Robert W. Brock
Director
AIRPORT DESIGN AND PLANNING AGREEMENT

This Agreement is between the Secretary of Transportation of the State of Kansas, Kansas Department of Transportation (KDOT) (the "Secretary") and the City of Gardner (the "Airport"), collectively, the "Parties."

RECITALS:

A. The Airport has applied for and the Secretary has approved an Airport design and planning project to design terminal utilities for the Gardner Municipal Airport.

B. The Secretary has approved the use of Kansas Airport Improvement Program (KAIP) funds from the State's General Aviation Airport Development Fund for this purpose, limited to the scope of the Project, as further described below.

C. The Secretary and the Airport are empowered by the laws of Kansas to enter into agreements for the design and planning of the airport.

D. The Secretary and the Airport desire to enter into this Agreement to participate in the cost of the Project by use of State funds.

NOW THEREFORE, the Parties agree as follows:

ARTICLE I

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

1. "Agreement" means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.

2. "Airport" means the City of Gardner, with its place of business at 120 E. Main, Gardner, Kansas 66030.

3. "Effective Date" means the date this Agreement is signed by the Secretary or the Secretary's designee.

4. "Expiration Date" means one hundred twenty (120) days after the date the Grant Offer Letter is mailed by the Secretary.

5. "KAIP" means the Kansas Airport Improvement Program, administered by KDOT's Division of Aviation.
6. "KDOT" means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.

7. "Non-Participating Costs" means the costs of any items or services which the Secretary, reasonably determines are not Participating Costs.

8. "Participating Costs" means expenditures for items or services which are an integral part of the Project, as reasonably determined by the Secretary.

9. "Parties" means the Secretary of Transportation and KDOT, individually and collectively, and the Airport.

10. "Project" means all phases and aspects of the endeavor to be undertaken by the Airport, being as follows: design terminal utilities for the Gardner Municipal Airport and is the subject of this Agreement.

11. "Secretary" means the Secretary of Transportation of the state of Kansas, and his or her successors and assigns.

ARTICLE II

SECRETARY RESPONSIBILITIES:

1. Payment of Costs. In accordance with KAIP guidelines, the Secretary agrees to reimburse the Airport ninety-five percent (95%) of the total planning costs, but not to exceed $14,843.75 for the Project. The Secretary shall not be responsible for the total actual Project planning costs that exceed $15,625.00. The Secretary reserves the right to retain up to five percent (5%) of the Secretary's maximum participation until the Airport completes its obligations under this Agreement to the satisfaction of the Secretary.

2. Reimbursement Payments. The Secretary agrees to make such payment to the Airport as soon as reasonably possible after the Project is completed and after receipt of proper billing and certification by the Airport that the Project was completed.

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

AIRPORT RESPONSIBILITIES:

1. Project Administration. The Airport agrees to undertake the Project, which entails an airport planning study that produces a tangible document that assists the airport in the consideration of factors typically examined in an airport layout plan.

2. General Indemnification. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act as applicable, the Airport will defend, indemnify, hold harmless, and save the Secretary and the Secretary’s authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the Airport, the Airport’s employees, agents, subcontractors or its consultants. The Airport shall not be required to defend, indemnify, or hold the Secretary harmless for negligent acts or omissions of the Secretary or the Secretary’s authorized representatives or employees.

3. Financial Obligation. In accordance with KAIP guidelines, the Airport will be responsible for five percent (5%) of the total actual planning costs, up to $15,625.00, which is the estimated total actual planning costs for the Project. The Airport agrees to be responsible for one hundred percent (100%) of the total actual planning costs that exceed $15,625.00 for the Project. The Airport agrees the total estimated local share costs associated with the Project is $781.25. The Airport shall also pay for any Non-Participating Costs incurred for the Project.

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

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

6. Legal Authority. The Airport shall adopt all necessary ordinances and/or resolutions and take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

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

ARTICLE IV

GENERAL PROVISIONS:

1. **Offer Expiration.** The Secretary’s offer to fund the Project, subject to the terms of this Agreement, is contingent upon the Airport executing this Agreement on or before the Expiration Date. In the event the Airport fails to execute this Agreement on or before the Expiration Date, the Secretary will not be obligated to fund the Project and the Secretary may cancel the Project. If the Airport wishes to extend the Expiration Date, the Airport must submit a written extension request to the Secretary at least forty five (45) days prior to the Expiration Date. After receiving the request, the Secretary may extend the Expiration Date by providing written notice to the Airport.

2. **Civil Rights Act.** The “Special Attachment No. 1, Rev. 09.20.17” pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

3. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this Agreement and made a part hereof.

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

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

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

The signature page immediately follows this paragraph.
IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

AIRPORT

By: ________________________________
   
   Name: ________________________________
   Title: ________________________________

By: ________________________________
   Kansas Department of Transportation (Date)
   Julie L. Lorenz,
   Acting Secretary of Transportation
Agenda Item: Consider approving the Airport Modernization Grant Agreement between the Kansas Department of Transportation and the City of Gardner

Strategic Priority: Infrastructure and Asset Management  
Fiscal Stewardship

Department: Public Works

Staff Recommendation:
Accept and sign the agreement between KDOT and the City of Gardner to make infrastructure improvements to the Gardner Municipal Airport and approve the expenditure of $21,037.50 of revenues in the City’s Airport Fund as detailed in the agreement.

Background/Description of Item:
In October 2018, the City of Gardner applied for grant funds from KDOT’s Kansas Airport Improvement Program (KAIP) to make infrastructure improvements to the Gardner Municipal Airport.

Due to a complete failure of the existing septic system at the airport, a sanitary sewer main extension that serves the terminal building is required. In the spring of 2017, lateral field failures with the existing on-site sanitary sewer system led to the closure of the restrooms at the airport offices and terminal building, and the subsequent installation of temporary, portable toilet facilities. Currently, there are no restrooms (other than the portable toilets) located at the airport. The installation of a gravity sanitary sewer is feasible and provides a permanent, long-term solution for sanitary sewer service at the airport.

The project is being designed under an agreement with Professional Engineering Consultants. The sanitary sewer plans are completed, and have been submitted for permitting to the Kansas Department of Health and Environment (KDHE). The sanitary sewer is currently under mandatory FAA review of Obstruction Evaluation / Airport Airspace Analysis.

KDOT has awarded funds for the installation of a gravity sanitary sewer at the airport terminal building. KDOT will reimburse the City ninety percent (90%) of the total actual costs of the Construction and Construction Engineering budget of $210,375.00.

Financial Impact:
Funds for the projects will come from:
KDOT- $189,337.50
City of Gardner Airport Fund- $21,037.50

Attachments Included:

- Award Letter from KDOT
- Grant Agreement
Suggested Motion:
Accept the agreement between KDOT and the City of Gardner for the Airport Modernization (Sewer installation) Project, approve the expenditure of $21,037.50 of revenues in the City’s Airport Fund for the required matching funds, and authorize the Mayor to sign the agreement.
March 18, 2019

Mr. Michael Kramer
Gardner Municipal Airport
120 E. Main
Gardner, KS 66030

RE: KDOT Grant Offer – Project Number AV-2019-36

Dear: Mr. Kramer

Congratulations, you have been approved for FY 2019 Kansas Airport Improvement Program (KAIP) funding to support the project described in your KAIP application as improve terminal building utilities.

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

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

If the grant is acceptable, please return all the following items as soon as possible:

1. Completed Grant Payee Information sheet
2. Both copies of the agreement, bearing original signatures of the sponsor

I would like to call to your attention that Article IV, Paragraph 4 of the agreement requires you take action and return the signed agreements within 120 days of the date on this letter. This grant offer will expire on July 16, 2019.

An original copy of the signed agreement will be provided upon completion.

If you have questions or concerns, please don’t hesitate to contact us directly at (785) 296-2553. We look forward to working with you to continue growing Kansas aviation.

Sincerely,

[Signature]

Robert W. Brock
Director
AIRPORT MODERNIZATION AGREEMENT

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

RECITALS:

A. The Airport has applied for and the Secretary has approved an Airport Geometric Improvement Project to improve terminal building utilities for the Gardner Municipal Airport.

B. The Secretary has approved the use of Kansas Airport Improvement Program (KAIP) funds from the State’s General Aviation Airport Development Fund for this purpose, limited to the scope of the Project, as further described below.

C. The Secretary and the Airport are empowered by the laws of Kansas to enter into agreements for the construction, planning and maintenance of the airport.

D. The Secretary and the Airport desire to enter into this Agreement to participate in the cost of the Project by use of State funds.

NOW THEREFORE, the Parties agree as follows:

ARTICLE I

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

1. “Agreement” means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.

2. “Airport” means the City of Gardner, with its place of business at 120 E. Main, Gardner, Kansas 66030.

3. “Construction” means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or pavement; any drainage, dredging, excavation, grading or similar work upon real property.

4. “Construction Contingency Items” means unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.

5. “Construction Engineering” means inspection services material testing, engineering consultation and other reengineering activities required during Construction of the Project.

6. “Contractor” means the entity awarded the Construction contract for the Project by the Airport, and any subcontractors working for the Contractor or the Airport with respect to the Project.
7. “Design Plans” means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement and as approved by FAA.

8. “Effective Date” means the date this Agreement is signed by the Secretary or the Secretary’s designee.

9. “Expiration Date” means one hundred twenty (120) days after the date the Grant Offer Letter is mailed by the Secretary.

10. “FAA” means the Federal Aviation Administration, a federal agency of the United States.

11. “Hazardous Waste” includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261 et seq., Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 et seq., Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430 et seq., Hazardous Waste.

12. “KAIP” means the Kansas Airport Improvement Program, administered by KDOT’s Division of Aviation.

13. “KDOT” means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.

14. “Letting” or “Let” means the process of receiving bids prior to an award of a Construction contract for any portion of the Project.

15. “Non-Participating Costs” means the costs of any items or services which the Secretary reasonably determines are not Participating Costs.

16. “Participating Costs” means expenditures for items or services which are an integral part of the Project, as reasonably determined by the Secretary.

17. “Parties” means the Secretary of Transportation and KDOT, individually and collectively, and the Airport.

18. “Project” means all phases and aspects of the endeavor to be undertaken by the Airport, being as follows: improve terminal building utilities for the Gardner Municipal Airport and is the subject of this Agreement.
19. "Project Limits" means that area of the Project, including all areas between and within the Right of Way boundaries as shown on the final Design Plans.

20. "Right of Way" means the real property and interests therein necessary for construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the final Design Plans.

21. "Secretary" means the Secretary of Transportation of the state of Kansas, and his or her successors and assigns.

ARTICLE II

SECRETARY RESPONSIBILITIES:

1. Payment of Costs. In accordance with KAIP guidelines, the Secretary agrees to reimburse the Airport ninety percent (90%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, but not to exceed $189,337.50 for the Project. The Secretary shall not be responsible for the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed $210,375.00. The Secretary reserves the right to retain up to five percent (5%) of the Secretary's maximum participation until the Airport completes its obligations under this Agreement to the satisfaction of the Secretary.

2. Reimbursement Payments. The Secretary agrees to make such payment to the Airport as soon as reasonably possible after Construction of the Project is completed and after receipt of proper billing and certification by the Airport that the Project was constructed within substantial compliance of the approved Design Plans.

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

ARTICLE III

AIRPORT RESPONSIBILITIES:

1. Project Administration. The Airport shall be responsible for undertaking and completion of the Project. Immediately after the Project is Let, the Airport shall notify KDOT's Division of Aviation to communicate the date the contract is Let, the total contract amount, and any other requested information related to the Project.

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

3. **Conformity with Federal Requirements.** The Airport agrees to design the Project, or contract to have it designed, in conformity with the current Federal Aviation Administration (FAA) airport design standards and the rules and regulations of the FAA pertaining thereto.

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

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

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

7. **Final Acceptance.** The Airport shall obtain final acceptance and certification of the Project through KDOT’s Division of Aviation.

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

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

10. **Hazardous Waste.** The Airport agrees to the following with regard to Hazardous Waste:

   (a) **Removal of Hazardous Waste.** The Airport shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The Airport shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The Airport will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency, State of Kansas environmental laws and regulations, and local agency standards where the Hazardous Waste is located.

   (b) **Responsibility for Hazardous Waste Remediation Costs.** The Airport shall be responsible for all damages, fines or penalties, expenses, fees, claims and costs.
incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.

(c) **Hazardous Waste Indemnification.** The Airport shall hold harmless, defend, and indemnify the Secretary, the Secretary’s agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under state or federal laws arising out of or related to any act of omission by the Airport in undertaking cleanup or remediation for any Hazardous Waste.

(d) **No Waiver.** By signing this Agreement the Airport has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project limits. The Airport reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project limits.

11. **General Indemnification.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act as applicable, the Airport will defend, indemnify, hold harmless, and save the Secretary and the Secretary’s authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the Airport, the Airport’s employees, agents, subcontractors or its consultants. The Airport shall not be required to defend, indemnify, or hold the Secretary harmless for negligent acts or omissions of the Secretary or the Secretary’s authorized representatives or employees.

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

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

14. **Financial Obligation.** In accordance with KAIP guidelines, the Airport will be responsible for ten percent (10%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, up to $210,375.00, which is the estimated total actual costs for the Project. The Airport agrees to be responsible for one hundred percent (100%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed $210,375.00 for the Project. The Airport shall also pay for any Non-Participating Costs incurred for the Project. The Airport shall separate and list apart the Participating Cost bid items (i.e., state aid eligible costs) from the Non-Participating Cost bid items in its Project accounting and on the final Design Plans and the bid documents.
15. **Audit.** The Airport will participate and cooperate with the Secretary in an annual audit of the Project. The Airport shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments that have been made with state funds by the Airport for items considered Non-Participating Costs, the Airport shall promptly reimburse the Secretary for such items upon notification by the Secretary.

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

17. **Legal Authority.** The Airport shall adopt all necessary ordinances and/or resolutions and take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

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

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

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

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

**ARTICLE IV**

**GENERAL PROVISIONS:**

1. **Project Limits.** It is mutually agreed the Project will be constructed within the limits of Gardner Municipal Airport.

2. **Incorporation of Design Plans.** The final Design Plans for the Project are by this reference made a part of this Agreement.

3. **Compliance with Federal and State Laws.** The Parties agree to comply with all appropriate state and federal laws and regulations applicable to the Project.

4. **Offer Expiration.** The Secretary’s offer to fund the Project, subject to the terms of this Agreement, is contingent upon the Airport executing this Agreement on or before the Expiration Date. In the event the Airport fails to execute this Agreement on or before the Expiration Date, the Secretary will not be obligated to fund the Project and the Secretary may cancel the Project. If the Airport wishes
to extend the Expiration Date, the Airport must submit a written extension request to the Secretary at least forty five (45) days prior to the Expiration Date. After receiving the request, the Secretary may extend the Expiration Date by providing written notice to the Airport.

5. **Civil Rights Act.** The "Special Attachment No. 1, Rev. 09.20.17" pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

6. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this Agreement and made a part hereof.

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

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

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

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

**AIRPORT**

By: ______________

Name: ______________

Title: ______________

By: ______________

Kansas Department of Transportation (Date)
Julie L. Lorenz,
Acting Secretary of Transportation
Agenda Item: Consider the purchase of an aerial drone for the Gardner Police Department

Strategic Priority: Improve Quality of Life

Department: Police Department

Staff Recommendation:

Staff recommends the purchase of a DJI Mavic V2.0 Enterprise Dual Quadcopter and accessories for the police department.

Background/Description of Item:

On December 4, 2017, the City Council approved the purchase of a drone for the police department for a sum of $9,467.00. Shortly after that approval, staff discovered that the drone manufacturer, DJI, was developing a more cost-effective thermal camera option for commercial use. Although no official release date had been announced, a decision was made to delay the purchase until additional information was available. Following the elapse of approximately one year, DJI has released the Mavic 2 Enterprise Dual drone with the thermal camera feature.

The Gardner Police Department is constantly looking for ways to improve its ability to quickly and effectively respond to the wide variety of law enforcement and public safety incidents encountered. One area to be considered in that regard is technology. Over the years, advances in technology and their application to law enforcement and public safety challenges have provided law enforcement agencies with the tools to overcome obstacles that have previously limited their effectiveness under certain circumstances. Recently, the rapid advancements in drone technology and their proven application in law enforcement have enabled agencies to overcome many of those obstacles and improve response and operational capabilities.

Drones can provide officers the ability to quickly and effectively survey areas from an elevated vantage point, which has several law enforcement and public safety applications. Below are several examples when the use of a drone would greatly enhance Gardner PD’s law enforcement and public safety response capabilities:

- Rapid deployment of sensors for intelligence and over-watch support
- Continuous on-station capability for hostage & active shooter incidents
- Document traffic or crime scene for later reconstruction
- Rapid victim or lost persons search with live high-resolution video streams
- Can operate off-the-grid for rugged post disaster support
- Day or night on-station mission capability and on-scene aerial lighting
- Quickly establish asset locations and safe zones
- Synchronized (In-Line) daylight and nighttime video feed with IR thermal feed

While there are many different drone manufacturers to choose from, DJI stands out as the premier manufacture of quality, affordable drones. The pricing listed is for DJI products acquired through an authorized DJI Dealer. DJI standardizes their pricing and there is little if any price variance between vendors. While there are many different drone setup variations, this proposal is limited to the most practical, fiscally conservative solution to meet the needs of Gardner PD.

The drone system being considered is called the Mavic 2 Enterprise. This system provides the ability to change from a regular camera to a FLIR (forward looking infrared radiometer) camera. The FLIR camera shows heat that is produced by people or other items that have a heat signature. This allows officers to effectively see in the dark. Officers are able to detect people or animals hiding in vegetation, or to see an item recently dropped, such as a weapon. A normal camera will not show these heat variations. The Mavic 2 Enterprise system comes standard with a high resolution camera that is capable of quickly being switched to the FLIR camera.

**Financial Impact:**

The total cost of the drone and listed accessories is $3,979.00. The funds will come from the Special Law Enforcement Trust Fund. As of 3/31/2019, the fund has a balance of $13,876.09. Liability insurance for personal injury and operator liability in the amount of $1,000,000 was quoted at $750.00 annually, which will be paid from the police department’s annual budget.

**Attachments included:**

- Quote from Unmanned Vehicle Technologies, LLC

**Suggested Motion:** Authorize the City Administrator to purchase the DJI Mavic 2 Enterprise drone and listed accessories from an authorized DJI dealer for the cost of $3,979.00.
Unmanned Vehicle Technologies, LLC  
1722 N College Avenue, Suite D  
Fayetteville, AR  72703  
(479) 595-8010  
www.uvt.us  

ADDRESS  
Lee Krout  
Gardner Police Department  
440 E Main Street  
Gardner, KS  66030 US  

SHIP TO  
Lee Krout  
Gardner Police Department  
440 E Main Street  
Gardner, KS  66030 US  

QUOTE #  Q101273  
DATE  04/02/2019  

SHIP VIA  
Standard (FREE)  

REP ID  
101  

ACTIVITY  
SKU  CNTY  RATE  AMOUNT  
DJi Mavic 2 Enterprise Dual (SP)  
DESCRIPTION:  
The DJI Mavic 2 Enterprise Dual is the latest in EO/IR (thermal imaging and high resolution visual imaging) solutions from DJI Enterprise and FLIR. The M2E Dual’s camera has two sensors built-in - one is a FLIR Lepton-based thermal camera and the other is a DJI high-resolution 12MP/4K visual camera. When combined through FLIR’s MSX technology, you see a blended image allowing you to pick out details such as hazardous materials placards, jersey numbers, license plates and other details that you would normally never be able to see through a thermal image. Combine that with the robust and portable platform of the Mavic 2 Enterprise, and you get 30+ minute flight times, ADS-B for real-time manned air traffic awareness, three different attachments (Speaker, Spotlight and Beacon - all included) and omni-directional obstacle avoidance and flight intelligence.  

In an effort to better support customers, DJI is now including their Enterprise Shield Basic coverage plan with all Mavic 2 Enterprise purchases. Enterprise Shield Basic gives you two full aircraft replacements in the 12 month coverage period for a small fee at the time of replacement. The first replacement fee is $149 and the second replacement fee is $189.  

Please note that the Enterprise Shield Basic plan MUST be activated within 48 hours of initial aircraft activation; otherwise, you must either go through a video verification process or you must send the drone in to DJI’s Service Center for assessment prior to activating the coverage.  

INCLUDES:  
(1) DJI Mavic 2 Enterprise Dual Aircraft  
(1) DJI Mavic 2 Remote Controller  
(1) DJI Mavic 2 Enterprise - Intelligent Flight Battery  
(1) DJI Mavic 2 - Battery Charger w/wall cable  

Thank you for choosing Unmanned Vehicle Technologies!
<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>SKU</th>
<th>QTY</th>
<th>RATE</th>
<th>AMOUNT</th>
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<tbody>
<tr>
<td>(1) DJI Mavic 2 Enterprise - Spotlight</td>
<td></td>
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<tr>
<td>(1) DJI Mavic 2 Enterprise - Speaker</td>
<td></td>
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<tr>
<td>(1) DJI Mavic 2 Enterprise - Beacon</td>
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<tr>
<td>(1) DJI Protector Case (IP67-rated hard case with custom cut foam for all included components)</td>
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<td>(1) DJI Enterprise Shield Basic Activation Code</td>
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<td><strong>DJI Mavic 2 Enterprise - Fly More Kit</strong></td>
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<td>(2) Batteries</td>
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<td>(1) Car Charger</td>
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<td>(1) Battery Charging Hub</td>
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<td>(1) Battery to Power Bank Adapter</td>
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<tr>
<td>(2) Low-Noise Propellers (Pair)</td>
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<tr>
<td><strong>DJI CrystalSky - 7.85° / High-Brightness (1000 cd/m²)</strong></td>
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<td><strong>MavMount 3.0 (Black, CrystalSky)</strong></td>
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<td>MSRP: $114.98</td>
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<td><strong>UVT System Setup &amp; Configuration</strong></td>
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<td>Includes updating firmware and testing all major flight components including the aircraft, remote controller(s), mobile devices (such as the DJI CrystalSky), batteries and all payloads. UVT technicians handle all components in a clean environment and each opened component is then resealed with a tamper-evident seal ensuring your system arrives safely to its final destination.</td>
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<td><strong>ProLine Support - Premium</strong></td>
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<tr>
<td>24x7x365 Technical Support</td>
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**SHIPPING / FREIGHT TERMS**

Quote does not include shipping/freight charges unless shown.

**SUBTOTAL** 4,181.98

**DISCOUNT** -202.98

**TOTAL** $3,979.00

**PAYMENT TERMS**

Payment due prior to shipment, unless terms have been extended.

**RETURNS**

All sales of UAV systems are final. Returns of unopened items in the original packaging are subject to a 20% restocking fee.

Accepted By

Accepted Date

Thank you for choosing Unmanned Vehicle Technologies!
COUNCIL ACTION FORM

MEETING DATE: APRIL 15, 2019
STAFF CONTACT: POLICE CHIEF JAMES N. PRUETTING

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Agenda Item: Consider authorizing the City Administrator to enter into a three-year agreement with Incident Response Technologies Inc. for the Rhodium Incident Management Suite

Strategic Priority: Improve Quality of Life

Department: Police Department

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Staff Recommendation: Authorize the City Administrator to enter into a three-year agreement with Incident Response Technologies Inc. for the Rhodium Incident Management Suite, a web-based incident management system, at a cost not to exceed $14,527.50 for the three-year term.

Background/Description of Item: In June 2018, Johnson County Fire District #1 and the Gardner Police Department began the process of updating the existing Local Emergency Operations Plan (LEOP) for the City of Gardner in order to create a more comprehensive plan in compliance with federal, state and county guidelines. In January 2019, Fire Chief Rob Kirk appointed Battalion Chief Trig Morley, Community Preparedness and Special Operations, to oversee Fire District #1’s role in drafting and maintaining the plan in conjunction with the Gardner Police Department. As part of the development and planned implementation of the LEOP and the pending opening of the Justice Center Emergency Operations Center, there is a need to purchase incident management software that can be used across different first responder agencies in order to coordinate resources and prepare advance plans for various incidents that might occur. The software also ensures the proper collection of data during and after an incident, which is critical when cost recovery is appropriate and for after-action review.

When exploring available options for incident management software, Rhodium was identified as the only option that incorporated ICS forms into the software, which is a key factor in working across first responder agencies and in accurately gathering and recording incident data. Both Battalion Chief Morley and Police Chief Pruetting have extensive experience in managing critical incidents in the field and from an emergency operations center and jointly found the software to be very comprehensive, easy to use, and scalable to the size of any incident. The software licenses will be managed by the Gardner Police Department and can be assigned as needed to other first responder agencies or entities involved in critical incident plan preparation or in the execution of a critical or non-critical response.

The proposed contract has been reviewed and approved by the City Attorney.

Financial Impact: The first year cost of the agreement is $5,217.50, with a subsequent cost of $4,655.00 in years two and three, totaling $14,527.50 for the three-year term.
Attachments included:
- Proposed Agreement and End User Terms of Use
- Rhodium Software Suite Overview

Suggested Motion:
Authorize the City Administrator to enter into a 3-year agreement with Incident Response Technologies Inc. for the Rhodium Incident Management Suite, a web-based incident management system, at a cost not to exceed $14,527.50 for the three-year term.
## Product Summary

<table>
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<th>Product</th>
<th>Product Description</th>
<th>List Price</th>
<th>Sale Price</th>
<th>Quantity</th>
<th>Term</th>
<th>Discount</th>
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<td>10 User Package</td>
<td>One-time fee for the activation of a 10 User package including Email Interface access.</td>
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<td>$750.00</td>
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<tr>
<td>10 User Package</td>
<td>Annual fee includes 10 Standard Users, 20 View Only Users, Email Interface Access, and Rhodium Mobile iOS/Android.</td>
<td>$4,900.00</td>
<td>$4,900.00</td>
<td>1.00</td>
<td>3.00</td>
<td>5.00%</td>
<td>$13,065.00</td>
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<tr>
<td>Subscription</td>
<td>Application for all Users</td>
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</table>

**1st Year Cost** = $5,217.50  
**Total Contract Cost** = $14,527.50

### Notes
The Gardner Police Department shall receive 10 standard users and 20 view-only users (each user, standard and view-only, will have a Rhodium Mobile license included) and email interface access for a term of three (3) years. Invoice can be paid in full or in annual installments:
- Year 1 = $5,217.50  
- Year 2 & 3 = $4,655

### Order Authorization

By signing below, I approve this quote on behalf of the above named organization and authorize IRT to proceed. I understand that my organization will be invoiced for the items included in the above quote and that this order is subject to the Terms of Use found at https://www.rhodiumims.com/pdf/online_terms_and_conditions.pdf. The total cost displayed above is the total cost for the subscription term listed on this quote. Invoices will be generated in accordance with the invoice schedule shown above, with all one-time items being billed on the first invoice, and any subscription items being billed evenly across all invoices during the term. Rhodium subscriptions auto-renew unless canceled.

Signed                             Printed                             Date

Incident Response Technologies, Inc
5445 DTC Parkway, PH4
Greenwood Village, CO 80111
www.irtsoftware.com
Customer Name: City of Gardner
Customer Address: 120 E. Main St.
City/State/Zip: Gardner, KS 66030
Contact Name: Jay Belcher
Contact Phone: 913-856-7312
Contact Email: jbelcher@gardnerkansas.gov

I, the undersigned, hereby certify that I have authority to contractually bind the above named Customer. I acknowledge, on behalf of Customer, the receipt of the attached Rhodium Incident Management Suite End User Terms of Use dated as of February 15th, 2019. I understand that use of the Services (as defined in the End User Terms of Use) by Customer is governed by these End User Terms of Use, which may only be modified in writing if executed by both parties.

Notwithstanding the specific terms of the End User Terms of Use in effect as of the date hereof, Customer and IRT agree that

(i) any updates to the End User Terms of Use shall also be (A) provided in writing by IRT to Customer, and (B) binding upon IRT and Customer only upon written acceptance by Customer; and

(ii) to the extent the End User Terms of Use in effect between the parties as of the date hereof include terms specific to Customer, and not to IRT’s customers generally, Customer’s acceptance may be conditioned on the retention of such specific terms within the End User Terms of Use applicable to Customer.

______________________________
Signature

______________________________
Printed Name

______________________________
Title

______________________________
Date

Updated: February 15th, 2019
END USER TERMS OF USE

The use of Incident Response Technologies Inc.'s ("IRT") Software is offered to you upon your acceptance of these End User Terms of Use. By using IRT's software (the "Software"), you indicate your continued acknowledgment and agreement to these End User Terms of Use. Any different or additional terms in any Purchase Order, Proposal or Invoice or any other document, whether pre-printed or otherwise, shall have no force or effect on these End User Terms of Use or its subject matter, and are specifically excluded and expressly rejected by IRT. If you do not agree to be bound by and comply with all of the provisions of these End User Terms of Use, you may not access or use the Software, data, information, services, or website provided by or through IRT (collectively, "Services").

We suggest you retain a copy of these End User Terms of Use for your records.

IRT has the right, at its sole discretion, to modify, add, or remove any terms or conditions of these End User Terms of Use. Any changes to these End User Terms of Use are effective immediately following the posting of such changes on the IRT website. You will be notified of changes to these End User Terms of Use by electronic mail, and by the "updated date" listed on the IRT website. To update the electronic mail address on file, contact support@irtsoftware.com or 866-260-7333. IRT is not responsible for failed notifications due to out of date or incorrect electronic mail addresses. The most recent version of these End User Terms of Use may be found at:

<http://www.rhodiumsuite.com>

You agree to review these End User Terms of Use from time to time and agree that any subsequent use by you of the Services following changes to these End User Terms of Use constitutes your acceptance of all such changes.

For purposes of these End User Terms of Use, "you" means the Customer identified on the signature page to these End User Terms of Use and each person affiliated with Customer that is authorized to use the Services.

TERMS

Subject to these terms and conditions of these End User Terms of Use, IRT grants you a personal, limited, revocable, non-exclusive and non-transferable license to use the Services, including but not limited to the Software. This license is exclusive to you and you may not sublicense the use of the Services or provide, disclose, distribute, transfer, or otherwise make available the Services, or any content or materials related thereto, to any individuals or entities that IRT has not specifically authorized to receive access to the Services through your account. Under no circumstances shall you have any rights of any kind in or to the Services after any termination or expiration of your subscription for any reason.

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Updated: February 15th, 2019
You may not disassemble, translate, reverse engineer, or otherwise decompile the Services or access any source code related thereto.

You acknowledge that IRT owns all right, title and interest, including but not limited to, all copyrights, in and to the Services being provided to you. You further acknowledge that you will not take any action inconsistent with such ownership. IRT does not grant you any ownership rights in or to any of the Services being provided.

IRT may modify or discontinue the Services at any time.

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You acknowledge that IRT may establish general practices and limits concerning use of the Services, including without limitation the maximum number of days that data will be retained by the Software; the maximum number of email messages that may be sent from or received by the Software; the maximum size of any file attachment, email message, or other data upload or import; the maximum disk space that will be allotted on IRT’s servers on your behalf, and the maximum number of times (and the maximum duration for which) you may access the Software in a given period of time. You agree that IRT has no responsibility or liability for the deletion or failure to store any data.

PAYMENT

Within thirty (30) days of receiving an invoice from IRT for your use of the Services, you agree to pay IRT the subscription fee specified therein. With regard to any one-time fees for configuration of the Services, custom development, or third party products, you agree to pay the total amount due within thirty (30) days of receiving an invoice from IRT unless an alternative payment plan has been previously agreed to in writing. IRT generates invoices upon receiving an Accepted Quote, Purchase Agreement, Purchase Order, or Accepted Proposal. All fees will be paid in U.S. dollars. Payments shall be submitted by check, wire transfer or credit card. You agree to a one (1) year minimum subscription. Should you select a multi-year subscription as set forth in an Accepted Quote, Purchase Agreement, Purchaser Order, Proposal or Invoice, your obligation for payment continues through the end of the period selected, except that you may terminate your multi-year commitment by submitting notice to IRT in accordance with the instructions below at least (3) business days prior to each annual renewal date for your Services. In the event that you terminate your Services prior to the end of the period selected in your Accepted Quote, Purchase Agreement, Purchase Order, or Accepted Proposal, IRT will invoice for the difference between the standard price and any discounted price offered to you for any previous or current invoices due during the period selected. Notwithstanding the period selected for the use of the Services, your subscription will automatically renew for a one (1) year period unless IRT is notified no later than three (3) business days prior to the expiration of your current subscription.

Notification of subscription cancelation must be in writing and received at support@irtsoftware.com or 5445 DTC Parkway, Penthouse 4, Greenwood Village, CO 80111. Any subscription fee that is not paid when due will accrue a late fee of one and one half percent (1.5%) per month, or the maximum rate permitted by applicable law, whichever is less, on any outstanding balance from the due date until paid, and you agree to pay all such late fees plus all expenses of collection. IRT’s fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you will be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on IRT’s income.

Updated: February 15th, 2019
SUPPORT AND AVAILABILITY

Standard support is included with your Software subscription at no additional charge and is limited to assisting you with resolving perceived problems with the Software via phone and email assistance. Standard support is available Monday-Friday between the hours of 9:00am and 5:00pm Mountain Time, except nationally recognized holidays. Upgraded support may be purchased separately.

Support technicians may be contacted at support@irtsoftware.com or 866-250-7333 extension 2. Additional support and help information may be accessed in the Software at any time by utilizing the help links. IRT reserves the right to allocate its resources to address support concerns of its users based on the relative severity of each user’s support needs, as determined in IRT’s reasonable discretion.

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Updated: February 15th, 2019
INFORMATION DATA.

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INDEMNIFICATION BY USER

You agree to indemnify, defend and hold IRT and IRT’s Related Parties harmless from any loss, liability, claim, demand, damage, or expense (including reasonable legal fees) asserted by any third party relating in any way to your use of the Services or breach of these End User Terms of Use.

INDEMNIFICATION BY IRT

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As applicable, any and all expenses related to obtaining licenses and/or exemptions related to your use of the Services outside the United States, shall be your sole responsibility.

GENERAL

You agree to maintain your password in a secure and confidential manner by not permitting others to use your account. You shall not sell, trade, or otherwise transfer your account to another person or charge anyone for access to the Services.

If any provision of these End User Terms of Use is held invalid or unenforceable in any respect by any court having competent jurisdiction, such provision will be enforced to the maximum extent permitted by law, and the remaining provisions of these End User Terms of Use will continue in full
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Fast delivery.
COUNCIL ACTION FORM

MEETING DATE: APRIL 15, 2019
STAFF CONTACT: LAURA GOURLEY, INTERIM CITY ADMINISTRATOR

Agenda Item: Authorize the Interim City Administrator to execute an agreement with Information Matrix

Strategic Priority: Promote Economic Development

Department: Administration

Staff Recommendation:
Staff recommends Council authorize the Interim City Administrator to execute an agreement with Information Matrix to produce and distribute video media, per the storyline of “Great Places to Live, Work and Raise a Family.”

Background/Description of Item:
Mayor Shute and staff had several discussions with Information Matrix, who create and distribute educational content for Public Television, as well as additional content for airing on network television. They've proposed creating and distributing video media showing Gardner as a “Great Place to Live, Work and Raise a Family.”

Mayor Shute and staff conducted due diligence regarding Information Matrix's proposal, including discussion with Martin Mini of KCADC who reviewed the proposal and pledged his support, stating KCADC will assist the city to achieve additional promotional benefits using the “b-roll” footage obtained from Information Matrix. (Mr. Mini indicated the b-roll footage alone may be worth the cost.)

Here is the link to Information Matrix's website: https://informationmatrixtv.com/

Information Matrix states they have a 3-pronged approach to education and outreach:

- Public Television – a 3-5 minute, short form documentary that bridges the gap between 30 and 60-minute shows. The intent of the segment is education; they believe Gardner is a good fit for “Great Places to Live, Work and Raise a Family.”

- Corporate Identity Documentary – a 5-6 minute “behind the scenes look” that will be emailed to viewers requesting information about great places to live, work, and raise a family.

- Educational Spot for Major Networks – 1-minute, educational, commercial segment that will air once nationally in all 50 states and 400 times regionally in the top 100 cities based on population.

Information Matrix states the city will know the airing schedule prior to actual airings and will receive airing affidavits directly from the major networks after the segments air.

Information Matrix’s proposal (especially when complemented by KCADC’s assistance to further use the b-roll footage) is in keeping with the intended use of transient guest tax revenue, per
Because the delayed opening of Hampton Inn will decrease 2019 transient guest tax revenues by approximately 50%, funding for anticipated 2019 CVB activities will be delayed. Gardner Edgerton Chamber of Commerce President Jason Camis discussed the CVB during his presentation at the January 7, 2019 Council meeting and noted the CVB will be formed at a later time when the increased revenue becomes available.

Noting the reduced revenues and delayed 2019 CVB activities, Interim City Administrator Gourley polled members of the Economic Development Council and obtained majority approval to reallocate a portion of the $115,000 previously approved in the 2019-2020 biennial budget for CVB activities to use for the Information Matrix proposal.

In summary:
- No CVB is yet formed (see attached council meeting minutes for January 7, 2019).
- 2019 transient guest tax revenue will be diminished, thus requiring delay of CVB activities.
- As 2019 CVB deliverables are still TBD, it is not too late to reallocate $27,000 for this promotional opportunity.
- Economic Development Council determines use of transient guest tax revenue (Economic Development Reserve Fund) and provided approval for this reallocation.

City Attorney Denk reviewed and approved the agreement.

**Financial Impact:**
The total cost is $27,000. (see Information Matrix agreement - “Requirements of City of Gardner” (d) and (e) ) Per the Economic Development Council’s approval, the cost will be paid from the Economic Development Reserve Fund as a reallocation of a portion of previously approved $115,000 CVB activities.

**Attachments Included:**
- Information Matrix agreement
- Council minutes from January 7, 2019 meeting (see New Business Item No. 1)
- Charter Ordinance No.18

**Suggested Motion:**
Authorize the Interim City Administrator to execute an agreement with Information Matrix
Studio Production Authorization
To the Attention of: Mayor Steve Shute, Laura Gourley, Daneeka Marshall-Oquendo
Participant Company: City of Gardner, Ks.
Storyline: Great Places to Live, Work and Raise a Family
Producer: Anthony Davis
Date: Tuesday, March 26, 2019

Public Television Distribution
This INFORMATION MATRIX short-form documentary series will be distributed to Public Television stations in all 50 states. The overall project will include the production of one (1) 3-5-minute educational segment produced as a standalone short-form documentary for distribution to Public Television Stations nationwide (estimated reach for one year is 60 million households). INFORMATION MATRIX maintains editorial control for the series format following Public TV Standards and will adhere to guidelines for Public Television’s official practices. The host of INFORMATION MATRIX for Public Television is Laurence Fishburne. Mr. Fishburne’s image may not be used for any other broadcasts other than for this Public Television series. City of Gardner agrees to be a content expert for INFORMATION MATRIX and understands that the format of the Public Television segment is non-commercial and strictly educational in nature. In adherence with Public Television Standards and Practices, there are no fees associated with the Public Television portion of the project. All fees outlined in this Authorization cover production costs for the value-added production and distribution services outlined below.

As a special thanks, INFORMATION MATRIX will provide the following value-added services.

5-6 Minute Corporate Profile
INFORMATION MATRIX will provide the production of one (1) broadcast quality, 5-6-minute educational documentary profile with expansive and detailed information documenting the issues and educational message that are applicable to your target audience. This is produced and edited on digital HD media. The format is educational and informational and is designed to promote your educational message within the context of the feature story line. Production includes interviews, narration, program/set design, script writing, videography, graphics, music, editing, high-end computer-generated graphics, and 2-D animation and/or graphics of your logo, phone number, and website will complete the production.

Educational Commercial Television Airings
INFORMATION MATRIX will provide the production of one (1) high end one-minute educational commercial segment used for network distribution. Your segment will be broadcast once primetime in over 84 million homes via MSNBC, CNBC, CNN or an equivalent network. Your educational commercial segment will also air 400 times in many of the top 100 Direct Marketing Areas during peak and prime time on networks such as CNBC, CNN, CNN Headline News, Fox Business Network, The Learning Channel, Family TV, Discovery Channel, or equivalent networks (a media schedule will be set in advance to guarantee these spots, and post airing affidavits (proof of airing) will be provided following the airings). Information Matrix will air these One Minute Commercials in the Kansas City DMA.
Internet Distribution

INFORMATION MATRIX will digitize your segments into digital files for streaming on your website and will be delivered in a format for streaming on social media sites. INFORMATION MATRIX will design and generate an email campaign to *your* narrowcasted audience sending up to 1,000,000 video emails from our email database.

*Information Matrix Will provide all b-roll footage at no additional cost*

Project Cycle: 90-120 Days

Day 1: Contract signed and organization is scheduled for participation in the project.
Days 2-14: Project Fee is due on receipt of invoice; Questionnaire and Collaterals Sent.
Days 15-45: Project assigned to a field producer, producer reviews literature, acclimates to storyline.
Days 46-75: Scripts written and approved. Shoot location determined and shoot day set.
Days 76-90+: Shoot day occurs; studio edits film; segments are approved & media schedule is set for airing.

Requirements of City of Gardner

a. Completion of the Research Questionnaire. (Available online, by email, & in Welcome Package)
b. Collateral materials sent necessary to the storyline and to aid the producer and field producer in scripting. (Included should be all necessary literature, marketing materials, past video work, master files of previously shot video (if available), company logo(s); all helpful creating the script.
c. A list of potential interviewees and site locations where the educational story may be shot.
d. City of Gardner does hereby commit to participate in this project described above and agrees to pay the $23,500 underwriting and scheduling fee as follows: 1/3 due upon receipt of invoice, 1/3 due upon receipt of script, and 1/3 due upon receipt of Corporate Documentary (there are no post-production fees). If City of Gardner fails to pay the initial 1/3rd pay due upon receipt of the initial invoice, INFORMATION MATRIX is entitled to 30% of the $23,500 underwriting and scheduling fee as liquidated damages.

e. The one day one location shoot will be provided for a location fee of $3,500 to shoot onsite in the continental U.S. This location expense will be the responsibility of City of Gardner. Alternately, a field production crew can be provided on location at an appropriate facility in South Florida (West Palm Beach to Miami) to shoot all footage and interviews for this project at no additional expense if the organization has a South Florida location to shoot story in use by an end user.
f. Expert advice on the technical accuracy of script and video for the 5-minute educational documentary and one-minute segment within 5 business days of receipt of these deliverables.
g. City of Gardner will receive the licensing rights to the 5-6-minute corporate documentary and educational commercial at the end of the project at no further cost, digital files of the aforementioned segments and all b-roll footage

_________________________________________  ____________________________  ________________
Authorized Signature                        Position                          Date

_________________________________________  ____________________________  ________________
Education Alliance Partners                 Position                          Date

INFORMATION MATRIX  
Senior Producer
Anthony Davis

Venue for any claim relating to this agreement, or to the breach of this agreement, shall be in Palm Beach County, Florida. This agreement shall be interpreted under the laws of the state of Florida.
The City Council of the City of Gardner, Kansas met in regular session on January 7, 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 Pruetting; Business & Economic Development Director Larry Powell; Utilities Director Gonzalo Garcia; Public Works Director Michael Kramer; Parks and Recreation Director Jason Bruce; Finance Director Matt 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.

**PRESENTATIONS**

1. Governing Body Rules of Procedure Update

   Mayor Shute stated this presentation would be deferred to the January 22, 2019 meeting.

2. Neighborhood Revitalization Plan (NRP) for the City of Gardner

   Business and Economic Development Director Larry Powell stated that the City had previously had a Neighborhood Revitalization Program, which had sunset after ten years. He said those who had participated in the program had shown more willingness to invest in their properties, and Johnson County had concluded the program was a favorable motivator for renovation, replacement, or the building of new structures. He said the County was willing to participate in a new program.

   Mr. Powell stated the original program had been for businesses only, but the program being recommended currently would include residential properties as well. He said the residential property currently suggested for inclusion was off of Killcreek Road and had historically faced issues that made it difficult or costly to develop such as floodplains, utility lines (including gas lines), and proximity to the sewage plant. He said there may be other properties in the community that face similar challenges, and these could be considered for inclusion in the future should they fit the criteria.

**PUBLIC HEARING**

1. Hold a public hearing on the adoption of a Neighborhood Revitalization Plan (NRP) for the City of Gardner

   Councilmember Melton made a motion to open a public hearing for the purpose of receiving public comments on the adoption of a Neighborhood Revitalization Plan for the City of Gardner

   Councilmember Moore Seconded.

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

   Councilmember Gregorcyk made a motion to close the public hearing

   Councilmember Moore Seconded.

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

**PUBLIC COMMENTS**
Jerry Gipner of 4018 W 159th, Olathe stated the hangars at the Gardner Municipal Airport were not all equal, and came in a range of prices. He said there was currently a hangar wait list that people had joined for $100 each, which he believed to be a contract. He said there was also an upgrade list for hangars and the people who sublease get the best hangars immediately because the individuals with those hangars wish to keep them. He said the Johnson County Airport Board would be meeting the following morning and effectively doubling hangar rates. He said there were also 10-15 hangars at the Gardner Municipal Airport containing planes that hadn’t moved for thirty years.

Gary Mitchell of 7th Avenue, Kansas City, Kansas, stated he was with the VAA and had attended the Airport Advisory Board meeting in December and that everyone had had an opportunity to make comments and discuss issues with the hangars during that meeting prior to the vote of the Board members. He said the plan that had been voted on was about the best possible plan. He said giving away the best hangars was an exaggeration and un-airworthy aircraft was an issue that was being worked on. He encouraged the Council to vote on the Airport Advisory Board’s recommendation for subleasing.

CONSENT AGENDA

1. Standing approval of the minutes as written for the regular meeting on December 3, 2018
2. Standing approval of City expenditures prepared December 13, 2018, in the amount of $1,418,320.97; December 14, 2018 in the amount of $523.00; December 19, 2018, in the amount of $1,144,582.28; December 20, 2018, in the amount of $814,931.16; December 27, 2018 in the amount of $466,212.44
3. Consider authorizing the Mayor to sign the 2019 County Assisted Road System (CARS) agreement for the Waverly, US-56 to Madison project
4. Consider the purchase of thirteen (13) Harris XL-185 portable radios and related equipment from Ka-Comm, Inc
5. Consider a recommendation to purchase a new vehicle for the Utilities Department
6. Consider authorizing the City Administrator to execute an addendum with Wilson & Company, Inc. for design services on the Santa Fe, Waverly to Poplar project
7. Consider reappointment of Clint Barney to the Utility Advisory Commission

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.

COMMITTEE RECOMMENDATIONS

1. Consider adopting a Resolution adopting a Neighborhood Revitalization Program

Business and Economic Director Larry Powell stated the Economic Development Advisory Committee had been reviewing this program since early 2018 and that determined that the original program, which had been just for businesses, was not adequate for current needs. Mr. Powell state businesses must make changes that increase property values by a minimum of 15% in order to be eligible for rebates. He said this had been changed from the previous figure of 20% due to current building costs. He said rebates would be transferrable, and that special assessments and the eight mills levied for USD 231 would still be required to be paid. He said the residential areas included had similar improvement requirements, but the rebate period was only five years versus the ten years for businesses as residential tax increases tend to occur more slowly. He said the goal was to encourage growth in these areas, but not to provide an undo advantage.

Mr. Powell said the next steps would be to contact other entities in the area and present the information, as these entities would need to enter into an inter-local agreement with the City of Gardner if they wished to participate in the program. He said the program would then go to the Kansas Attorney General’s office for review and approval prior to being put in place and made available to the general public. Councilmember Winters asked if the program
would still be available if no other intergovernmental entities wished to participate. Mr. Powell stated it would, and
clarified that the Fire Department had been part of the City when the original program had been put in place, but
that the current program still required mills for the Fire Department, USD 231 (8 mills for Capital Outlay), and all
specials to be paid.

Mayor Shute asked about retroactivity of the program. Mr. Powell stated no one was eligible to participate in the
program until it had been approved by the Attorney General, which he hoped would occur by March or April of 2019.

Councilmember Gregorcyk asked for examples of outcomes from the previous program as well as a reminder of
how the program was funded. Mr. Powell stated the highest return on investment from the original program had
been the O’Reilly building where the return on investment had been equivalent to the cost to build. He said those
wishing to participate would be approved, would perform improvements, the improvements would be accepted,
Johnson County would be notified and subsequently appraise the building, and if the requirements met the
guidelines the participant would receive a refund only after their taxes were paid in full.

Councilmember Baldwin asked if there had been any consideration of using a flat dollar amount in addition to the
15% requirement so that once a certain dollar amount had been spent the percentage no longer mattered. Mr.
Powell stated there had been an attempt to develop a matrix based on this concept but it had become convoluted
and did not support the goal of encouraging development across the board.

Councilmember Moore asked how the zones were determined. Mr. Powell stated the first step had been looking at
the zones from the original program. He said input from property owners about their future plans had also been
included. He said location and mitigating circumstances such as noise had been considered as well. He said while
everything believed necessary to include at this time had been included, there were other areas that could apply in
the future if they met the criteria, so long as they went through the same process.

Mayor Shute stated part of this is the Main Street Marketplace property, which would already have a CID or TIF.
Mr. Powell stated this rebate could not be utilized if the property was already receiving another incentive.
Councilman Winter asked if a residential property was eligible if it was located in a business zone. Mr. Powell
stated there was no provision for mixed use, meaning business properties had to be in business zones and
residential properties had to be in residential zones.

Councilmember Gregorcyk made a motion to adopt Resolution 2006, a resolution adopting a Neighborhood
Revitalization Program

Councilmember Baldwin Seconded.

With all of the Councilmembers voting in favor of the motion, the Resolution passed and was assigned
Resolution number 2006

Gregorcyk: Yes
Melton: Yes
Moore: Yes
Winters: Yes
Baldwin: Yes

2. Consider a recommendation to award a contract to DEHN, Inc. for the Hillsdale Lightning Protection
   Project # WA1807

Utilities Director Gonzalo Garcia stated this project had started after a lightning strike in 2016 had required the plant
to be manually operated due to SCADA damage. He said there was currently no lightning protection at the plant
for either equipment or personnel. He said the system would have two components: lightning rods and surge
protectors. Councilman Melton asked if these protections had been in place when the plant had been hit in 2016.
Mr. Garcia stated there had been no protection as it had been removed from the original project due to budget
restrictions.
Councilmember Baldwin made a motion to authorize the City Administrator to execute a contract with DEHN, Inc., in the amount of $109,850.00 for a lightning and surge protection system for the Hillsdale Water Treatment Plant, Project #WA1807

Councilmember Moore Seconded.

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

3. Consider authorizing new sub-lease policy for hangars at the Gardner Municipal Airport

Public Works Director Michael Kramer stated the airport minimum standards for the Gardner Municipal Airport had been redone when the City had taken over airport operations in 2016. He said subleasing had been reviewed with both the Airport Advisory Board (AAB) and the City Council at that time, and a policy had been passed to allow subleasing to continue through December, 2018, with all future subleasing to be for a maximum of two years. He said the AAB had started discussing this issue in November of 2018 at their Board meeting with about seventeen citizens who signed in. He said the existing policy had been discussed, along with past policies and best practices from other airports. He said this discussion had been utilized to create the recommendation presented to the AAB in December, 2018, which had been approved and was now being presented to the Council.

Councilmember Moore made a motion to approve the recommend sub-lease policy for hangars at the Gardner Municipal Airport

Councilmember Melton Seconded.

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

NEW BUSINESS

1. Consider the Gardner Edgerton Chamber of Commerce Agreement

Jason Camis, President of the Gardner Edgerton Chamber of Commerce, stated the Chamber was working to determine if a Convention and Visitors Bureau (CVB) would be best operated under the Chamber umbrella or as a stand-alone organization. He said he wanted to have a contract for the CVB that was separate from the Chamber’s agreement. He said the first step for creating a CVB was determining the organizational structure, followed by completing a visitor profile to help to better understand the target audience. He said the Chamber would continue to work with the City of Gardner and perform the activities it had in the past. He said there were many opportunities coming up such as the 2020 Kansas City Airshow to be held at the New Century Airport and the 2021 Model T tour of the Santa Fe Trail. He said the funding for this year could vary based on the opening of the Hampton Inn and he would work with City staff on a payment schedule.

Councilmember Melton stated there was nothing in the agreement providing metrics for accountability. He said the Council needed to have a way to know money was being utilized correctly. Mr. Camis stated a board with voting privileges could potentially be added.

Councilmember Baldwin stated the agreement with Southwest Johnson County EDC should also be considered in this process. He said if accountability was needed for the Chamber agreement, it was needed for the agreement with the EDC as well.

Interim City Administrator Laura Gourley stated the Economic Development Council was going to be part of the setup for the CVB, and the CVB contract would then come back before the Governing Body. She said she was unsure if the Governing Body was requesting spending powers or reporting powers, and said spending powers may be problematic due to Charter Ordinance 18.

Mayor Shute stated the Governing Body was looking for accountability and felt this needed to be enforced across all intergovernmental partners. He said no decisions would be made on the CVB until there was a CVB
agreement. He said this funding provided the ability to perform the advance work needed to form the CVB. Mayor Shute stated any future contracts that were signed would include performance clauses.

Councilmember Gregorcyk asked if Mr. Camis expected the funding from the Transient Guest Tax to shrink over time and the CVB to become more self-supportive. Mr. Camis stated most CVBs had a public funding element and were not self-supporting.

Councilmember Gregorcyk made a motion to authorize the Mayor to execute an agreement with the Gardner Edgerton Chamber of Commerce for business and tourism services for one year, ending December 31, 2019. Councilmember Melton Seconded.

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

2. Consider accepting the Sanitary Sewer and Waterline Easement dedications by separate instruments for Gardner Business Center.

Councilmember Moore made a motion to accept the dedication of the Sanitary Sewer and Waterline Easements by separate instruments. Councilmember Baldwin Seconded.

With all of the Councilmembers present voting in favor of the motion, the motion carried. (Councilmember Gregorcyk was not present to vote).

3. Consider the acceptance of Drainage, Sanitary Sewer, Waterline, and Temporary Turnaround Easement dedications by separate instruments for Olathe Health

Councilmember Melton stated when the gas line had been installed, the asphalt before the turn-in had been torn up and concrete had been poured. He asked who was responsible for fixing this. Public Works Director Michael Kramer stated staff would look into this.

Councilmember Baldwin made a motion to accept the dedication of the Drainage, Sanitary Sewer, Waterline, and Temporary Turnaround Easements by separate instruments. Councilmember Melton Seconded.

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

4. Consider adopting a resolution providing notice to be given for a public hearing concerning the advisability of the creation of a Community Improvement District within in the City and declaring the intent of the City to levy a Community Improvement District Sales Tax (Main Street Market Place CID)

Councilmember Melton made a motion to adopt Resolution No. 2007 providing for notice to be given for a public hearing concerning the advisability of the creation of a Community Improvement District within the City and declaring the intent of the City to levy a Community Improvement District Sales Tax pursuant to K.S.A. 12-6a26 et seq. (Main Street Market Place CID).

Councilmember Moore Seconded.

With all of the Councilmembers voting in favor of the motion, the Resolution passed and was assigned Resolution number 2007.

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<td>Melton</td>
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<td>Moore</td>
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Interim City Administrator Laura Gourley stated she wished to mention that Bond Counsel Tyler Ellsworth had been made a Partner at Kutak Rock.

5. Consider adopting a resolution approving the execution of a funding agreement with The Bristol Groupe LLC.

Councilmember Gregorcyk stated he was excited for this opportunity and appreciated the investment. Mayor Shute stated these were three tough areas and this was a great opportunity.

Councilmember Gregorcyk made a motion to adopt Resolution No. 2008 approving the execution of a funding agreement related to three proposed economic development projects located within the City (The Bristol Groupe LLC Projects)

Councilmember Baldwin Seconded.

With all of the Councilmembers voting in favor of the motion, the Resolution passed and was assigned Resolution number 2008

Moore: Yes
Winters: Yes
Baldwin: Yes
Gregorcyk: Yes
Melton: Yes

COUNCIL UPDATES

City Clerk Amy Nasta stated there had been some challenges with availability for Governing Body Members when scheduling the interviews for both the Airport Advisory Board (AAB) and the Utility Advisory Commission (UAC) and as a result, these interviews will not be completed in time to meet the deadlines outlined in Governing Body Rules of Procedure. She said the UAC would only have two members at the end of January, including the reappointment of Clint Barney approved earlier in the meeting. She said there had also been an insufficient number of applicants for the UAC as compared to seats, and Attorney Denk had verified that the terms of seated members could be extended slightly in order for the process to be extended, as Governing Body Rules of Procedure allows for this in exceptional circumstances. She said the two applicants already received will still be considered.

Ms. Nasta stated the Governing Body had received enough applications to fill the open position on the Airport Advisory Board, and could determine if they would prefer to restart the process or have an agenda item introduced at the January 22, 2019 City Council meeting to slightly extend the process in order to allow for interviews and consideration.

Mayor Shute stated there was consensus from the Governing Body to extend the current terms of UAC members by eight weeks and restart the UAC selection process.

Mayor Shute stated there was consensus from the Governing Body to have an agenda item introduced at the January 22, 2019 meeting to extend the Airport Advisory Board selection process.

Public Works Director Michael Kramer stated the Federal shutdown was affecting applications for airspace, which was impacting projects including sewer and road projects at the Gardner Municipal Airport. He said applications were not being accepted or reviewed.

Interim City Administrator Laura Gourley stated she wanted to remind the Governing Body that the next meeting would be Tuesday, January 22, 2019. She said IT had used a creative solution to put up a new camera to allow for livestreaming that evening, and that the previous camera would be added back in the future. Councilmember Moore stated he appreciated the camera.
Councilmember Gregorcyk asked for an update on the City Administrator search process and asked if 1% of the PILOT was equivalent to approximately $100,000 on the electric franchise. Finance Director Matthew Wolff stated he believed the value for 1% for 2018 had been approximately $120,000. Interim City Administrator Laura Gourley stated the City Administrator position had been posted and applications would be accepted through February 1, 2019. She said the selection committee would conduct initial interviews from February 11, 2019 through February 22, 2019. She said the goal was to have someone in place by April 1, 2019, but that this timeline may be a bit too aggressive. Mayor Shute stated a second Interim City Administrator may need to be appointed after March 22, 2019 and that this was being proactively considered.

Councilmember Baldwin stated a tracking plan for various projects to be displayed on the City’s website had been discussed at the November, 2017 Council Retreat. He said he believed the agreements with Southwest Johnson County EDC and the Chamber presented a good opportunity to create a checklist for the website to help track progress on these items, along with links to relevant materials. Mayor Shute stated the G3 dashboard was still available. Finance Director Matthew Wolff stated this was more for viewing the big picture and other measures of satisfaction, not for step-by-step tracking of agenda items. Councilmember Moore stated he would like to see more visibility of G3 in general. Mr. Wolff stated more visibility would be available this quarter.

Mayor Shute stated the Martin Luther King exhibit would be available for viewing at City Hall on Friday, January 18, 2019 and Monday, January 21, 2019.

**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 08:38 p.m.

City Clerk
CHARTER ORDINANCE NO. 18

A CHARTER ORDINANCE REPEALING CHARTER ORDINANCE NO. 17, EXEMPTING THE CITY OF GARDNER, KANSAS, FROM ALL THE PROVISIONS OF K.S.A. 12-1696, RELATING TO DEFINITIONS PERTAINING TO TRANSIENT GUEST TAX; FROM THE PROVISIONS OF K.S.A. 12-1697 (a), RELATING TO THE LEVY OF TRANSIENT GUEST TAX; FROM THE PROVISIONS OF K.S.A. 12-1698(e), RELATING TO CITY TRANSIENT GUEST TAX FUND; FROM ALL THE PROVISIONS OF K.S.A. 12-16,101, RELATING TO A COMMITTEE TO MAKE RECOMMENDATIONS FOR PROGRAMS AND EXPENDITURES; AND FROM ALL THE PROVISIONS OF K.S.A. 12-16,113, RELATING TO AN ANNUAL ACCOUNTING OF EXPENDITURES; AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT.

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

SECTION ONE: The City of Gardner, Kansas, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to repeal Charter Ordinance No. 17.

SECTION TWO: The City of Gardner, Kansas, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt, and does exempt itself from all the provisions of K.S.A. 12-1696, which reads as follows:

"As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) ‘Person’ means an individual, firm, partnership, corporation, joint venture or other association of persons;

(b) ‘Hotel, motel or tourist court’ means any structure or building which contains rooms furnished for the purposes of providing lodging, which may or may not also provide meals, entertainment or various other personal services to transient guests, and which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are sought for pay or compensation by transient or permanent guests and having more than two bedrooms furnished for the accommodation of such guests;

(c) ‘Transient guest’ means a person who occupies a room in a hotel, motel or tourist court for not more than 28 consecutive days;

(d) ‘Business’ means any person engaged in the business of renting, leasing or letting living quarters, sleeping accommodations, rooms or a part thereof in connection with any motel, hotel or tourist court; and

(e) ‘Convention and tourism promotion’ means: (1) activities to attract visitors into the community through marketing efforts, including advertising, directed to at least one of the five basic convention and tourism market segments consisting of group tours, pleasure travelers, association meetings and conventions, trade shows and corporate meetings and travel; and (2) support of those activities and organizations which encourage increased lodging facility occupancy."
SECTION THREE: The City of Gardner, Kansas, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby enacts the following substitute and additional provisions for those provisions exempted from in SECTION TWO above:

"As used in this act, the following words and phrases have the meaning respectively ascribed to them herein:

(a) "Person" means an individual, firm, partnership, corporation, joint venture or other association of persons;

(b) "Hotel, motel, or tourist court" means any structure or building which contains rooms furnished for the purposes of providing lodging, which may or may not also provide meals, entertainment or various other personal services to transient guests, and which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are sought for pay or compensation by transient or permanent guests and having more than two bedrooms furnished for the accommodation of such guests;

(c) "Transient guests" means a person who occupies a room in a hotel, motel or tourist court for not more than 28 consecutive days;

(d) "Business" means any person engaged in the business of renting, leasing or letting living quarters, sleeping accommodations, rooms or a part thereof in connection with any motel, hotel or tourist court;

(e) "Economic development promotion" means (1) activities to attract the location or relocation of business into the community through marketing efforts, including advertising; (2) activities designed to encourage retention and expansion of existing businesses in the community; and (3) convention and tourism promotion activities designed to attract visitors into the community through marketing efforts, including advertising, directed to at least one of the five basic convention and tourism market segments consisting of group tours, pleasure travelers, association meetings and conventions, trade shows and corporate meetings and travel and support of those activities and organizations which encourage increased lodging facility occupancy."

SECTION FOUR: The City of Gardner, Kansas, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt, and does exempt itself from, and makes inapplicable to it, the provisions of K.S.A. 12-1697 (a), which reads as follows:

"(a) In order to provide revenues to promote tourism and conventions, the governing body of any county or the governing body of any city is hereby authorized to levy a transient guest tax at not to exceed the rate of 2% upon the gross receipts derived from or paid by transient guests for sleeping accommodations, exclusive of charges for incidental services or facilities, in any hotel, motel or tourist court. The percentage of such tax shall be determined by the board of county commissioners or by the city governing body and shall be specified in the resolution or ordinance authorizing the same."

SECTION FIVE: The City of Gardner, Kansas, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby enacts the following substitute and additional provisions for those provisions exempted from in SECTION FOUR, above:
“(a) In order to provide revenues to promote economic development, the Governing Body is hereby authorized to levy a transient guest tax by ordinary ordinance upon the gross receipts derived from or paid by transient guests for sleeping accommodations, exclusive of charges for incidental services or facilities, in any hotel, motel, or tourists court.”

SECTION SIX: The City of Gardner, Kansas, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt itself from and make inapplicable to it the provisions of K.S.A. 12-1698 (e), which reads as follows:

“(e) Except as otherwise provided in K.S.A. 12-1774, and amendments thereto, all such moneys received by the county or city treasurer from disbursements from the county or city transient guest tax fund shall be credited to the tourism and convention promotion fund of such county or city and shall only be expended for convention and tourism promotion.”

SECTION SEVEN: The City of Gardner, Kansas, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby enacts the following substitute and additional provisions for those provisions exempted from in SECTION SIX, above:

“(e) All such moneys received by the city treasurer from disbursements from the city transient guest tax shall be credited to the ‘Economic Development Promotion Fund’ and shall only be expended for economic development promotion, including convention and tourism promotion, pursuant to the terms of an agreement or agreements approved by the Governing Body for economic development promotion services.”

SECTION EIGHT: The City of Gardner, Kansas, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt itself and does exempt itself from, and makes inapplicable to it the provisions of K.S.A. 12-16,101, which reads as follows:

“The governing body of any city or county which levies a transient guest tax pursuant to this act shall establish a convention and tourism committee to make recommendation concerning the programs and expenditures for promotion of conventions and tourism. Such board of county commissioners or city governing body shall appoint ten (10) members to such committee, a majority of which shall be representatives of businesses coming within the terms of this act. In appointing such members, the board of county commissioners or city governing body shall attempt to create a representative balance of large and small businesses and businesses from the various geographic areas of such county. The board of county commissioners or city governing body shall provide, by resolution, for the appointments and terms of service not to exceed four (4) years for such members. The board of county commissioners or city governing body adopting such tax shall have the authority to contract for convention and tourism programs to be implemented.”

SECTION NINE: The City of Gardner, Kansas, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby enacts the following substitute and additional provisions for those provisions exempted from in SECTION EIGHT, above:

“(a) The Governing Body hereby establishes an Economic Development Council to make recommendations concerning the programs and expenditures for economic development promotion. Such council shall be composed of the Mayor of Gardner, or a duly authorized representative; President of the City Council; City Administrator; Parks and Recreation Director; a representative of the Southwest Johnson County Economic Development Corporation; a
representative of the Gardner Chamber of Commerce; and a representative from the Gardner lodging industry."

SECTION TEN: The City of Gardner, Kansas, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt itself from and make inapplicable to it the provisions of K.S.A. 12-16,113, which reads as follows:

"Any entity to which funds which in the aggregate in any year exceed $25,000, are provided for convention and tourism promotion purposes from moneys received pursuant to K.S.A. 12-1693 or K.S.A. 12-1697, and amendments thereto, or pursuant to any charter ordinance or resolution which imposes a transient guest tax, shall provide for the separate accounting of the receipt and disbursement of such funds and shall provide to the city or county, as the case requires, an accounting of the receipt and expenditures of such funds in accordance with generally accepted accounting principles within 120 days after the end of the fiscal year of such entity. In the event no such accounting is provided within such time period, funds shall not be provided to the entity unless and until the accounting is provided."

SECTION ELEVEN: The City of Gardner, Kansas, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby enacts the following substitute and additional provisions for those provisions exempted from in SECTION TEN, above:

"The City of Gardner shall provide the separate accounting of the receipt and disbursement of all funds from the Economic Development Promotion Fund, and shall provide to the City an accounting of the receipt and expenditures of such funds in accordance with generally accepted accounting principles within 180 days after the end of its fiscal year. In the event no such accounting is provided within such time period, funds shall not be provided to the City of Gardner from the Economic Development Promotion Fund unless and until the accounting is provided."

SECTION TWELVE: This Ordinance shall be published once each week for two consecutive weeks in the official city newspaper.

SECTION THIRTEEN: This is a Charter Ordinance and shall take effect sixty-one (61) days after final publication unless a sufficient petition for a referendum is filed and a referendum held on the ordinance as provided in Article 12, Section 5, subsection (c) (3), of the Constitution of the State of Kansas, in which case the ordinance shall become effective if approved by a majority of the electors voting thereon.

PASSED AND APPROVED by the Governing Body, not less than two-thirds of the members elect voting in favor thereof, the 7th day of October, 2002.

_______________________________
Carol Lehman, Mayor

ATTEST:

_______________________________
Gwen Scott, City Clerk
Agenda Item: Authorize the Interim City Administrator to execute an extension of the agreement for professional services with dPlanit, LLC (David Knopick, Owner)

Strategic Priority: Promote Economic Development

Department: Administration

Staff Recommendation:
Staff recommends Council authorize the Interim City Administrator to execute an extension of the agreement for professional services with dPlanit, LLC (David Knopick, Owner)

Background/Description of Item:
Council is aware the City previously engaged the consultant services of David Knopick, dPlanit LLC, to assist staff to review and assess the Land Development Code (Title 17), review and assess existing zoning and plan review processes, and provide recommendations for improvements. The original $18,000 contract was authorized under the Interim City Administrator’s $25,000 budgetary signature authority. The term of the original contract was from October 1, 2018 to March 31, 2019.

Mayor Shute requested an extension of Mr. Knopick’s excellent services to complete the aforementioned items. Additionally, to support Council’s request for Planning Commission training – and in recognition of the upcoming term expirations – Mr. Knopick will conduct/assist with Planning Commission training. Mr. Knopick will also provide requested “on-call” planning assistance and technical review services supporting specific development activities and projects. The proposed term extension is from April 1, 2019 through August 31, 2019.

City Attorney Denk reviewed and approved the original agreement. The only changes to this extension of the original agreement are the aforementioned term extension through August and the below “redline” of scope of services and fees (the attached “clean” contract reflects these changes):

EXHIBIT A - SCOPE OF SERVICES

- Primary scope of work
  - Complete Review and assessment of existing Land Development Code (Title 17)
  - Complete Review and assessment of existing zoning and plan review processes
  - Provide recommendations regarding changes / improvements to Title 17 and zoning / plan review processes
  - Conduct / assist with up to two Planning Commission training sessions
Through one-on-one interactions and efforts related to conducting the activities above, work with City planning staff to provide guidance regarding customer service, problem solving and other functions related to City planning / development processes - such interactions may include: working meetings as part of the review and assessment activities identified above, and informal mentoring and knowledge sharing opportunities.

On-call planning assistance / technical review services supporting specific development activities / projects

EXHIBIT B - FEES

- Monthly Retainer Fee - $3,000 $3,400
- For the purposes of the retainer fee hours not to exceed 10 hours per week / 40 hours per month (work may be accomplished via a combination of on-site and off-site activities)
- Hours beyond 40 per month utilized to accomplish the primary scope of work items above will be billed at $85 $95 per hour in addition to the monthly retainer amount
- On-call planning assistance / technical review services supporting specific development activities / projects will be billed at $100 per hour
- Expenses will not be billed.

Financial Impact:
Because this extension will cause the total cost of services over the entire term beginning the previous October 2018 through August 31, 2019 to exceed ICA’s signature authority, this action comes before Council for approval.

Attachments Included:
- Original Agreement for Professional Services with dPlanit, LLC (Oct. 2018)
- Extension Agreement for Professional Services with dPlanit, LLC (April 2019)

Suggested Motion:
Authorize the Interim City Administrator to execute an extension of the agreement for professional services with dPlanit, LLC (David Knopick, Owner)
AGREEMENT FOR PROFESSIONAL SERVICES

This agreement ["Agreement"], is made as of this 1st day of October, 2018 by and between the City of Gardner, Kansas, [hereinafter “City"], and dPlanit, LLC, [hereinafter referred to as "Consultant”].

RECITALS

WHEREAS, Consultant represents that he is a duly qualified certified planner, experienced in professional planning and related services; and

WHEREAS, in the judgment of the City of Gardner, it is necessary and desirable to employ the services of Consultant for professional planning and related services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1.0 Term of Agreement.
The term of this Agreement shall be from October 1, 2018 to March 31, 2019 unless a different term is specified within the Scope of Services as described on Exhibit A or unless terminated earlier in accordance with the provisions of Article 2 below. In the event that the services rendered under this Agreement may extend beyond any one budget year, the continuation of this Agreement from year to year is contingent upon the approval of sufficient budgetary authority for the continuation of this Agreement by the Governing Body of the City in the establishment of its annual budget.

2.0 Termination.
2.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, City shall have the right, in its sole discretion, to terminate this Agreement by giving 10 days written notice to Consultant.

2.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, City may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

2.3 Delivery of Work Product and Final Payment Upon Termination. In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to City all materials and work product subject to Section 10.1 (Ownership of Documents) and shall submit to City an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.
2.4 Payment Upon Termination. Upon termination of this Agreement by City, the City shall pay Consultant the reasonable value of Services rendered by Consultant prior to termination; provided, however, City shall not in any manner be liable for lost profits that might have been made by Consultant had the Agreement not been terminated or had Consultant completed the Services required by this Agreement. In this regard, Consultant shall furnish to City such financial information as in the judgment of the City is necessary for City to determine the reasonable value of the Services rendered by Consultant. In determining the reasonable value of Services, appropriate consideration shall be given to the defective or deficient nature of the Services rendered. The foregoing is cumulative and does not affect any right or remedy that City may have in law or equity.

2.5 Authority to Terminate. The City Council has the authority to terminate this Agreement on behalf of the City. In addition, the City Administrator, in consultation with the City Attorney, shall have the authority to terminate this Agreement on behalf of the City.

3.0 Scope of Services.
3.1 Consultant’s Specified Services. The Scope of Services to be performed by Consultant under this Agreement is as described in Exhibit A to the Agreement, attached and incorporated by reference.

3.2 Performance Standard. Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant’s profession. City has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant’s work by City shall not operate as a waiver or release of liability. If City determines that any of Consultant’s work is not in accordance with such level of competency and standard of care, City, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with City to review the quality of work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 2; or (d) pursue any and all other remedies at law or in equity.

3.3 Assigned Personnel.
3.3.1 Consultant shall only assign competent personnel to perform work hereunder. In the event that at any time City, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from City.

3.3.2 With respect to this Agreement, the Consultant shall employ the following key personnel: David Knopick
3.3.3 In the event that any of Consultant’s personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant’s control, Consultant shall be responsible for timely provision of adequately qualified replacements.

3.3.4 The Consultant shall designate David Knopick (dave@dplanit.com; 913-954-0915) as Principal on the Project. As principal on this project, this person shall be the primary contact with the Project Representative and shall have authority to bind Consultant. So long as the individual named above remains actively employed or retained by Consultant, he/she shall perform the function of principal on the Project, unless otherwise agreed to in writing signed by both parties. The Consultant will supply a direct name, phone number and email and will notify the City if this contact information changes during the contract period.

3.3.5 City shall designate Laura Gourley, Interim City Administrator (lgourley@gardnerkansas.gov; 913-856-0939) as the Project Representative to represent the City in coordinating this project with Consultant, with authority to transmit instructions and define policies and decisions of City. The written consent of the City Administrator and/or Governing Body, shall be required to approve any increase in Project cost as defined in Exhibit B.

4.0 Time of Performance.
The services described herein shall be provided during the period described in this Agreement, or in accordance with the schedule, set forth in the Scope of Services.

5.0 Payment.
5.1 Payment shall be made by City only for services rendered and upon submission of a payment request upon completion and City approval of the work performed as defined in Exhibit B. In consideration for the full performance of the services set forth in Exhibit A, City agrees to pay Consultant pursuant to rates stated in Exhibit B to this Agreement, attached and incorporated by reference.

5.2 Consultant shall bill City monthly for all work performed. The bill submitted by Consultant shall itemize the work for which payment is requested. City agrees to pay Consultant within thirty (30) days of approval. Consultant agrees to submit herewith such financial information as shall be required by City to enable the City to properly report such payments as required by state or federal law.

5.3 All invoices should be sent to City of Gardner, Finance Department, 120 E. Main St., Gardner, KS 66030.

5.4 Right to Withhold Payment. City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to Consultant, to protect City from loss because of:

1) Defective Work not remedied by Consultant nor, in the opinion of City, likely to be remedied by Consultant;

2) Claims of third parties against City or City's property;
3) Failure by Consultant to pay Subcontractors or others in a prompt and proper fashion;
4) Evidence that the balance of the Work cannot be completed in accordance with this Agreement for the unpaid balance of the Contract Price;
5) Evidence that the Work will not be completed in the Contract Time required for substantial or final completion;
6) Persistent failure to carry out the Work in accordance with this Agreement;
7) Damage to City or a third party to whom City is, or may be, liable; or
8) Conditions unfavorable for the prosecution of Work, or because of conditions which, in the opinion of the Engineer, warrant such action.

6.0 Cash Basis and Budget Laws.
The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws, or if mill levy funds generated are less than anticipated.

7.0 Indemnification.
To the fullest extent permitted by law, with respect to the performance of its obligations in this Contract or implied by law, and whether performed by Consultant or any permitted subcontractors hired by Consultant, the Consultant agrees to indemnify and hold harmless the City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent or intentional acts, errors, or omissions of the Consultant or its subcontractors. Consultant shall also pay for City’s reasonable attorneys’ fees, expert fees, and costs incurred in the defense of such a claim.

8.0 Insurance.
8.1 The Consultant shall procure and maintain, at its sole expense, throughout the duration of this Agreement, insurance of such types (on an occurrence basis unless otherwise agreed to) and in at least such amounts as required herein (and not less than as required in any bid documents or other contract documents), from an insurance company licensed to do business in the State of Kansas, the following insurance coverages as may be necessary to protect the Consultant and the City and agents of the City against all hazards or risks of loss as hereinafter specified:

☐ Commercial General Liability for bodily injury and property damage liability claims arising from the injuries to members of the public or damage to property of others arising out of any act or omission of the Consultant or its agents, employees or Subcontractors with limits of not less than $1,000,000 per occurrence and $2,000,000 in the aggregate. The property damage liability coverage shall contain no exclusion relative to blasting, explosion, and collapse of building or damage to underground property and/or facilities;
☐ Commercial Automobile Liability for bodily injury and property damage with limits of not less than $1,000,000 each accident for all owned, non-owned and hired automobiles.

☐ Professional Liability - The Consultant shall maintain Professional Liability insurance in an amount not less than $500,000, and shall provide the City with certification thereof.

☐ Special Hazards - Additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Instructions to Bidders or Special Conditions.

8.2 The City shall be named as additional insured on such policies. Satisfactory certificates of insurance shall be filed with the City prior to starting any work on this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy coverage thereby is changed or canceled.

8.3 Industry Ratings - 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 policyholder rating of A or better;  
3) Carries at least a Class X financial rating.  
OR

Is a company mutually agreed upon by the City and Consultant.

9.0 Conflict of Interest.  
Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder, including under 31 U.S.C.S. Section 1352. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed.

10.0 Nondiscrimination.  
Consultant must comply with the Kansas Act Against Discrimination and if applicable, execute a Certificate of Nondiscrimination and Affirmative Action as provided in K.S.A. §44-1030. The Consultant further agrees that the Consultant shall abide by the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans with Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.
11.0 Facilities and Equipment.
Consultant shall furnish at its own cost and expense all labor, tools, equipment, materials, transportation, and any other accessories, services and facilities required to complete the Project as designated, described in accordance with this Agreement, including any attached exhibits and any addendums to this Agreement. The City expressly denies responsibility for or ownership of any item purchased until the same is delivered to and accepted by the City.

12.0 Accessibility.
Consultant will comply with the Rehabilitation Act of 1973, as amended, Section 504, which prohibits discrimination against handicapped persons in employment services, participation and access to all programs receiving federal financial assistance. Consultant shall also comply with applicable requirements with the Americans with Disabilities Act (ADA), as amended, which is a federal anti-discrimination statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying equal treatment by state and local governments and their agencies in employment practices and accessibility in public services and programs.

13.0 Records, Ownership and Inspection.
13.1 Ownership of Documents.
All documents prepared by Consultant in the performance of this Agreement, although instruments of professional service, are and shall be the property of City, whether the project for which they are made is executed or not.
13.2 Open Records.
In recognition of the City’s obligations under the Kansas Open Records Act (“KORA”), Consultant acknowledges that this Agreement along with any reports and/or records provided pursuant to this Agreement are public documents and are subject to disclosure under KORA.
13.3 Maintenance of Records.
Except as otherwise authorized by the City, Consultant shall retain such documentation for a period of three (3) years after receipt of final expenditure report under this contract, unless action, including but not limited to litigation or audit resolution proceedings, necessitate maintenance of records beyond this three (3) year period.

14.0 Independent Contractor.
It is the express intent of the parties that this Contract shall not create an employer-employee relationship. Employees of the Consultant shall not be deemed to be employees of the City and employees of the City shall not be deemed to be employees of the Contractor. The Contractor and the City shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the City’s employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining worker’s compensation insurance, unemployment insurance for its employees, and for payment of
all federal, state, local and any other payroll taxes with respect to its employee's compensation.

15.0 Compliance with Laws.
The Consultant shall observe and comply with all applicable federal, state, and local laws, regulations, standards, ordinances or codes and shall be in compliance with all applicable licensure and permitting requirements at all times.

16.0 Assignment.
Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented. The subcontracting, assignment, delegation or transfer of the Services shall in no way relieve the Consultant of its primary responsibility for the quality and performance of such Services.

17.0 Confidentiality.
All reports and documents prepared by Consultant in connection with the performance of this Agreement are confidential until released by City to the public. Consultant shall not make any such documents or information available to any individual or organization not employed by Consultant or City without the written consent of City before any such release.

18.0 Notices.
All notices hereunder shall be given in writing and sent as follows:
   To City: Laura Gourley, Interim City Administrator
             City of Gardner
             120 E. Main, Gardner, KS 66030

   To Consultant: David Knopick, Owner
                  dPlanit, LLC
                  8511 Barstow, Lenexa, KS 66219

19.0 Amendments.
19.1 This document represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, and agreements, either written or oral.
19.2 This document may be amended only by written instrument, signed by both City and Consultant.

20.0 No Third Party Beneficiaries.
City and Consultant specifically agree that this Agreement is 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.

21.0 **Force Majeure.**
City shall not be responsible for any delay or failure of performance resulting from fire, flood, other acts of God, vandalism, strike, labor dispute of a third party, domestic or international unrest, delay in receipt of supplies, energy shortage or failure, or any other cause beyond its reasonable control.

22.0 **Titles.**
The titles in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

23.0 **Negotiations.**
City and Consultant agree that disputes relative to the project should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Consultant shall proceed with the work as per this Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without both parties' express written consent.

24.0 **Costs and Attorney Fees.**
If on account of a continued default or breach by either party of such party's obligations under the terms of this agreement after any notice and opportunity to cure as may be required hereunder, it shall be necessary for the other party to employ one or more attorneys to enforce or defend any of such other party's rights or remedies hereunder, then, in such event, any reasonable amounts incurred by such other party, including but not limited to attorneys' fees, experts' fees and all costs, shall be paid by the breaching or defaulting party.

25.0 **Severability.**
If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

26.0 **Authority to Enter into Agreement.**
Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have
signed this Agreement have the legal power, right, and authority to make this Agreement
and to bind each respective party.

27.0 Incorporation of Appendices.
Appendix A - Scope of Services, Appendix B - Fees, are attached hereto and made a part
hereof as if fully set out herein.

28.0 Entire Agreement.
This Agreement represents the entire agreement between the Parties hereto and any
provision not contained herein shall not be binding upon either party, nor have any force
or effect.

29.0 Governing Law and Venue.
This Agreement shall be governed by the laws of the State of Kansas and, in the event of
litigation, the sole and exclusive venue shall be within the District Court of Johnson County,
Kansas.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this 1st day of October, 2018.

CITY OF GARDNER, KANSAS

Laura Gourley, Interim City Administrator

CONSULTANT

David Knopick, dPlanit, LLC

ATTEST:

Ty Nasto
City Clerk

APPROVED AS TO FORM:

Ryan Denk, City Attorney
Primary scope of work

- Review and assess existing Land Development Code (Title 17)
- Review and assess existing zoning and plan review processes
- Provide recommendations regarding changes/improvements to Title 17 and zoning/plan review processes
- Through one-on-one interactions and efforts related to conducting the activities above, work with City planning staff to provide guidance regarding customer service, problem solving and other functions related to City planning/development processes - such interactions may include: working meetings as part of the review and assessment activities identified above, and informal mentoring and knowledge sharing opportunities.
EXHIBIT B - FEES

- Monthly retainer fee - $3,000 per month to be billed monthly
- Hours not to exceed 10 hours per week / 40 hours per month (work may be accomplished via a combination of on-site and off-site activities)
- Hours beyond 40 per month will be billed at $85 per hour in addition to the monthly retainer amount.
- Expenses will not be billed
AGREEMENT FOR PROFESSIONAL SERVICES

This agreement ["Agreement"], is made as of this 15th day of April, 2019 by and between the City of Gardner, Kansas, [hereinafter "City"], and dPlanit, LLC, [hereinafter referred to as “Consultant”].

RECITALS

WHEREAS, Consultant represents that he is a duly qualified certified planner, experienced in professional planning and related services; and

WHEREAS, in the judgment of the City of Gardner, it is necessary and desirable to employ the services of Consultant for professional planning and related services.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1.0 Term of Agreement.
The term of this Agreement shall be from April 1, 2019 to August 31, 2019 unless a different term is specified within the Scope of Services as described on Exhibit A or unless terminated earlier in accordance with the provisions of Article 2 below. In the event that the services rendered under this Agreement may extend beyond any one budget year, the continuation of this Agreement from year to year is contingent upon the approval of sufficient budgetary authority for the continuation of this Agreement by the Governing Body of the City in the establishment of its annual budget.

2.0 Termination.
2.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, City shall have the right, in its sole discretion, to terminate this Agreement by giving 10 days written notice to Consultant.

2.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, City may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

2.3 Delivery of Work Product and Final Payment Upon Termination. In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to City all materials and work product subject to Section 10.1 (Ownership of Documents) and shall submit to City an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

2.4 Payment Upon Termination. Upon termination of this Agreement by City, the City shall pay Consultant the reasonable value of Services rendered by Consultant prior
to termination; provided, however, City shall not in any manner be liable for lost
profits that might have been made by Consultant had the Agreement not been
terminated or had Consultant completed the Services required by this Agreement.
In this regard, Consultant shall furnish to City such financial information as in the
judgment of the City is necessary for City to determine the reasonable value of the
Services rendered by Consultant. In determining the reasonable value of Services,
appropriate consideration shall be given to the defective or deficient nature of the
Services rendered. The foregoing is cumulative and does not affect any right or
remedy that City may have in law or equity.

2.5 Authority to Terminate. The City Council has the authority to terminate this
Agreement on behalf of the City. In addition, the City Administrator, in consultation
with the City Attorney, shall have the authority to terminate this Agreement on
behalf of the City.

3.0 Scope of Services.

3.1 Consultant's Specified Services. The Scope of Services to be performed by
Consultant under this Agreement is as described in Exhibit A to the Agreement,
attached and incorporated by reference.

3.2 Performance Standard. Consultant shall perform all work hereunder in a manner
consistent with the level of competency and standard of care normally observed by
a person practicing in Consultant's profession. City has relied upon the
professional ability and training of Consultant as a material inducement to enter
into this Agreement. Consultant hereby agrees to provide all services under this
Agreement in accordance with generally accepted professional practices and
standards of care, as well as the requirements of applicable federal, state and local
laws, it being understood that acceptance of Consultant's work by City shall not
operate as a waiver or release of liability. If City determines that any of
Consultant's work is not in accordance with such level of competency and standard
of care, City, in its sole discretion, shall have the right to do any or all of the
following: (a) require Consultant to meet with City to review the quality of work
and resolve matters of concern; (b) require Consultant to repeat the work at no
additional charge until it is satisfactory; (c) terminate this Agreement pursuant to
the provisions of Article 2; or (d) pursue any and all other remedies at law or in
equity.

3.3 Assigned Personnel.

3.3.1 Consultant shall only assign competent personnel to perform work
hereunder. In the event that at any time City, in its sole discretion, desires
the removal of any person or persons assigned by Consultant to perform
work hereunder, Consultant shall remove such person or persons
immediately upon receiving written notice from City.

3.3.2 With respect to this Agreement, the Consultant shall employ the following
key personnel: David Knopick

3.3.3 In the event that any of Consultant's personnel assigned to perform
services under this Agreement become unavailable due to resignation,
sickness or other factors outside of Consultant’s control, Consultant shall be responsible for timely provision of adequately qualified replacements.

3.3.4 The Consultant shall designate David Knopick (dave@dplanit.com; 913-954-0915) as Principal on the Project. As principal on this project, this person shall be the primary contact with the Project Representative and shall have authority to bind Consultant. So long as the individual named above remains actively employed or retained by Consultant, he/she shall perform the function of principal on the Project, unless otherwise agreed to in writing signed by both parties. The Consultant will supply a direct name, phone number and email and will notify the City if this contact information changes during the contract period.

3.3.5 City shall designate Laura Gourley, Interim City Administrator (lgourley@gardnerkansas.gov; 913-856-0939) as the Project Representative to represent the City in coordinating this project with Consultant, with authority to transmit instructions and define policies and decisions of City. The written consent of the City Administrator and/or Governing Body, shall be required to approve any increase in Project cost as defined in Exhibit B.

4.0 Time of Performance.
The services described herein shall be provided during the period described in this Agreement, or in accordance with the schedule, set forth in the Scope of Services.

5.0 Payment.
5.1 Payment shall be made by City only for services rendered and upon submission of a payment request upon completion and City approval of the work performed as defined in Exhibit B. In consideration for the full performance of the services set forth in Exhibit A, City agrees to pay Consultant pursuant to rates stated in Exhibit B to this Agreement, attached and incorporated by reference.

5.2 Consultant shall bill City monthly for all work performed. The bill submitted by Consultant shall itemize the work for which payment is requested. City agrees to pay Consultant within thirty (30) days of approval. Consultant agrees to submit herewith such financial information as shall be required by City to enable the City to properly report such payments as required by state or federal law.

5.3 All invoices should be sent to City of Gardner, Finance Department, 120 E. Main St., Gardner, KS 66030.

5.4 Right to Withhold Payment. City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to Consultant, to protect City from loss because of:

1) Defective Work not remedied by Consultant nor, in the opinion of City, likely to be remedied by Consultant;
2) Claims of third parties against City or City’s property;
3) Failure by Consultant to pay Subcontractors or others in a prompt and proper fashion;
4) Evidence that the balance of the Work cannot be completed in accordance with this Agreement for the unpaid balance of the Contract Price;
5) Evidence that the Work will not be completed in the Contract Time required for substantial or final completion;
6) Persistent failure to carry out the Work in accordance with this Agreement;
7) Damage to City or a third party to whom City is, or may be, liable; or
8) Conditions unfavorable for the prosecution of Work, or because of conditions which, in the opinion of the Engineer, warrant such action.

6.0 Cash Basis and Budget Laws.
The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws, or if mill levy funds generated are less than anticipated.

7.0 Indemnification.
To the fullest extent permitted by law, with respect to the performance of its obligations in this Contract or implied by law, and whether performed by Consultant or any permitted subcontractors hired by Consultant, the Consultant agrees to indemnify and hold harmless the City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent or intentional acts, errors, or omissions of the Consultant or its subcontractors. Consultant shall also pay for City’s reasonable attorneys’ fees, expert fees, and costs incurred in the defense of such a claim.

8.0 Insurance.
8.1 The Consultant shall procure and maintain, at its sole expense, throughout the duration of this Agreement, insurance of such types (on an occurrence basis unless otherwise agreed to) and in at least such amounts as required herein (and not less than as required in any bid documents or other contract documents), from an insurance company licensed to do business in the State of Kansas, the following insurance coverages as may be necessary to protect the Consultant and the City and agents of the City against all hazards or risks of loss as hereinafter specified:

☐ Commercial General Liability for bodily injury and property damage liability claims arising from the injuries to members of the public or damage to property of others arising out of any act or omission of the Consultant or its agents, employees or Subcontractors with limits of not less than $1,000,000 per occurrence and $2,000,000 in the aggregate. The property damage liability coverage shall contain no exclusion relative to blasting, explosion, and collapse of building or damage to underground property and/or facilities.;
☐ Commercial Automobile Liability for bodily injury and property damage with limits of not less than $1,000,000 each accident for all owned, non-owned and hired automobiles.

☐ Professional Liability - The Consultant shall maintain Professional Liability insurance in an amount not less than $500,000, and shall provide the City with certification thereof.

☐ Special Hazards - Additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Instructions to Bidders or Special Conditions

8.2 The City shall be named as additional insured on such policies. Satisfactory certificates of insurance shall be filed with the City prior to starting any work on this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy coverage thereby is changed or canceled.

8.3 Industry Ratings - 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 policyholder rating of A or better;
   AND
   3) Carries at least a Class X financial rating.
   OR
   Is a company mutually agreed upon by the City and Consultant.

9.0 Conflict of Interest.
Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder, including under 31 U.S.C.S. Section 1352. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed.

10.0 Nondiscrimination.
Consultant must comply with the Kansas Act Against Discrimination and if applicable, execute a Certificate of Nondiscrimination and Affirmative Action as provided in K.S.A. §44-1030. The Consultant further agrees that the Consultant shall abide by the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans with Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.
11.0 **Facilities and Equipment.**
Consultant shall furnish at its own cost and expense all labor, tools, equipment, materials, transportation, and any other accessories, services and facilities required to complete the Project as designated, described in accordance with this Agreement, including any attached exhibits and any addendums to this Agreement. The City expressly denies responsibility for or ownership of any item purchased until the same is delivered to and accepted by the City.

12.0 **Accessibility.**
Consultant will comply with the Rehabilitation Act of 1973, as amended, Section 504, which prohibits discrimination against handicapped persons in employment services, participation and access to all programs receiving federal financial assistance. Consultant shall also comply with applicable requirements with the Americans with Disabilities Act (ADA), as amended, which is a federal anti-discrimination statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying equal treatment by state and local governments and their agencies in employment practices and accessibility in public services and programs.

13.0 **Records, Ownership and Inspection.**
13.1 **Ownership of Documents.**
All documents prepared by Consultant in the performance of this Agreement, although instruments of professional service, are and shall be the property of City, whether the project for which they are made is executed or not.
13.2 **Open Records.**
In recognition of the City’s obligations under the Kansas Open Records Act (“KORA”), Consultant acknowledges that this Agreement along with any reports and/or records provided pursuant to this Agreement are public documents and are subject to disclosure under KORA.
13.3 **Maintenance of Records.**
Except as otherwise authorized by the City, Consultant shall retain such documentation for a period of three (3) years after receipt of final expenditure report under this contract, unless action, including but not limited to litigation or audit resolution proceedings, necessitate maintenance of records beyond this three (3) year period.

14.0 **Independent Contractor.**
It is the express intent of the parties that this Contract shall not create an employer-employee relationship. Employees of the Consultant shall not be deemed to be employees of the City and employees of the City shall not be deemed to be employees of the Contractor. The Contractor and the City shall be responsible to their respective employees for all salary and benefits. Neither the Contractor’s employees nor the City’s employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers’ compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining worker’s compensation insurance, unemployment insurance for its employees, and for payment of
all federal, state, local and any other payroll taxes with respect to its employee’s compensation.

15.0 Compliance with Laws.
15.1 The Consultant shall observe and comply with all applicable federal, state, and local laws, regulations, standards, ordinances or codes and shall be in compliance with all applicable licensure and permitting requirements at all times.
15.2 Pursuant to K.S.A. 16-113, if the Consultant does not have a resident agent in the State of Kansas, it shall execute and file “Certificate of Appointment of Process of Agent” with the Clerk of the District Court of Johnson County, Kansas. These forms may be obtained at the Office of the Clerk of the District Court. Consultant shall be responsible for the filing fee. This certificate is pursuant to the General Statutes of Kansas, and shall be filed prior to the formal execution of the Contract Documents. Failure to comply with these requirements shall disqualify the Consultant for the awarding of the Contract.

16.0 Assignment.
Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented. The subcontracting, assignment, delegation or transfer of the Services shall in no way relieve the Consultant of its primary responsibility for the quality and performance of such Services.

17.0 Confidentiality.
All reports and documents prepared by Consultant in connection with the performance of this Agreement are confidential until released by City to the public. Consultant shall not make any such documents or information available to any individual or organization not employed by Consultant or City without the written consent of City before any such release.

18.0 Notices.
All notices hereunder shall be given in writing and sent as follows:
To City: Laura Gourley, Interim City Administrator
         City of Gardner
         120 E. Main, Gardner, KS 66030

To Consultant: David Knopick, Owner
dPlanit, LLC
8511 Barstow, Lenexa, KS 66219
19.0 Amendments.
19.1 This document represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, and agreements, either written or oral.
19.2 This document may be amended only by written instrument, signed by both City and Consultant.

20.0 No Third Party Beneficiaries.
City and Consultant specifically agree that this Agreement is 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.

21.0 Force Majeure.
City shall not be responsible for any delay or failure of performance resulting from fire, flood, other acts of God, vandalism, strike, labor dispute of a third party, domestic or international unrest, delay in receipt of supplies, energy shortage or failure, or any other cause beyond its reasonable control.

22.0 Titles.
The titles in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

23.0 Negotiations.
City and Consultant agree that disputes relative to the project should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Consultant shall proceed with the work as per this Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without both parties’ express written consent.

24.0 Costs and Attorney Fees.
If on account of a continued default or breach by either party of such party’s obligations under the terms of this agreement after any notice and opportunity to cure as may be required hereunder, it shall be necessary for the other party to employ one or more attorneys to enforce or defend any of such other party’s rights or remedies hereunder, then, in such event, any reasonable amounts incurred by such other party, including but not limited to attorneys’ fees, experts’ fees and all costs, shall be paid by the breaching or defaulting party.

25.0 Severability.
If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

26.0 Authority to Enter into Agreement.
Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

27.0 Incorporation of Appendices.
Appendix A - Scope of Services, Appendix B - Fees, are attached hereto and made a part hereof as if fully set out herein.

28.0 Entire Agreement.
This Agreement represents the entire agreement between the Parties hereto and any provision not contained herein shall not be binding upon either party, nor have any force or effect.

29.0 Governing Law and Venue.
This Agreement shall be governed by the laws of the State of Kansas and, in the event of litigation, the sole and exclusive venue shall be within the District Court of Johnson County, Kansas.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this _____ day of __________, 20__. 

CITY OF GARDNER, KANSAS

____________________________
Laura Gourley, Interim City Administrator

____________________________
David Knopick dPlanit, LLC

ATTEST:

____________________________
City Clerk

APPROVED AS TO FORM:

____________________________
Ryan Denk, City Attorney
EXHIBIT A - SCOPE OF SERVICES

- Primary scope of work
  o Complete review and assessment of existing Land Development Code (Title 17)
  o Complete review and assessment of existing zoning and plan review processes
  o Provide recommendations regarding changes / improvements to Title 17 and zoning / plan review processes
  o Conduct / assist with up to two Planning Commission training sessions
  o Through one-on-one interactions and efforts related to conducting the activities above, work with City planning staff to provide guidance regarding customer service, problem solving and other functions related to City planning / development processes - such interactions may include: working meetings as part of the review and assessment activities identified above, and informal mentoring and knowledge sharing opportunities.

- On-call planning assistance / technical review services supporting specific development activities / projects
EXHIBIT B - FEES

- Monthly Retainer Fee - $3,400
- For the purposes of the retainer fee hours not to exceed 10 hours per week / 40 hours per month (work may be accomplished via a combination of on-site and off-site activities)
- Hours beyond 40 per month utilized to accomplish the primary scope of work items above will be billed at $95 per hour in addition to the monthly retainer amount
- On-call planning assistance / technical review services supporting specific development activities / projects will be billed at $100 per hour
- Expenses will not be billed.
Agenda Item: Consider authorizing the purchase of a Skid Steer Loader from KC Bobcat and lease purchase financing from Arvest Bank.

Department: Public Works

Staff Recommendation:
Staff recommends approval of the purchase of a skid steer loader from KC Bobcat and lease purchase financing from Arvest Bank.

Background/Description of Item:
The 2019 Public Works Operations Division Budget includes $11,400 in funding for the first payment of a 5-year lease purchase of a new skid steer loader. The 2005 Bobcat S-300 skid steer loader is in need of replacement due to the age and condition of the machine. It has become limited in its capacities. The machine is no longer in compliance with OSHA requirements for silica dust which is encountered in pavement removals and other routine concrete operations. The new skid steer loader will meet OSHA operator silica dust requirements. The Water Treatment Plant has requested that the existing skid-steer be transferred to their utility division.

Bids received on Friday, February 1st, 2019:

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Quoted Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>KC Bobcat</td>
<td>$45,000</td>
</tr>
<tr>
<td>Foley Eq</td>
<td>$55,502</td>
</tr>
<tr>
<td>Coleman Eq</td>
<td>$55,000</td>
</tr>
</tbody>
</table>

After reviewing all of the manufacturer specifications, staff recommends purchasing the S650 skid steer loader from KC Bobcat. After reviewing the documents, the proposed lease agreement from the vendor did not meet Kansas Statutory requirements. Staff reached out to local banks to see if they were interested in providing lease purchase financing for this piece of equipment. The City received one proposal from Arvest Bank. The lease agreement from Arvest Bank does meet statutory requirements and resulted in savings of approximately $2,600 when compared to the vendor’s lease purchase proposal.

The City’s Bond Counsel, Tyler Ellsworth of Kutak Rock, has reviewed the lease purchase documents.

Attachments:
- Bobcat skid steer quote
- Arvest Bank lease purchase proposal
- Arvest Bank lease purchase annual payment amortization schedule
- Arvest Bank lease purchase documents
Financial Impact:
The 2019 budget included $11,400 for the first lease payment. The estimated annual principal and debt payment for the 5-year lease purchase is $10,023.56. Funding will come from the General Fund.

Staff Recommendation:
Consider authorizing the purchase of a skid steer loader from KC Bobcat and lease purchase financing from Arvest Bank.
<table>
<thead>
<tr>
<th>Customer</th>
<th>Quote #</th>
<th>Annual Hours</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>CITY OF GARDNER PW</td>
<td></td>
<td>500</td>
<td>January 10, 2019</td>
</tr>
<tr>
<td><strong>Bobcat Product</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>NEW 2019 S650 SSL</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Sale Price w/o tax</strong></td>
<td>$42,400.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Salesperson</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>E KEATING</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Offer is subject to credit approval by Wells Fargo Vendor Financial Services, LLC. Not all applicants will qualify.**

<table>
<thead>
<tr>
<th>Lease Term / Months</th>
<th>12</th>
<th>24</th>
<th>36</th>
<th>48</th>
<th>60</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lease Factor + tax</td>
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<td>0.02399</td>
<td>0.01756</td>
<td>0.01539</td>
<td>0.01390</td>
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<tr>
<td>Lease Payment Monthly + tax</td>
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<td>$1,017.24</td>
<td>$744.43</td>
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<td>$589.25</td>
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<table>
<thead>
<tr>
<th>Purchase Option Not To Exceed</th>
<th>12</th>
<th>24</th>
<th>36</th>
<th>48</th>
<th>60</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase Option Amount</td>
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<td>52%</td>
<td>50%</td>
<td>45%</td>
<td>41%</td>
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<tr>
<td></td>
<td>Call for Quote</td>
<td>$22,048.00</td>
<td>$21,200.00</td>
<td>$19,080.00</td>
<td>$17,384.00</td>
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</tbody>
</table>

**This illustration is for comparison purpose only. The actual payments are subject to change.**

**Lease Rates:**

*Power Lease payments* are in arrears and will be due monthly. Payments do not include any applicable taxes. *Power Lease* rates and factors are subject to change at any time for any reason.

**Sales Tax / Use Tax:**

There is no sales tax due at signing. Use tax billed monthly in addition to lease payment or as required by applicable tax authority.

**Personal Property Tax:**

Lessee will be billed annually for P.P.T. or as required by applicable tax authority or jurisdiction.

**Credit Guidelines and Insurance:**

Evidence of physical damage insurance required prior to funding. Evidence of $500,000 in liability coverage naming Wells Fargo Vendor Financial Services, LLC. ("WFVFS") as additional insured is required prior to funding.

**Attachments:**

Maximum of 2 serialized attachments. All hand held tools are excluded from this program. Attachments requiring specialized residuals include Breakers, Flail Cutters, Forestry Attachments, Planers, Rotary Grinders, Stump Grinders, and Wheel Saws. Attachments requiring separate residual quotes include Chippers and Concrete Pumps.

**Non-standard applications:**

Dairy (all applications), Recycling (all applications), Refuse (all applications), Forestry (all applications) have a separate residual matrix.

**Excluded Applications:**

Machines used to manage or handle infectious, hazardous, or nuclear applications are not eligible for PowerLease

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This calculator is provided as a tool to assist customers of WFVFS. WFVFS does not warrant the accuracy, adequacy or completeness of this information and materials and expressly disclaims liability of errors or omissions in this information. No warranty of any kind, implied, expressed or statutory, including, but not limited to, the warranties of non-infringement of third party rights, title, merchantability, fitness for a particular purpose and freedom from computer virus is given in conjunction with the information and materials.
Date: Tuesday, April 02, 2019

Provided for: Ed York

Provided by: Rick Dierks
   Equipment Finance Specialist

Customer: City of Gardner

Equipment Description: S650 T4 Bobcat Skid-Steer Loader

Equipment Cost: $45,000 (will need copies of invoice)

Delivery Date: April 2019

Term (months):
   Fixed Rate 3.64% bank qualified tax exempt
   60 monthly payments @ $849.28 beginning one month after closing
   OR 5 annual payments @ $10,023.56 beginning one year after closing

Structure Type: Municipal Lease

Residual ($): None

Advance / Arrears: Arrears

Documentation/Filing Fee: $0

Guarantors: None

The above quote assumes the following:

- **PAYMENTS HAVE NO APPLICABLE TAXES ADDED**
- Proposal is pending the review of requested financial information, equipment valuation, and subsequent approval of same.
- Documentation used will be Arvest Equipment Finance KS Municipal Lease Agreement.
- Proposal is valid until May 4, 2019.
- An IRS Form 8038 (G or GC) must be provided as bank qualified tax exempt status.
- Rate is indexed to a FHLB spread and subject to bank qualified tax exempt status.

Thank you for the opportunity to provide this proposal. There are other financing options available. If after your review you would like to pursue another alternative, please feel free to contact me via phone @ 913-213-7803 or via email at rdierks@arvest.com.
City of Gardner - annual payments

Compound Period: Monthly
Nominal Annual Rate: 3.640%

CASH FLOW DATA

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
<th>Amount</th>
<th>Number</th>
<th>Period</th>
<th>End Date</th>
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AMORTIZATION SCHEDULE - Normal Amortization

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<th>Principal</th>
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Last interest amount decreased by 0.03 due to rounding.
Date: ______________

____________________________

RE: Municipal Lease Agreement

Dear ________________________.

Enclosed are the following lease documents for your review:

☐ Lease Agreement
☐ Certificate of Acceptance
☐ Incumbency & Essential Use Certificate
☐ 8038G or 8038GC
☐ Opinion of Lessee Council
☐ Other_______________________________________

Please **READ EACH DOCUMENT CAREFULLY**, have them signed, witnessed and dated where indicated and returned to us along with a check in the amount of $______________ which represents ________________________________.

**Please return the documents OVERNIGHT to:**
Arvest Equipment Finance
818 Garrison Ave, 2nd Fl
Fort Smith, AR 72917
Attn: __________________

We appreciate your business and look forward to continue serving your equipment leasing needs.

Sincerely,

__________________________________
Arvest Equipment Finance
1-866-745-1487
MUNICIPAL LEASE-PURCHASE AGREEMENT

Lease No. ______________________________________

This Municipal Lease-Purchase Agreement (this “Agreement”), dated as of __________, is made and entered into by and between Arvest Equipment Finance, a division of Arvest Bank, an Arkansas banking corporation (“Lessor”), and ______________________________ (“Lessee”), a Kansas municipal corporation.

In consideration of the mutual covenants and conditions hereinafter set forth, the parties agree as follows:

1. **Term and Payments.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the property described in Exhibit A hereto (together with all replacement parts, substitutions, proceeds, increases, additions, accessions, repairs and accessories incorporated therein or affixed thereto, the “Property”) for the amounts to be paid in the sums (the “Lease Payments”) and on the dates (the “Lease Payment Dates”) set forth in Exhibit B hereto. The obligation of Lessee to make the Lease Payments called for in Exhibit B, except only as specifically provided for herein, shall be absolute and unconditional in all events and shall not be subject to any set-off, defense, counterclaim, or recoupment for any reason. Lessee acknowledges that it selected the Equipment and takes full responsibility for selection of the Equipment and the specifications of the Equipment. The term of the lease hereunder shall commence upon the acceptance of possession of the Property by Lessee (or acceptance by Lessee of delivery of the first item of Property if this Agreement involves multiple items of Property) and shall continue, unless earlier terminated as provided herein, for such additional fiscal period as are necessary to complete the anticipated total lease term as set forth in Exhibit B. Lessee will evidence its acceptance of the Property by executing and delivering to Lessor a Certificate of Acceptance (hereinafter so called) in the form provided by Lessor.

2. **Revenue Receipts.** Lessee represents and warrants, to the best of its knowledge and after appropriate consultation, that the terms of this Agreement conform to the requirements of the Kansas Cash-Basis Law, K.S.A. 10-1102 et seq. Lessee further represents and warrants that its chief administrative office, each year during the term of lease including the last year before the year in which the lease term is to expire, will submit to and advocate for approval by its governing body of a budget that includes amounts sufficient to pay the Lease Payment, plus all others sums due hereunder. Lessee also represents and warrants that its governing body, each fiscal year during the term of the lease, will fully consider and make all good faith and reasonable efforts to adopt a budget, for each successive fiscal period during the term of this Agreement, that specifically identifies amounts sufficient to permit Lessee to discharge all of its obligations hereunder.

3. **Taxes.** In addition to the Lease Payments to be made pursuant to Section 1 hereof, Lessee agrees, to the extent permitted by law and subject to the immunity and maximum liability provisions of the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., to indemnify and hold Lessor
harmless from and against and to pay Lessor, as additional rent, on demand, an amount equal to all licenses, assessments, sales, use, real or personal property, gross receipts or other taxes, levies, imposts, duties or charges, if any, together with any penalties, fines, or interest thereon imposed against or on Lessor, Lessee or the Property by any governmental authority upon or with respect to the Property or the purchase, ownership, rental, possession, operation, return or sale of, or receipt of payments for, the Property, except any Federal or state income taxes, if any, payable by Lessor. Lessee may contest any such taxes prior to payment provided such contest does not involve any risk of sale, forfeiture or loss of the Property or any interest therein.

4. Lessee’s Covenants and Representations. Lessee covenants and represents as follows:

   (a) Lessee represents it has full power and authority to enter into this Agreement which has been duly authorized, executed and delivered by Lessee and is a valid and binding obligation of Lessee enforceable in accordance with its terms, and all requirements for execution, delivery, and performance of this Agreement have been, or will be, complied with in a timely manner;

   (b) All approvals from any and all sources that are required prior to Lessee entering into this Lease have been legally given and received.

   (c) There are no pending or threatened lawsuits or administrative or other proceedings contesting the authority for, authorization or performance of, or expenditure of funds pursuant to, this Agreement;

   (d) Information supplied and statements made by Lessee in any financial statement or current budget prior to or contemporaneously with this Agreement are true and correct;

   (e) Lessee has an immediate need for, and expects to make immediate use of, substantially all the Property, which need is not temporary or expected to diminish in the foreseeable future; specifically, Lessee will not give priority or parity in the appropriation of funds for the acquisition or use of any additional property for purposes or functions similar to those of the Property; and

   (f) There are no circumstances presently affecting Lessee that could reasonably be expected to alter its foreseeable need for the Property or adversely affect its ability or willingness to budget funds for the payment of sums due hereunder.

5. Use and Licenses. Lessee shall pay and discharge all operating expenses and shall cause the Property to be operated by competent persons only. Lessee shall use the Property only for its proper purposes and will not install, use, operate, or maintain the Property improperly, carelessly, or in violation of any applicable law, ordinance, rule, or regulation of any governmental authority, or in a manner contrary to the nature of the Property or the use contemplated by its manufacturer. Lessee shall keep the property at the location stated on the Certificate of Acceptance executed by Lessee upon delivery of the Property until Lessor, in writing, permits its removal unless the Property is such that it is to be used at more than one location, or is a vehicle, in which event the Property shall be stored and kept at the location
6. **Maintenance.** Lessor shall not be obligated to make any repairs or replacements. At its own expense, Lessee shall service, repair, and maintain the Property in as good condition, repair, appearance, and working order as when delivered to Lessee hereunder, ordinary wear and tear from proper use alone excepted, and shall replace any and all parts thereof which may from time to time become worn out, lost, stolen, destroyed, or damaged beyond repair or rendered unfit for intended use, for any reason whatsoever, all of which replacements shall be free and clear of all liens, encumbrances, and claims of others and shall become part of the Property and subject to this Agreement. Lessor may, in its sole and exclusive direction, but has no duty or obligation to do so, discharge such costs, expenses and insurance premiums necessary for the repair, maintenance and preservation of the Property, and all sums so expended shall be due from Lessee in addition to rental payments hereunder.

7. **Alterations.**

   (a) Lessee may, at its own expense, install or place in or on, or attach or affix to, the Property such equipment or accessories as may be necessary or convenient to use the Property for its intended purposes provided that such equipment or accessories do not impair the value or utility of the Property. All such equipment and accessories shall be removed by Lessee upon termination of this Agreement, provided that any resulting damage shall be repaired at Lessee’s expense. Any such equipment or accessories not removed shall become the property of Lessor. Accessions shall become part of the Property and may not be removed by Lessee.

   (b) Without the written consent of Lessor, Lessee shall not make any other alterations, modifications, or improvements to the Property except as required or permitted hereunder. Any other alterations, modifications, or improvements to the Property shall immediately become part of the Property, subject to this Agreement. Without the prior written consent of Lessor, Lessee shall not affix or attach any of the Property to any real property. The Property shall remain personal property regardless of whether it becomes affixed or attached to real property or permanently rests upon any real property or any improvement thereon.

8. **Liens.** Lessee shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, security interest, pledge, lien, charge, encumbrance, or claim on or with respect to the Property, title thereto, or any interest therein, except the respective rights of Lessor and Lessee hereunder.

9. **Damages to or Destruction of Property.** Lessee shall bear the entire risk of loss, damage, theft, or destruction of the Property from any and every cause whatsoever, and no loss, damage, destruction or other event shall release Lessee from the obligation to pay the full
amount of the Lease Payments or from any other obligation under this Agreement. In the event of damage to any item of the Property, Lessee will immediately place the same in good repair with proceeds of any insurance recovery applied to the cost of such repair. If Lessor determines that any item of Property is lost, stolen, destroyed, or damaged beyond repair, Lessee, at the option of Lessor, will either: (a) replace the same with like property in good repair, or (b) on the next Lease Payment Date, pay Lessor (i) all amounts then owed by Lessee to Lessor under this Agreement, including the Lease Payment due on such date, and (ii) an amount equal to the applicable Option to Purchase Value set forth in Exhibit B.

10. Insurance. Lessee shall either be self-insured with regard to the Property (but only if Lessee has Lessor’s written permission to be self insured) or shall purchase and maintain insurance with regard to the Property (“company insured”). Lessee shall indicate on each Certificate of Acceptance executed in relation to this Agreement its election to be self-insured or company insured with regard to the Property listed on that Certificate of Acceptance. Whether Lessee is self-insured or company insured, Lessee shall, for the term of this Agreement, at its own expense, provide comprehensive liability insurance with respect to the Property, insuring against such risks and in such amounts as are customary for lessees of property of a character similar to the Property (but in no event less then ten million dollars). In addition, Lessee shall, for the term of this Agreement, at its own expense, provide casualty insurance with respect to the Property, insuring against customary risks, coverage at all times not less than the amount of the unpaid principal portion of the Lease Payments required to be made pursuant to Section 1 as of the last preceding Payment Date specified in Exhibit B on which a Lease Payment was made. If insurance policies are provided with respect to the Property, all insurance policies shall be with insurers authorized to do business in the state where the Property is located and shall name both Lessor and Lessee as insureds as their respective interests may appear. Insurance proceeds from casualty losses shall be payable solely to Lessor, subject to the provisions of Section 9. Lessee shall, within three days of a request, deliver to Lessor evidence of the required coverages together with premium receipts, and each insurer shall agree to give Lessor written notice of non-payment of any premium due and ten (10) days notice prior to cancellation or alteration of any such policy. Lessee shall also carry and require any other person or entity working on, in, or about the Property to carry worker’s compensation insurance covering employees on, in, or about the Property. In the event Lessee fails, for any reason, to comply with the requirements of this Section: (a) Lessor may but is not required to (and shall have no liability for not doing so) in its sole and exclusive discretion, purchase insurance covering liability and/or casualty loss, and charge the same to Lessee; and (b) to the extent permitted by applicable law and subject to the immunity and maximum liability provisions of the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., Lessee shall indemnify, save harmless and, at Lessee’s sole expense, defend Lessor and its agents, employees, officers, and directors and the Property against all risk of loss not covered by insurance.

11. Indemnification. Lessee, to the extent permitted by law and subject to the immunity and maximum liability provisions of the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., shall indemnify and save harmless, Lessor and its agents, employees, officers, and directors from and, at Lessee’s expense, defend Lessor and its agents, employees, officers, and directors against all liability, obligations, losses, damages, penalties, claims, actions, costs, and expenses (including but not limited to reasonable attorneys’ fees) of whatsoever kind or nature which in any way relate to or arise out of this Agreement or the ownership, rental, possession, operation,
condition, sale, or return of the Property. All amounts which become due from Lessee under this Section 11 shall be credited with any amounts received by Lessor from insurance provided by Lessee (which is not applied to others sums due from Lessee) and shall be payable by Lessee within thirty (30) days following demand therefor by Lessor and shall survive the termination or expiration of this Agreement.

12. No Warranty. EXCEPT FOR REPRESENTATIONS, WARRANTIES, AND SERVICE AGREEMENTS RELATING TO THE PROPERTY MADE OR ENTERED INTO BY THE MANUFACTURERS OR SUPPLIERS OF THE PROPERTY, ALL OF WHICH ARE HEREBY ASSIGNED TO LESSEE, LESSOR HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND ASSUMES NO OBLIGATION WITH RESPECT TO THE TITLE, OR THE CONFORMITY OF THE PROPERTY TO SPECIFICATION OR PURCHASE ORDER, ITS DESIGN, DELIVERY, INSTALLATION OR OPERATION. LESSEE LEASES THE EQUIPMENT AS IS. ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, CONDITION, QUALITY, DURABILITY OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT OR IN CONNECTION WITH, OR FOR THE PURPOSES OR USES OF LESSEE, ARE HEREBY WAIVED AND DISCLAIMED. All such risks shall be borne by Lessee without in any way excusing Lessee from its obligations under this Agreement, and Lessor shall not be liable to Lessee for any damages on account of such risks. All claims or actions on any warranty so assigned shall be made or prosecuted by Lessee, at its sole expense, upon prior written notice to Lessor. Lessor may, but shall have no obligation whatsoever to, participate in such claim or action on such warranty, at Lessor’s expense. Any recovery under such a warranty shall be made payable jointly to Lessee and Lessor.

13. Option to Purchase. Provided Lessee has complied with the terms and conditions of this Agreement, Lessee shall have the option to purchase not less than all of the Property which is then subject to this Agreement, “AS IS” and “WHERE IS”, at the payment date, for the Option to Purchase Values set forth in Exhibit B. Lessee may exercise such option to purchase by giving written notice to Lessor, not less than sixty (60) days prior to the date specified in Exhibit B for the exercise of such option, provided that upon Lessee’s timely payment of all Lease Payments specified in Exhibit B, Lessee shall be deemed to have properly exercised its option to purchase the Property. Upon exercise of the option to purchase and payment of the applicable Option to Purchase amount Lessee shall be deemed to have acquired all of Lessor’s right, title, and interest in and to the Property, free of any lien, encumbrance, or security interest except such liens, encumbrances, or security interest as may be created, or permitted and not discharged, by Lessee but without other warranties. Payment of the applicable Option to Purchase amount shall occur on the applicable Lease Payment Date specified in Exhibit B, at which time Lessor shall, unless not required hereunder, deliver to Lessee a quitclaim bill of sale transferring Lessor’s interest in the Property to Lessee free from any lien, encumbrance, or security interest except such as may be created, or permitted and not discharged, by Lessee but without other warranties. Upon Lessee’s actual or constructive payment of the Option to Purchase Value and Lessor’s actual or constructive delivery of a quitclaim bill of sale covering the Property, this Agreement shall terminate except as to obligations or liabilities accruing hereunder prior to such termination and obligations and liabilities hereunder that expressly survive the termination of this Agreement.

DB03/8542934.7

(a) The occurrence of one or more of the following events shall constitute an Event of Default, whether occurring voluntarily or involuntarily, by operation of law or pursuant to any order of any court or governmental agency:

(1) Lessee fails to make any payment hereunder when due or within ten (10) days thereafter;

(2) Lessee fails to comply with any other covenant, condition or agreement of Lessee hereunder for a period of ten (10) days after notice thereof;

(3) Any representation or warranty made by Lessee hereunder, including but not limited to those representations and warranties in the paragraph titled “Revenue Receipts” and in the paragraph titled “Lessee’s Covenants and Representations”, shall be untrue in any material respect as of the date made;

(4) Lessee makes, permits, or suffers any unauthorized assignment, transfer, or other disposition of this Agreement or any interest herein, or any part of the Property or any interest therein; or

(5) Lessee becomes insolvent; or admits in writing its inability to pay its debts as they mature; or applies for, consents to or acquiesces in the appointment of a trustee, receiver, or custodian for Lessee or a substantial part of its property; or, in the absence of such application, consent, or acquiescence, a trustee, receiver, or custodian is appointed for Lessee or a substantial part of its property and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement, moratorium, or any proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding is instituted by or against Lessee and, if instituted against Lessee, is consented to or acquiesced in by Lessee or is not dismissed within sixty (60) days.

(b) Upon the occurrence of any Event of Default specified herein, Lessor may, at its sole discretion, exercise any or all of the following remedies:

(1) Enforce this Agreement by appropriate action to collect amounts due or to become due hereunder, by acceleration of any amounts due, or action to cause Lessee to perform its other obligations hereunder in which event Lessee shall be liable for all costs and expenses incurred by Lessor;

(2) Take possession of the Property, without demand or notice and without court order or any process of law, and remove and relet the same for Lessee’s account, in which event Lessee: waives any and all damages resulting there from; and shall be liable for all costs and expenses incurred by Lessor in connection therewith; and shall pay to Lessor the difference, if any, between the amounts to be paid pursuant to Section 1 hereof titled “Term and Payments” less the amounts received and to be received by Lessor in connection with any such reletting in the event that such figure is a positive figure; and waives the right to
receive the difference, if any, between the amounts to be paid pursuant to Section 1 hereof titled “Term and Payments” less the amounts received and to be received by Lessor in connection with any such reletting in the event that such figure is not a positive figure.

(3) Terminate this Agreement and repossess the Property, in which event Lessee shall be liable for any amounts payable hereunder through the date of such termination and all costs and expenses incurred by Lessor in connection therewith plus the amount by which the applicable Option to Purchase Amount (calculated as if the option to purchase was exercised as of the date of termination) exceeds the then value of the Property;

(4) Sell the Property or any portion thereof for Lessor’s account at public or private sale, for cash or credit, without demand or notice to Lessee of Lessor’s intention to do so, or relet the Property for a term and a rental which may be equal to, greater than, or less than the rental and term provided herein. If the proceeds from any such sale or rental payments received under a new agreement made for the periods prior to the expiration of this Agreement are less than the sum of (i) the costs of such repossession, sale, relocation, storage, reconditioning, reletting, and reinstallation (including but not limited to reasonable attorneys’ fees), (ii) the unpaid principal balance derived from Exhibit B as of the last preceding Lease Payment Date specified in Exhibit B, and (iii) any past due amounts hereunder (plus interest on such unpaid principal balance at the rate specified in Section 19 hereof, prorated to the date of such sale), all of which shall be paid to Lessor, Lessor shall retain all such proceeds, and Lessee shall remain liable for any deficiency; or

(5) Pursue and exercise any other remedy available at law or in equity. In all events Lessee shall be liable for any and all costs and expenses incurred by Lessor in connection with the exercise of any remedies. “Costs and expenses,” as that term is used herein, shall mean, to the extent allowed by law: (i) reasonable attorneys’ fees if this Agreement is referred for collection to an attorney who is not a salaried employee of Lessor or the holder of this Agreement; (ii) court costs and disbursements including such costs in the event of any action necessary to secure possession of the Property; and (iii) actual and reasonable out-of-pocket expenses incurred in connection with any repossession or foreclosure, including costs of storing, reconditioning, and reselling the Property, subject to the standards of good faith and commercial reasonableness set by the Uniform Commercial Code. Lessee waives all rights under all exemption laws.

(6) Lessee gives Lessor permission to enter upon any property where the Property is or may be located and/or stored for purposes of taking possession of same. In the event that Lessor takes possession of the Property Lessor shall have the right to take possession of and sell any and all property located thereon and/or therein.
(c) Notwithstanding anything contained in the Agreement to the contrary, it is understood and agreed by the parties hereto that the Lessee is obligated only to pay Lease Payments, plus any other sums due hereunder under the Agreement as may lawfully be made from funds budgeted and appropriated for those purposes during the Lessee’s then current budget year or from funds made available from any lawfully operated, revenue producing source. Should the Lessee fail to budget, appropriate or otherwise make available funds for payments due under the Agreement in any budget year, the Agreement shall be deemed terminated on the last day of the then current budget year for which appropriations were received without penalty or expense to the Lessee of any kind whatsoever, except as to the portions of the recurring charges herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise made available. The Lessee agrees to notify the Lessor of such termination, which termination shall not constitute an Event of Default under the Agreement, at least sixty (60) days prior to the end of the Lessee's then current budget year. Notwithstanding the foregoing and to the extent permitted by law, the Lessee agrees that, if the Agreement is terminated in accordance with the provisions of this Section, the Lessee shall not acquire or purchase an property of the type described in Exhibit A hereto for a period of ninety (90) days from the end of the then current budget year of the Lessee.

15. Termination. Unless Lessee has properly exercised its option to purchase pursuant to Section 13 hereof, Lessee shall, upon the expiration of the term of this Agreement or any earlier termination hereof pursuant to the terms of this Agreement, deliver the Property to Lessor unencumbered and in at least as good condition and repair as when delivered to Lessee, ordinary wear and tear resulting from proper use alone excepted to such location, as Lessor shall designate at or within a reasonable distance from the general location of the Property. If Lessee fails to deliver the Property to Lessor, as provided in this Section 15, on or before the date of termination of this Agreement, Lessee shall pay to Lessor upon demand, for each month during the hold-over period, an amount equal to highest amount due during the term of this Lease as a Lease Payment. If termination is due to a default the provisions of the section titled "Default and Lessor's Remedies" shall be applicable. Lessee hereby waives any right which it now has or which might be acquired or conferred upon it by any law or order of any court or other governmental authority to terminate this Agreement or its obligations hereunder, except in accordance with the express provisions hereof.

16. Assignment. Without Lessor’s prior written consent, Lessee will not either (i) assign, transfer, pledge, hypothecate, grant any security interest in, or otherwise dispose of this Agreement or the Property or any interest in this Agreement or the Property; or (ii) sublet or lend the Property or permit it to be used by anyone other than Lessee or Lessee’s employees. Lessor may assign its rights, title, and interest in and to this Agreement, the Property, and any other documents executed with respect to this Agreement and/or grant or assign a security interest in this Agreement and/or the Property, in whole or in part. Any such assignees shall have all of the rights of Lessor under this Agreement. Subject to the foregoing, this Agreement inures to the benefit of and is binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto. No assignment or reassignment of any of Lessor’s rights, title, or interest in this Agreement or the Property shall be effective with regard to Lessee unless and until Lessee shall either have received a copy of the document by which the assignment or reassignment is made, or a notice signed by an officer of Lessor, in either event disclosing the name and address of such
assignee. No further action will be required by Lessor or by Lessee to evidence the assignment, but Lessee will acknowledge receipt of such assignment in writing if so required. During the term of this Agreement, Lessee shall keep a complete and accurate record of all such assignments in form necessary to comply with Section 149(a) of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations, proposed or existing, from time to time promulgated thereunder.

17. Personal Property. The Property is and shall at all times be and remain personal property.

18. Title. Upon acceptance of the Property by Lessee hereunder, Lessee shall have title to the Property during the term of this Agreement; however, in the event of an Event of Default hereunder and for so long as such Event of Default is continuing, Lessor may elect to have title transferred to its name.

19. Lessor’s Right to Perform for Lessee. If Lessee fails to make any payment or perform or comply with any of its covenants or obligations hereunder, Lessor may, but shall not be required to, make such payment or perform or comply with such covenants and obligations on behalf of Lessee, and the amount of any such payment and the expenses (including but not limited to reasonable attorneys’ fees) incurred by Lessor in performing or complying with such covenants and obligations, as the case may be, together with interest thereon at the rate applicable upon default, shall be payable by Lessee upon demand. Any and all other remedies provided for herein shall remain applicable.

20. Interest on Default. If Lessee fails to pay any Lease Payment specified in Section 1 hereof within ten (10) days after the due date thereof, Lessee shall pay to Lessor interest on such delinquent payment from the due date until paid at the lower of the highest lawful rate or the highest prime rate as published in the Wall Street Journal for the Monday following the date that the Lease Payment was due.

21. Notices. Any notices to be given or to be served upon any party hereto in connection with this Agreement must be in writing and may be given by certified or registered mail, and shall be deemed to have been given and received forty-eight (48) hours after a registered or certified letter containing such notice, postage prepaid, is deposited in the United States mail, and if given otherwise shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notice shall be given to the parties at their respective addresses designated on the signature page of this Agreement or at such other address as either party may hereafter designate.

22. Security Interest. As security for Lessee’s covenants and obligations hereunder, Lessee hereby grants to Lessor, and its successors, a security interest in the Property, all accessions thereto and all proceeds therefrom, and, in addition to Lessor’s rights hereunder, all of the rights and benefits of a secured party under the Uniform Commercial Code as in effect from time to time hereafter in the state in which the Property is located or any other state which may have jurisdiction over the Property. Lessee agrees to execute, acknowledge and deliver to Lessor in recordable form upon request any instruments with respect to the Property or this Agreement.
considered necessary or desirable by Lessor to perfect and continue the security interest granted
to herein in accordance with the laws of the applicable jurisdiction.

23. **Tax Exemption.** Lessee certifies that it does reasonably anticipate that not more
than $10,000,000 of “qualified tax-exempt obligations,” as that term is defined in Section
265(b)(3)(D) of the Code, will be issued by it and any subordinate entities during the year in which
this Agreement is executed. Further, Lessee designates this issue as comprising a portion of the
$10 million in aggregate issues to be designated as “qualified tax exempt obligations” eligible for
the exception contained in Section 265(b)(3)(D) of the Code allowing for an exception to the
general rule of the Code which provides for a total disallowance of a deduction for interest
expense allocable to the carrying of tax exempt obligations.

24. **JURY TRIAL WAIVER.** ALL PARTIES HERETO HEREBY WAIVE
TRIAL BY JURY IN ANY AND ALL LITIGATION RELATED TO AND/OR ARISING
OUT OF THIS LEASE, ANY AGREEMENTS RELATED TO THIS LEASE, AND/OR
THE TRANSACTION CONTEMPLATED BY THIS LEASE.

25. **LIMITATION OF REMEDIES AGAINST LESSOR.** LESSOR SHALL NOT BE
RESPONSIBLE OR LIABLE FOR ANY LOSS OF BUSINESS, LOSS OF PROFITS,
CONSEQUENTIAL DAMAGES, OR OTHER DAMAGE CAUSED BY AND OR RELATED
TO THIS LEASE AND/OR THE PROPERTY INCLUDING BUT NOT LIMITED TO: TIME
LOST IN REPAIR OR REPLACING ANY PROPERTY, IRRESPECTIVE OF THE CAUSE
THEREOF; FAILURE OR DELAY IN DELIVERING ANY PROPERTY LEASED OR TO BE
LEASED HEREUNDER; FAILURE TO PERFORM ANY PROVISION HEREOF; FIRE OR
OTHER CASUALTY; RIOT, STRIKE OR OTHER LABOR DIFFICULTY;
GOVERNMENTAL REGULATIONS OR RESTRICTIONS; THEFT, DAMAGE TO, LOSS
OF, DEFECT IN OR FAILURE OF ANY PROPERTY LEASED HEREUNDER; OR ANY
OTHER CAUSE WHETHER OR NOT DUE TO NEGLIGENCE OR BEYOND LESSOR'S
CONTROL. THERE SHALL BE NO ABATEMENT OR APPORTIONMENT OF MONTHLY
RENT AT ANY TIME OR FOR ANY REASON EXCEPT AS SPECIFICALLY ALLOWED
BY THE TERMS OF THIS AGREEMENT.

26. **Miscellaneous.**

(a) Lessee shall, whenever requested, advise Lessor of the exact location and
condition of the Property and shall give Lessor immediate notice of any attachment or
other judicial process affecting the Property. Lessor may, for the purpose of inspection,
at all reasonable times enter upon any job, building, or place where the Property and the
books and records of Lessee with respect thereto are located.

(b) Lessee agrees to equitably adjust the payments payable under this
Agreement if there is a determination for any reason that the interest payable pursuant to
this Agreement (as incorporated within the schedule of payments) is not excludable from
income in accordance with the Code, such as to make Lessor and its assigns whole.

(c) Time is of the essence. No covenant or obligations hereunder to be
performed by Lessee maybe waived except by the written consent of Lessor, and a
waiver of any such covenant or obligation or a forbearance to invoke any remedy on any occasion shall not constitute or be treated as a waiver of such covenant or obligation as to any other occasion and shall not preclude Lessor from invoking such remedy at any later time prior to Lessee’s cure of the condition giving rise to such remedy. Lessor’s rights hereunder are cumulative and not alternative.

(d) This Agreement shall be construed in accordance with, and governed by, the laws of the State of Kansas.

(e) This Agreement constitutes the entire agreement between the parties and shall not be modified, waived, discharged, terminated, amended, altered, or changed in any respect except by a written document signed by both Lessor and Lessee.

(f) Any term or provision of this Agreement found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without, to the extent reasonably possible, invalidating the remainder of this Agreement.

(g) Lessor shall have the right at any time or times, by notice to Lessee, to designate or appoint any person or entity to act as agent or trustee for Lessor for any purposes hereunder.

(h) All transportation charges shall be borne by Lessee. Lessee will immediately notify Lessor of any changes occurring in or to the Property, of a change in Lessee’s address, or in any fact or circumstance warranted or represented by Lessee to Lessor, or if any Event of Default occurs.

(i) Use of the neuter gender herein is for purposes of convenience only and shall be deemed to mean and include the masculine or feminine gender whenever and wherever appropriate.

(j) The captions set forth herein are for convenience of reference only and shall not define or limit any terms or provisions hereof.

(k) Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representative, successors, and assigns, where permitted by this Agreement.

(l) NO THIRD PARTY BENEFICIARIES: There are no third party beneficiaries of this Lease and/or the transaction contemplated by this Lease.

(m) ELECTRONIC SIGNATURES. Lessor and Lessee agree that fax signatures are enforceable and that copies received via fax machines constitute an original signature for this Lease and for any documents related to this lease. Documents received in electronic format (PDF, TIF and/or similar method), which are a copy of an original, showing a copy of a signature, are enforceable as if the enforcing party had the original signature.
IN WITNESS WHEREOF, the parties have duly executed this Agreement on and as of the ________ day of ____________________.

LESSEE: ____________________

By: ____________________ PRINTED NAME: ____________________
By: ____________________ PRINTED TITLE: ____________________
Authorized Signer

LESSOR:  Arvest Equipment Finance
PO Box 11110
Fort Smith, AR 72917

By: ____________________ PRINTED NAME: ____________________
By: ____________________ PRINTED TITLE: ____________________
Authorized Signer
MUNICIPAL LEASE-PURCHASE AGREEMENT (THE “AGREEMENT”) BY AND BETWEEN
LESSOR, Arvest Equipment Finance, and LESSEE,
Dated as of______________________.

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PROPERTY LOCATION:
EXHIBIT B
SCHEDULE OF PAYMENTS & OPTION TO PURCHASE PRICE

MUNICIPAL LEASE-PURCHASE AGREEMENT (THE “AGREEMENT”) BY AND BETWEEN
LESSOR, Arvest Equipment Finance, and LESSEE, ___________________________

Dated as of _____________________.

LESSEE:  ____________________________

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ACCEPTED BY LESSEE: ____________________________

Name: ____________________________

Title: ____________________________

Date: ____________________________
This Rider to that certain Municipal Lease-Purchase Agreement (together with all Exhibits and this Rider, the “Agreement”) dated as of [Dated Date], between Arvest Equipment Finance, a division of Arvest Bank, an Arkansas banking corporation (together with its successors and assigns, “Lessor”), and [NAME OF LESSEE] (together with its successors and assigns, “Lessee”), is incorporated in and is hereby made a part of the Agreement.

Lessor and Lessee hereby agree that capitalized terms used herein and not otherwise defined herein shall have the terms assigned to such terms in the Agreement and that the following changes and additions shall be made to the Agreement:

1. Notwithstanding any other provision of this Agreement, Lessee shall only be obligated to pay Lease Payments and other payments from funds budgeted and appropriated for that purpose during Lessee’s then current budget year or, where appropriate, insurance proceeds (including self-insurance reserves if self-insurance is in effect).

2. As required by K.S.A. Section 10-1116c(d), Lessee acknowledges as follows:
   (a) The capital cost that would be required to purchase the Property if paid for by cash would be $______________.
   (b) The annual average effective interest cost of this Agreement is __________% per annum.
   (c) No amount is included in the Lease Payments (assuming continuation of the Lease Term applicable to the Agreement through the Maximum Lease Term) for service, maintenance, insurance and other charges exclusive of capital cost and interest cost.

[Only include the following Sections 3-5 for school districts and community colleges.]

3. Pursuant to K.S.A. Sections 71-201a or 72-1146, as applicable, Lessee and Lessee’s governing body will be responsible solely for Lessee’s and Lessee’s governing body’s actions or failure to act under this Agreement.

4. Lessee’s governing body hereby certifies that it has, by the affirmative recorded vote of a majority of the members of the governing body, elected to omit the mandatory contract provisions prescribed by the Kansas Department of Administration in form DA-146a, as amended. The omission of those provisions will not result in the waiving or omission of the provisions of K.S.A. Sections 71-201a, 71-201b, 72-1146 or 72-1147, as applicable, and amendments thereto. [Confirm language in authorizing resolution/discuss with counsel.]
5. Pursuant to K.S.A. Sections 71-201a or 72-1147, as applicable, Section 11 of the Agreement is hereby deleted in its entirety.

Except as specifically set forth in this Rider, all terms and conditions contained in the Agreement will remain in full force and effect and are hereby ratified and confirmed.

[remainder of page intentionally blank]
LESSOR: ARVEST EQUIPMENT FINANCE, a division of Arvest Bank

By: ________________________________
Name: _____________________________
Title: ______________________________
Address: __________________________
Date: [Dated Date]

LESSEE: [NAME OF LESSEE]

By: ________________________________
Name: _____________________________
Title: ______________________________
Address: __________________________
Date: [Dated Date]
ADDENDUM TO MUNICIPAL LEASE-PURCHASE AGREEMENT

RE: Municipal Lease-Purchase Agreement No. ________ (the “Agreement”) between ARVEST EQUIPMENT FINANCE, a division of Arvest Bank (the “Lessor”), and ________________ (the “Lessee”).

Municipal Lease Purchase Agreement; Modification. The following Municipal Lease Purchase Agreement Modification amends the previous Terms of the Municipal Lease Purchase Agreement between ARVEST EQUIPMENT FINANCE, a division of Arvest Bank (the “Lessor”), and ________________ (the “Lessee”).

Municipal Lease Purchase Agreement

Section 2: Revenue Receipts will have the following sentence removed: Lessee also represents and warrants that its governing body, each fiscal year during the term of the lease, will fully consider and make all good faith and reasonable efforts to adopt a budget, for each successive fiscal period during the term of this Agreement, that specifically identifies amounts sufficient to permit Lessee to discharge all of its obligations hereunder.

Section 10: Insurance will be have the following sentence modified: “but in no event less then ten million dollars”; The updated language will be “but in no event less then one million dollars per occurrence”

Section 16 Assignment will have the following sentence removed: During the term of this Agreement, Lessee shall keep a complete and accurate record of all such assignments in form necessary to comply with Section 149(a) of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations, proposed or existing, from time to time promulgated thereunder.

Miscellaneous: Except as expressly amended hereby, all the terms and conditions of the Municipal Lease Purchase Agreement will remain in full force and effect. Without limiting the foregoing, all indemnities and other payment obligations that are included in the Municipal Lease Purchase Agreement will survive this Agreement.

Agreed to and Accepted by the Lessee:

LESSEE:

By: ______________________________
Name: ________________
Title: ______________________
Date: ___________

ARVEST EQUIPMENT FINANCE

By: ______________________________
Name: ______________________
Title: ______________________
Date: ______________________
CERTIFICATE OF ACCEPTANCE

Lease No. ____________________

MUNICIPAL LEASE-PURCHASE AGREEMENT (THE “AGREEMENT”) BY AND BETWEEN
LESSOR, Arvest Equipment Finance, and LESSEE, ________________________

1. ACCEPTANCE: In accordance with the Agreement, Lessee hereby certifies that all the Property described herein (i) has been received by Lessee, (ii) has been thoroughly examined and inspected to the complete satisfaction of Lessee, (iii) has been found by Lessee to be in good operating order, repair, and condition, (iv) has been found to be of the size, design, quality, type and manufactured specified by Lessee, (v) has been found to be and is wholly suitable for Lessee’s purposes, and (vi) is hereby unconditionally accepted by Lessee, in the condition received, for all purposes of the Agreement.

2. PROPERTY:

_________________________________________________________________________________

3. USE: The primary use of the Property is as follows:

_________________________________________________________________________________

4. PROPERTY LOCATION:

_________________________________________________________________________________

5. INVOICING: Invoices shall be sent to the following address, including to whose attention invoices should be directed:

_________________________________________________________________________________

6. MAINTENANCE: In accordance with Section 7.01 of the Agreement, Lessee agrees to, at its own expense, repair and maintain the Property for the term of the Agreement.

LESSEE: ______________________________

By: ______________________________
Title: ____________________________

ACCEPTED on this _____ day of _____, ______.
INCUMBENCY, INSURANCE, AND ESSENTIAL USE CERTIFICATES

MUNICIPAL LEASE-PURCHASE AGREEMENT BY AND BETWEEN
LESSOR, Arvest Equipment Finance, and LESSEE, ________________________________
Lease No. _________________________________________

I, ____________________ , do hereby certify that I am the duly elected or appointed and acting ________________ of
____________________, a political subdivision or agency duly organized and existing under the laws of the State of Kansas,
that I have custody of the records of such entity, and that, as of the date hereof, the individual(s) named below are the duly
elected or appointed officer(s) of such entity holding the office(s) set forth opposite their respective name(s). I further certify
that (i) the signature(s) set opposite their respective name(s) and title(s) are their true and authentic signature(s), and (ii) such
officer(s) have the authority on behalf of such entity to enter into that certain Municipal Lease-Purchase Agreement (the
“Agreement”) dated as of ____________, between such entity and Arvest Equipment Finance.

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IN WITNESS WHEREOF, I have duly executed this Certificate and affixed the seal of such entity hereto this ____ day
of________.____.

________________________________ (SEAL)

Signature

Lessee certifies that property and liability insurance, if applicable, have been secured in accordance with the Agreement
and such coverage will be maintained in full force for the term of the Agreement. “Lessor or its Assigns” should be designated
as loss payee and additional insured until Lessee is notified, in writing, to substitute a new loss payee. The following
information is provided about insurance:

INSURANCE COMPANY/AGENT’S NAME: ______________________________________

INSURANCE COMPANY ADDRESS: ______________________________________

PHONE NUMBER: __________________ POLICY NUMBER: __________________

I, ____________________ , of__________ (“Lessee”), hereby certify that the
Equipment to be leased to the undersigned under the certain Municipal Lease-Purchase Agreement dated as of ____________,
between such entity and Arvest Equipment Finance (“Lessor”), will be used by the undersigned Lessee for the following
purpose:

____________________________________________________________________________________________________

The undersigned Lessee hereby represents that the use of the Equipment is essential to its proper, efficient, and
economic operation.

IN WITNESS WHEREOF, I have set my hand this _______ day of ________,______.

By: ______________________
Title: ____________________
COUNCIL ACTION FORM  
COMMITTEE RECOMMENDATION NO. 1  
MEETING DATE:  APRIL 15, 2019  
STAFF CONTACT:  LARRY POWELL, DIRECTOR BUSINESS & ECONOMIC DEVELOPMENT  

Agenda Item:  Consider adopting 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  

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

Department:  Business & Economic Development  

Planning Commission Recommendation:  
After review of applications Z-19-02 and PDP-19-02 for Plaza South [property located at the northeast corner of S. Gardner Road and W. 188th Street, (Tax IDs CF221436-2001 and CF221436-2011)], a rezoning from C-2 (General Business) District to ACP-2 (Activity Center Planned General Business) District according to the associated preliminary development plan dated 3/15/19 (received 3/21/19), and the staff report dated March 26, 2019, the Planning Commission recommends the Governing Body approve the applications as proposed, provided the following conditions are met:  

1. The trail along W. 188th Street shall be constructed of concrete.  
2. The applicant shall provide for a common area maintenance agreement or property maintenance agreement for all common areas at time of the first final development plan/final plat applications, including the infrastructure within all access and sidewalk easements.  
3. All easements shall be approved prior to approval of any final development plan/final plat.  
4. The stormwater plan and traffic study shall be approved prior to approval of any final development plan.  
5. Lots 5, 6, 7, 8 and 9 – To better meet the intent of the required building frontage within this development context, shall include an acceptable vertical element along at least 35% of the front building line, either via a building, plantings, or an ornamental wall or fence complimenting the design of the buildings.  

Staff Recommendation:  
Staff recommended approval of Z-19-02 Zoning Map Amendment and PDP-19-02 Preliminary Development Plan for Plaza South and recommended forwarding the application to the Governing Body with the conditions outlined below:  

1. The trail along W. 188th Street shall be constructed of concrete.  
2. The applicant shall provide for a common area maintenance agreement or property maintenance agreement for all common areas at time of the first final development plan/final plat applications, including the infrastructure within all access and sidewalk easements.  
3. All easements shall be approved prior to approval of any final development plan.
4. The stormwater plan and traffic study shall be approved prior to approval of any final development plan.

5. Lots 5, 6, 7, 8 and 9 – To better meet the intent of the required building frontage within this development context, shall include an acceptable vertical element along at least 35% of the front building line, either via a building, plantings, or an ornamental wall or fence complimenting the design of the buildings.

Background/Description of Item:
The property, which is located approximately one-quarter mile north of the I-35 and S. Gardner Road interchange, has long been in unimproved agricultural use and is not platted. An existing asphalt trail runs along the west side of the subject property along S. Gardner Road, and utility infrastructure is located in close proximity. An approximately 270' wide parcel used for stormwater detention and overhead electric transmission lines separates the proposed development from the single-family subdivision to the north (Aspen Creek). Most of the remaining adjacent area is undeveloped (with the exception of Orscheln Farm & Home and Groundhouse Coffee) and zoned for commercial use.

The project will involve the dedication of additional right-of-way for S. Gardner Road and W. 188th Street, and will result in the construction of almost one-quarter mile of new collector roadway as W. 188th Street is continued to the east. This will also provide access for future development of the Olathe Medical Center property south of the subject property. The adjacent intersection with S. Gardner Road will be improved by the City as part of a project to reconfigure W. 191st Street to connect with S. Gardner Road at W. 188th Street.

This is the first request for a rezoning to the recently created Activity Center Planned (AC-P) District. This district is intended to provide a balanced mix of regional- and community-serving uses and amenities near major highway interchanges and along connecting arterial and collector streets, infrastructure to support multi-modal transportation services, improved public realm design, and incentives for developments that meet the intent of this district.

This rezoning and development request is consistent with the I-35 and Gardner Road Interchange Subarea Plan that was adopted as part of the Comprehensive Plan. It also supports other recommendations of the Comprehensive Plan such as promoting diverse commercial growth serving neighborhoods and the region near the highway interchanges, providing trails to increase public bicycle and pedestrian access to community facilities, and siting buildings around internal, pedestrian-friendly streets.

The current base zoning district of C-2 (General Business) District provides the basis for the standards applied to the preliminary development plan in the ACP-2 (Activity Center Planned General Business) District. A preliminary development plan consists of block and lot patterns designed to accommodate specific street types, building types, frontage types, and uses. A final development plan is a more detailed plan for a portion or the entirety of the approved preliminary development plan area, and will contain information on building elevations and materials, landscaping and other site amenities that are not addressed in the preliminary development plan.

The Plaza South preliminary development plan provides for nine lots accommodating 316,942 square feet of potential retail/service, office, restaurant, assisted/independent living, lodging, and large assembly uses. These uses are mostly speculative at this time. The applicant is proposing the internal circulation system to consist of private roadways with adjacent sidewalks located in
access easements. It is a requirement that private roads or shared access areas will be maintained by a private entity.

As for regular planned districts, the Activity Center Planned District allows approval of departures from various standards, except that this specific planned district ensures that standards for internal, well-connected circulation patterns and enhanced civic spaces along arterial and collector roadways are met. The applicant has provided for well-connected access drives functioning as streets, including sidewalks and a new trail with structural amenities along W. 188th Street. Particular amenities are intended to be implemented in the Activity Center Planned District, and have been proposed, such as pedestrian and non-motorized connections to existing trails. Other required amenities will be enforced at time of final development plan process, including infrastructure to encourage and support public transit and public art, wayfinding signs, historic interpretive signs, or creative landscape amenities in prominent locations. The exceptions to allowed deviations that pertain to enhanced building and landscape design will be enforced at time of final development plan approval.

Staff recommended, and the Planning Commission accepted, approval of the following deviation requests for the preliminary development plan:

- Shorter block lengths (Lots 1-8) and smaller lot areas (Lots 1-4) than provided in the Code for this suburban context, with the finding that this configuration supports greater walkability.
- Larger lot size and greater building setback for Lot 9 (religious facility use). Through the planned development process, the Code allows for larger lot sizes as part of a campus plan that provides internal access and circulation that is consistent with surrounding areas. The applicant mitigated the greater building setback with planned amenities that closely address the streetscape and support an enhanced public realm.
- Deviation from the Terrace frontage type requirement for a direct connection to the public sidewalk every 50'. This was deemed inappropriate and unnecessary in this context.

Four deviation requests resulted in recommended conditions of approval as follows:

- Reduced civic open space area requirement, as the existing and planned trail meets the intent of the standards and adopted plans; however, a condition of approval is that the new trail be constructed of concrete for greater durability.
- The applicant did not address the ownership and management of the public open space amenities in the sidewalk and access easements as required in the Code. It is recommended that a common area maintenance agreement be provided at time of final development plan/final plat.
- The code requires sufficient right-of-way dedications and public improvements. It is a recommended condition of approval that the traffic study and stormwater plan be approved before approval of any final development plan for Plaza South.
- For lots 5-9, the Terrace frontage type includes a required building frontage of 70%, but it is stated that this can be reduced up to 50% provided that active open space and a vertical element is provided. Staff found that this vertical element is important in this context to provide a comfortable sense of enclosure and interest for pedestrians using the trail system or sidewalk network, and thus recommended a condition of approval that the final development plans for these lots include at least 35% of the frontage to contain a vertical element at the prescribed building line.
Staff found that all review criteria for the rezoning request and preliminary development plan application are met provided the recommended conditions are approved.

At the March 26, 2019 Planning Commission meeting, after holding a public hearing, the Commission recommended the Governing Body approve the rezoning and preliminary development plan for Plaza South with conditions by a unanimous vote of the six attending members. Only the applicant spoke on this proposal from the public.

**Governing Body Action Options:**
When the Planning Commission submits a recommendation of approval or disapproval of such amendment and the reasons therefor, the Governing Body may:

1. Adopt such recommendation by ordinance,
2. Override the Planning Commission’s recommendation by at least a two-thirds vote of the membership of the Governing Body, or
3. Return such recommendation to the Planning Commission with a statement specifying the basis for the Governing Body’s failure to approve or disapprove.

**Financial Impact:**
None

**Other Impacts:**
None

**Attachments included:**
- Ordinance
- Vicinity Map
- Preliminary development plan document
- Excerpt of the minutes from the March 26, 2019 Planning Commission meeting
- Planning Commission packet

**Suggested Motion:**

Approve Ordinance 2612 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. 2612

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 March 26, 2019, 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 located at the northeast corner of S. Gardner Road and W. 188th Street shall hereafter have a zoning classification of ACP-2 (Activity Center Planned General Business) District in accordance with preliminary development plan PDP-19-02 Plaza South dated 3/15/19, received 3/21/19, and subject to the following conditions:

1. The trail along W. 188th Street shall be constructed of concrete.
2. The applicant shall provide for a common area maintenance agreement or property maintenance agreement for all common areas at time of the first final development plan/final plat applications, including the infrastructure within all access and sidewalk easements.
3. All easements shall be approved prior to approval of any final development plan.
4. The stormwater plan and traffic study shall be approved prior to approval of any final development plan.
5. Lots 5, 6, 7, 8 and 9 – To better meet the intent of the required building frontage within this development context, shall include an acceptable vertical element along at least 35% of the front building line, either via a building, plantings, or an ornamental wall or fence complimenting the design of the buildings.

CASE NO. Z-19-02(PDP-19-02)

Rezoning from C-2 (General Business) District to ACP-2 (Activity Center Planned General Business) District:

Legal Description:
ALL THAT PART OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 14 SOUTH, RANGE 22 EAST, IN THE CITY OF GARDNER, JOHNSON COUNTY, KANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
DISTANCE OF 952.47 FEET; THENCE S 89°07'03" W, A DISTANCE OF 1125.47 FEET, TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF 188TH STREET AS NOW ESTABLISHED; THENCE N 2°32'11" W, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 30.01 FEET; THENCE S 89°07'03" W, ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID 188TH STREET, A DISTANCE OF 201.00 FEET, TO THE POINT OF BEGINNING, SUBJECT TO THAT PART IN ROAD.

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 15th day of April, 2019.

SIGNED by the Mayor this 15th day of April, 2019.

CITY OF GARDNER, KANSAS

(SEAL)

Steve Shute, Mayor

Attest:

Amy Nasta, City Clerk

Approved as to form:

Ryan B. Denk, City Attorney

(Case No. Z-19-02(PDP-19-02))
CALL TO ORDER

The meeting of the Gardner Planning Commission was called to order at 7:00 p.m. on Tuesday, March 26, 2019, by Chairman Austin.

PLEDGE OF ALLEGIANCE

Chairman Austin led the Pledge of Allegiance.

ROLL CALL

Commissioners present:

   Chairman Austin
   Commissioner Boden
   Commissioner Gardenhire
   Commissioner McNeer
   Commissioner Roberts
   Commissioner Simmons-Lee

Commissioners absent:

   Commissioner Brady

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
   Ryan Denk, City Attorney

There were 11 members of the public in attendance.

REGULAR AGENDA

1. PLAZA SOUTH
   Located at the northeast corner of S. Gardner Road and W. 188th Street
b. **PP-19-03**: Consider a preliminary plat for an approximately 30 acre, 9-lot commercial subdivision.

Chairman Austin asked the Commissioners if they had outside communication with the public on this item. Only Commissioner Gardenhire stated that two members from his office representing the client were present but there was no further discussion with them other than what was being covered at this meeting. He added he had no financial conflicts.

Ms. Kelly Drake Woodward, Chief Planner, presented the rezoning request from C-2 General Business District to ACP-2 Activity Center Planned General Business District. This is the first application under the new planned district tailored for the gateway areas of Gardner. The standards are based on the current C-2 District with deviations and additional requirements applicable per the specific planned zoning district. The request includes two parcels totaling almost 28 acres that are currently agricultural uses and the proposed preliminary development plan accommodating retail/service, office, restaurant, assisted/independent living, lodging, and large assembly uses. The site is undeveloped and unplatted with an existing asphalt trail along S. Gardner Road, on the west side. Primary overhead power lines traverse a portion of the west and entire southern boundary and all utilities are available to the site. Along the entire northern property line is an approximately 270’ deep tract used for stormwater detention basins for the Aspen Creek subdivision and overhead power lines. The interchange at I-35 and S. Gardner Road will be reconfigured and the W. 191st Street connection to S. Gardner Road will be eliminated, with the new connection moving north to the W. 188th Street intersection. This will be a key intersection after the improvements were made.

The property is at the confluence of several residential and commercial zoning districts with future multi-family development planned to the west along W. 188th Street. Single family exists to the north separated from the subject parcels by a 270’ wide stormwater detention area. Commercial development is planned on all other sides of the parcel. The Regional Commercial Future Land Use area within the subarea plan includes these properties that is anticipated to provide goods and services to those traveling by auto from I-35 and other local connections, and bike/pedestrian circulation. It will also serve patrons visiting the future Olathe Medical Facility to the south. The subarea plan shows W. 188th Street east of S. Gardner Road as a proposed future collector roadway, which is consistent with the proposed infrastructure. This development is also consistent with the Commercial Areas Plan of the Comprehensive Plan by siting buildings to create internal “streets” that are attractive and comfortable for pedestrians and that integrate public trails.

The preliminary development plan shows nine lots totaling about 26.5 acres and includes right-of-way along both S. Gardner Road and W. 188th Street. The development has been planned with private drives functioning and designed as streets that are proposed to be designed to the Local Neighborhood Street design standards and maintained by a private entity. This is a requirement of the subdivision standards, and also supports pedestrian and bicycle mobility as consistent with the Comprehensive Plan. The one-to-four-story buildings total 316,942 sq.ft. of potential development with 723 vehicle and 72 bicycle parking spaces. Currently, the applicant has only two prospective tenants, therefore, a majority of the plans are speculative. However, when final development plans are brought forward for each lot, this detailed plan must demonstrate that all
applicable standards, requirements, and conditions of the preliminary development plan have been met. The final development plans must be in substantial compliance with the approved preliminary development plan, or the preliminary development plan must be revised through this same public process.

The development fronting S. Gardner Road (Lots 1-4) is based on the Arterial Parkway-Boulevard street type and Buffer Edge frontage type. The development fronting W. 188th Street (Lots 5, 6, and 9) are based on the Collector – Activity street type and Terrace frontage type. Lots 7 and 8 are based on the Local – Neighborhood street type and Terrace frontage type. Proposed building types include Small Commercial – Pad Site (Lots 1-6), Large Commercial (Lot 7), and Prominent Civic (Lots 8 and 9). The Open and Civic Space type is trail.

The purpose of the Activity Center Planned District is to encourage a balanced mix of regional- and community-serving uses and amenities near major highway interchanges and along connecting arterial and collector streets; and provide incentives for developments that meet the intent of this district. Specifically, development plans in this planned district should accomplish one or more of the following along and near key commercial corridors:
• Support for multi-modal transportation services
• Improved public realm designs
• Development patterns that provides for compatibility between uses

As for regular planned districts, the Activity Center Planned District allows the Planning Commission to approve departures from standards for blocks, lots, open and civic space types, building type and development standards, frontage type standards, site design, and landscape standards. However, there are some exceptions to allowed deviations that have to do with ensuring standards are met for internal, well-connected circulation patterns and enhanced civic spaces along arterial and collector roadways.

The applicant has provided for well-connected access drives functioning as streets and a new trail with structural amenities along W. 188th Street. There is an existing trail on S. Gardner Road. Particular amenities are intended to be implemented in the Activity Center Planned District, and have been proposed, such as pedestrian and non-motorized connections to existing trails. Other required amenities will be enforced at the final development plan process, including infrastructure to encourage and support public transit and public art, wayfinding signs, historic interpretive signs, or creative landscape amenities in prominent locations.

There were eight deviations requested and staff has recommended four be approved and four be conditions of approval (numbers below correspond with numbering in the staff report). The deviations recommended by staff were:

• Deviation 1. Deviation from the subdivision standards pertaining to block length and area for Lots 1-8, calling for smaller blocks. Staff supports this because the smaller blocks enhance walkability and better achieves the intent of the AC-P district within this future activity node.
• Deviation 5. Lot 9 is designed for the Prominent Civic building type, but does not fall within the lot size range (is larger). The Code allows larger lot sizes as part of a campus plan through the planned development process that considers
internal access and circulation with surrounding areas. The applicant has provided for beneficial internal access and circulation that is in alignment with adjacent access points.

- Deviation 6. The Prominent Civic building type standards require a front setback of 20' -50'. Lot 9 is proposed at a 287' setback. The applicant has proposed a community amenity area on the south side of the property along the W. 188th Street right-of-way as an alternative way to establish a close relationship with the public realm. This area will have park benches, picnic tables with shade structures, butterfly bushes, and limestone fence posts along the walking trail. Staff finds that the proposed amenities establish an acceptable alternative built relationship with the public realm. If approved, the final details will be worked out on the final development plan.

- Deviation 8. Lots 5-9 utilize the Terrace frontage type that requires direct sidewalk connections to the public sidewalk at least every 50’. The applicant has provided 2-3 pedestrian connections per lot. To place these connections every 50’ within this context would be unnecessary and potentially unsafe.

Deviations recommended as conditions of approval by staff:

- Deviation 2. A reduction to the open space requirement is requested. The Code provides that the required open space of 12% may be reduced based on a plan through the planned development process that meets or exceeds the intent of the civic open space standards. The existing trail along S. Gardner Road counts toward the open space and an additional trail is proposed to help meet the requirement. This will provide recreation for all ages and connect the commercial uses with existing and planned residential uses nearby. Both Parks and Recreation and Public Works Departments have requested that the trail be constructed of concrete for durability. Trails along the greenway are asphalt, but the City is replacing asphalt trails along the road network with concrete when the opportunity arises.

- Deviation 3. The ownership and management of amenities in sidewalk and access easements needs specification and the applicant has not addressed ownership and management. It is a recommended condition of approval that the applicant must provide for a common area maintenance agreement or property maintenance agreement for all common amenities at time of the first final development plan/final plat applications, including the infrastructure within all access and sidewalk easements.

- Deviation 4. The dedication of the right-of-way (ROW) and public improvements needs approval. The City recently received the traffic study and has not yet reviewed it for approval. Staff recommends it be approved prior to approval of any final development plans.

- Deviation 7. Lots 5-9 are the Terrace frontage type with a standard of 70% required building frontage (70% of lot frontage shall be occupied by a building within 10’ – 25’ setback range). The Code provides an exception for up to 50% of this requirement through an administrative adjustment provided that active open space and a vertical element is provided. Additionally, there are some utility infrastructure concerns that prevent close building placement along W. 188th Street. However, it is still important to create a comfortable sense of enclosure and interest for pedestrians using the trail system or sidewalk network. Staff recommends that the applicant implement an acceptable vertical element along
at least 35% of the front building line, either via a building or other elements such as plantings, or an ornamental wall or fence complimenting the design of the buildings. These amenities will be addressed on the final development plan phase.

Ms. Woodward continued with staff findings using the review criteria for the rezoning.

1. Character of the neighborhood – generally undeveloped, and the proposed plan creates improved road and trail connections that integrate well with existing development.

2. Compatibility of the proposed uses – the development will be well-buffered from the adjacent residential uses and will provide beneficial goods and services for the neighborhood.

3. Suitability for development under current restrictions – the property is currently zoned C-2 (General Business) District, and the rezoning request is to a planned district based on this C-2 District. The prescribed Regional Commercial future land use designation provides that the properties could be zoned for even more intense commercial uses. The request is to rezone to the Activity Center Planned District which is designated for areas near the I-35 interchanges. The proposed uses are compatible with the intent of the ACP-2 district and this request brings the property more in alignment with the Comprehensive Plan (and associated subarea plan) than the current restrictions.

4. Impact of the removal of the restrictions on the area – this rezoning to the ACP-2 District further limits deviations that can be requested. Removal of the restrictions will not detrimentally affect nearby property, and should enhance it.

5. Length of time vacant as zoned – the property remains vacant under the current zoning. This request is intended to provide some assurances to prospective buyers of what they can build.

6. Relative gain under current restrictions – The applicable development standards remain the same under current and proposed zoning, but the proposed zoning provides for enhanced amenities more supportive of the gateway context. The net impact is perceived by staff to be positive as related to economic development and public welfare.

7. Staff recommendation – Staff recommends approval with conditions.

8. Consistency with the Comprehensive Plan – Staff has found the request to be consistent with the Comprehensive Plan and the I-35 and Gardner Road Interchange Subarea Plan.

9. Impact on the capacity/safety of the public realm – The proposed development provides for greater connections of the public utility and street infrastructure. Stormwater and traffic impacts are still being evaluated, therefore conditions of approval regarding these improvements are recommended. The public improvement plans are required to be approved before the final plat is released for recording.

The staff findings using the review criteria for the preliminary development plan were then presented.

1. The plan improves on base standards – It provides for some additional public space amenities at the streetscape to mitigate greater building setbacks. This would not have been accomplished through the strict application of the base zoning district. The proposed development plan improves multi-modal connections and walkability with smaller blocks.
2. Impact of flexibility on the community versus the applicant – The improved streetscape amenities will further encourage walkability and promote public health, safety, and welfare in this southern gateway as the area continues to grow.

3. Impact of flexibility on meeting the intent of the standards – The base C-2 zoning district intent is to provide retail, service and employment uses that contribute to the overall vitality and mix of uses of these areas at strategic locations. The development proposes a beneficial mix of regional- and neighborhood-serving uses that may provide for residential living within walking distance of essential goods and medical services along a designated transit route and near major highway systems.

4. Sound planning and design principles – The plan meets most development regulations that are based on sound planning and urban design principles, and where deviations are requested, mitigating solutions have been proposed or recommended.

The development is consistent with adopted community plans. Staff recommends approval of both the rezoning and preliminary development plan.

Public Hearing

Mr. Judd Clausen, Phelps Engineering, civil engineers and surveyors for the project, thanked Ms. Woodward for the in-depth staff report. He said there was much creativity involved in the design of the project with thought put into the road and sidewalk locations and the uses of the entire site. He felt the activity center could be called a “flexible and opportunity center” and the overall design was a great compromise for all involved. The City got much of the items they were looking for in their UDO requirements and design characteristics required in this proposed zoning district. The opportunity for a new church for the community and promising retail tenants would bring new development to the area. It would also benefit by completing W. 188th Street.

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

Motion passed 6-0.

Commission Discussion

Commissioners Boden, Gardenhire and Roberts praised the development and growth and support the deviations and recommendations.

Commissioner Simmons-Lee asked about the main access to the site.

Mr. Larry Powell, Director of Business & Economic Development, replied the City was in the process of improving the intersection of W. 188th Street and S. Gardner Road and would have a signal installed. The main road through the site from the church to the south end would be a private road without signals.
Commissioner McNeer thanked Ms. Woodward for her work on the presentation and agreed this project would make a great front door to Gardner.

Motion made after review of applications Z-19-02 and PDP-19-02 for Plaza South (property located at the northeast corner of S. Gardner Road and W. 188th Street, (Tax IDs CF221436-2001 and CF221436-2011), a rezoning from C-2 (General Business) District to ACP-2 (Activity Center Planned General Business) District according to the associated preliminary development plan dated 3/15/19, received 3/21/19, and staff report dated March 26, 2019, the Planning Commission recommends the Governing Body approve the applications as proposed, provided the following conditions are met:

1. The trail along W. 188th Street shall be constructed of concrete.
2. The applicant shall provide for a common area maintenance agreement or property maintenance agreement for all common areas at time of the first final development plan/final plat applications, including the infrastructure within all access and sidewalk easements.
3. All easements shall be approved prior to approval of any final development plan/final plat.
4. The stormwater plan and traffic study shall be approved prior to approval of any final development plan.
5. Lots 5, 6, 7, 8 and 9 – To better meet the intent of the required building frontage within this development context, shall include an acceptable vertical element along at least 35% of the front building line, either via a building, plantings, or an ornamental wall or fence complimenting the design of the buildings.

Motion made by Gardenhire and seconded by Boden.

Motion passed 6-0.
PROJECT NUMBER / TITLE: Z-19-02(PDP-19-02) Rezoning from C-2 to ACP-2 with an associated development plan for Plaza South

PROCESS INFORMATION
Type of Request: Rezoning and Preliminary Development Plan
Date Received: February 13, 2019

APPLICATION INFORMATION
Applicant: Phelps Engineering, Inc.
Owner: Tom Vankeirsbilck
Parcel ID: CF221436-2001 and CF221436-2011
Location: Northeast corner of the intersection of S. Gardner Road and W. 188th Street

REQUESTED ACTION
The applicant has requested approval of a rezoning from C-2 (General Business) District to ACP-2 (Activity Center Planned General Business) District and the associated preliminary development plan for nine lots accommodating retail/service, office, restaurant, assisted/independent living, lodging, and large assembly uses.

EXISTING ZONING AND LAND USE
The property is currently zoned C-2 (General Business) District, and it is currently an unimproved agricultural use.

SURROUNDING ZONING AND LAND USE

<table>
<thead>
<tr>
<th>Zoning</th>
<th>Use(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>North of subject property</td>
<td></td>
</tr>
<tr>
<td>R-1 (Single-Family Residential) District</td>
<td>Approx. 270’ wide lot for stormwater detention backed by single-family homes</td>
</tr>
<tr>
<td>East of subject property</td>
<td></td>
</tr>
<tr>
<td>C-3 (Heavy Commercial) District</td>
<td>Unimproved agricultural</td>
</tr>
<tr>
<td>South of subject property</td>
<td></td>
</tr>
<tr>
<td>C-2 (General Business) District</td>
<td>Restaurant, gas station, and unimproved agricultural</td>
</tr>
<tr>
<td>West of subject property</td>
<td></td>
</tr>
<tr>
<td>CP-2 (Planned General Business) District</td>
<td>Retail and unimproved agricultural</td>
</tr>
<tr>
<td>C-3 (Heavy Commercial) District</td>
<td>Unimproved agricultural</td>
</tr>
</tbody>
</table>
EXISTING CONDITIONS

Currently, the two lots are undeveloped and unplatted. An existing asphalt trail runs along the west side of the subject property along S. Gardner Road. Existing utility infrastructure including gas, sanitary sewer, electric and stormwater is located adjacent to the west, south, and east property boundaries. Water lines are available across the street to the west and south. Along the entire northern property line is an approximately 270’ deep tract used for stormwater detention basins for the Aspen Creek subdivision and overhead power lines. 188th Street east of S. Gardner Road is currently not paved beyond the portion that accesses Groundhouse South at the southeast corner of the S. Gardner Road and W. 188th Street intersection, but there is an existing gravel access drive to an interior property abutting I-35. There appears to be no floodplain on the property, although there are some areas designated for potential flooding to the east.

BACKGROUND / HISTORY

The northern parcel is a little over 18 acres, and the southern parcel is almost 9.6 acres. These parcels have been farmed for many years. The map (next page) indicates the statutory notification area.
DEVELOPMENT PLAN HIGHLIGHTS

The applicant is proposing a plan for nine lots totaling 26.559 acres and 2.022 acres of right-of-way along both S. Gardner Road and W. 188th Street. The development has been planned with private drives functioning and designed as streets that are proposed to be generally designed to the Local Neighborhood Street design standards, to be maintained by a private entity. This is a requirement of the subdivision standards, and also supports pedestrian and bicycle mobility as consistent with the Comprehensive Plan. The one- to four-story buildings total 316,942 square feet of potential development. The development includes a total of 723 vehicle parking spaces and 72 bicycle parking spaces.

At the current time, the applicant has only two prospective tenants for this development, therefore, a majority of the plans are speculative. However, when final development plans are brought forward for each lot, this detailed plan must demonstrate that all applicable standards, requirements, and conditions of the preliminary development plan have been met. The final development plans must be in substantial compliance with the approved preliminary development plan, or the preliminary development plan must be revised through this same public process.
Analysis is based on the following:

a. S. Gardner Rd.: Arterial Parkway/Boulevard street type and Buffer Edge frontage type
b. W. 188th St.: Collector Activity street type and Terrace frontage type
c. Internal private roads: Local Neighborhood street type and Terrace frontage type
d. Lots 1-6: Small Commercial – Pad Site building type
e. Lot 7: Large Commercial building type
f. Lots 8 & 9: Prominent Civic building type
g. Open and Civic Space type is trail

**CONSISTENCY WITH COMPREHENSIVE PLAN**

This site is included in the *I-35 & Gardner Road Interchange Subarea Plan* ("Subarea Plan"), which was adopted by reference as part of the *City of Gardner 2014 Comprehensive Plan* by the Governing Body on June 20, 2016 (Ordinance No. 2517) to set specific goals and policies relating to development in portions of the City of Gardner, and areas within Gardner Township considered for future annexation.

This development is in line with the following goals and policies of the subarea plan:

- **Goal 1**: Provide and upgrade transportation networks to support the city’s efforts to promote economic development and to protect residential use in other areas.
- **Goal 2**: Provide infrastructure and public facilities to support the city’s efforts to promote economic development and local jobs.
- **Goal 3**: Create quality development through streetscape design and site design standards.
- Various policies pertaining to facilitating pedestrian and non-motorized access from abutting areas, internal street circulation patterns, expanded trail facilities, and obtaining adequate rights-of-way and utility easements.

The subarea plan includes this property in the Regional Commercial Future Land Use area, which is described as:

*The intent of the regional commercial use is to allow for retail and service uses located near I-35 interchanges. A regional commercial area provides goods and services aimed toward those traveling by an auto and capitalize on accessibility from areas beyond Gardner.*

This proposed development is anticipated to provide goods and services to those traveling by auto from I-35 and other local connections, but will also accommodate bicycle/pedestrian circulation. It is anticipated to serve patrons coming to the future Olathe Medical Facility to the south as well.

The subarea plan shows W. 188th Street east of S. Gardner Road as a proposed future collector roadway, which is consistent with the proposed infrastructure.

The Regional Commercial Future Land Use is translated by Table 5-1 of the *Gardner Land Development Code* (LDC) into typically applicable zoning districts of C-2, C-3, M-1 or application of “P” planned districts to allow larger-scale master development for large commercial or employment uses such as those represented in this application. This application is for a specialized planned district, the Activity Center Planned District, which is associated with the underlying C-2 zoning district (ACP-2), and thus is consistent with the Comprehensive Plan.
The proposed development is also consistent with the Comprehensive Plan as follows:

- Commercial area objective to promote commercial growth at the I-35 interchanges to provide neighborhood and regional commercial areas with a diverse range of retail and commercial uses and services.
- Open Space Recreation & Environmental Features objective to increase public bicycle and pedestrian access to community facilities through connections to the local trail system.
- Commercial Areas Plan for Regional Commercial to site buildings to create internal “streets” that are attractive and comfortable for pedestrians and integrate public amenities such as trails.

STAFF ANALYSIS - ZONING

This section highlights contents of the application which may merit particular consideration in regard to zoning intent and standards. A full analysis of applicable zoning regulations is available upon request.

This application is being reviewed per the Planned Development process of Section 17.03.040 of the LDC, and specifically Section 17.06.040 Activity Center Planned District. The uses for this district are based on the typically applicable base zoning district (C-2) associated with the Comprehensive Plan Future Land Use category for the site (Regional Commercial). There is an additional qualification that development plans for land located within one-half mile of the I-35 interchange right-of-way that include frontage on arterial or collector streets (this development qualifies) shall include at least one use that is consistent with Community Mixed Use or Community Commercial future land use as permitted in one or more of the typically applicable zoning districts (C-O, CO-A or C-2) as a primary or secondary component. In this case, the development is projected to include the following proposed primary uses that are permitted in the C-2 district (which also corresponds with the Community Mixed Use future land use designation):

- Large Assembly (religious facility)
- Residential Care – Limited (assisted/independent living)
- Lodging – Large (hotel)
- Health Care – Small (medical office)
- Personal Services – General (bank)
- Food and Beverage – General, Accessory Drive-Through and Accessory Outdoor (restaurants)
- Convenience Store Fuel Station – General (gas station)

Vehicle/Equipment Service and Repair – General (tire store) is permitted as a Conditional Use in the C-2 District, and thus will require a Conditional Use Permit at time of Final Development Plan approval.

As for regular planned districts, the Activity Center Planned District allows the Planning Commission to approve departures from standards for blocks and lots, open and civic space types, building type and development standards, frontage type standards, and site design and landscape standards, however, there some exceptions to allowed deviations that have to do with ensuring standards are met for internal, well-connected circulation patterns and enhanced civic spaces along arterial and collector roadways. The applicant has provided for well-connected access drives functioning as streets and a new trail with structural amenities along W. 188th Street. There is an existing trail on S. Gardner Road. Particular amenities are intended to be implemented in the Activity Center Planned District, and have been proposed, such as pedestrian and non-motorized connections to existing trails. Other required amenities will be enforced at
time of final development plan process, including infrastructure to encourage and support public transit and public art, wayfinding signs, historic interpretive signs, or creative landscape amenities in prominent locations. The exceptions to allowed deviations that pertain to enhanced building and landscape design will be enforced at time of final development plan approval.

The following information addresses standards that have not been met, for which the Planning Commission may choose to approve deviations.

DEVIATION REQUESTS

1. Chapter 17.04 SUBDIVISION STANDARDS
   Section 17.04.010 (B) Street Network – Blocks and Connectivity – Lots 1-8

   **Standard:**
   Block length = 500’ min. and 1,000’ max. Block Area = 5-8 acres

   **Proposed:** Lots 1-8 are slightly less than 500’ block length (about 430’ – 470’) and Lots 1-4 and 8 are less than the minimum lot area of 5 acres (about 2.7-3.7 acres).

   **Applicant Response:** None provided.

   **Staff Comment:** Block length and block area are regulated per planning context. Although this area meets the definition of a suburban planning context (commercial corridors or large scale projects arranged around a campus plan), some of the block lengths would be more typical of the General planning context (areas supporting commercial corridors) and some of the block areas would be more typical of the walkable/compact planning context. As this is an indication the area is even more walkable, staff recommends approval of this deviation.

2. Chapter 17.04 SUBDIVISION STANDARDS
   Section 17.04.020 (D) Required Open Space

   **Standard:**
   12%, which may be reduced based on a plan through the planned development process that meets or exceeds the intent of this section.

   **Proposed:** The applicant has provided a 15’ sidewalk easement on private property adjacent to W. 188th Street, along Lots 1, 5, and 6. They have proposed an expanded 60’ sidewalk easement on Lot 9 (church), which is also related to other deviation requests for building and frontage type (see conditions #6 and #7). A 10’ wide asphalt paved trail is planned to meander through this easement and within the designated right-of-way, along with other amenities.

   **Applicant Response:** The applicant prefers to use asphalt for the trail, as the current trail along S. Gardner Road is asphalt construction.

   **Staff Comment:** Staff finds that a trail is the most needed civic/open space amenity within this context, considering the proximity of the development to multi-family housing, commercial nodes, and a designated transit route that runs past this property along S. Gardner Rd. Staff recommends finding that the 12% requirement for open space may be reduced based on the proposed development plan that meets the intent of this section for open space systems that are integrated into the street network and public realm and that provides for recreation for all ages. However, both Parks and Recreation and Public Works have requested that the trail
be constructed of concrete for purposes of longevity. Although the trail along S. Gardner Road is constructed of asphalt, the City is replacing asphalt trails along the road network with concrete when the opportunity arises. The 12% open/civic space requirement equates to a land area of about 3 acres (considering total project area minus the ROW dedication). The sidewalk easement on private property totals approximately 0.9 acres, so they are gaining quite a bit of land for development. The requirement is also recommended to be reduced because of the existing trail that also benefits this development, although the developer does not have to build the trail. The concrete trail is a recommended condition of approval.

3. Chapter 17.04 SUBDIVISION STANDARDS
Section 17.04.020 (G) Ownership and Management

Standard:
(G) Options for ownership and management of preserved area include:
1. Creation of or dedication to a non-profit entity capable of carrying out the ownership and management.
2. Creation of a homeowners and/or leaseholders association that owns it in common capable of carrying out the ownership and management.
3. Dedication to a public entity as part of the rights-of-way, parks or other community facilities element of the plan.

All Open Space shall require documentation recorded with the final plat that demonstrates the ongoing maintenance, administrative and financial management of the space according to these standards.

Proposed: The applicant has not addressed ownership and management of the amenities in the sidewalk and access easements.

Applicant Response: None provided.

Staff Comment: Staff recommends a condition of approval that the applicant must provide for a common area maintenance agreement or property maintenance agreement for all common amenities at time of the first final development plan/final plat applications, including the infrastructure within all access and sidewalk easements.

4. Chapter 17.04 SUBDIVISION STANDARDS
Section 17.04.040 (H) Peripheral Street Improvements

Standard:
(H) The applicant shall be responsible for one-half of all peripheral streets which may border the subdivision, limited to the dedication of one-half of the recommended rights-of-way. The applicant shall dedicate and build its portion of the improvement, or put money for the cost of its portion of the improvement into escrow and waive the right to protest any future benefit district for the improvement.

Proposed: The applicant has dedicated 60’ of right-of-way on S. Gardner Road, and 30’ of right-of-way on W. 188th Street.

Applicant Response: None provided.

Staff Comment: Because we have just received, and not yet reviewed/approved the traffic study, it is unclear whether this amount of right-of-way is sufficient as dedicated turn lanes
may be required. Staff recommends that the traffic study be approved prior to approval of any final development plan.

5. Chapter 17.07 BUILDING STANDARDS
   Section 17.07.040 Specific Building Type Standards: Lot 9, Prominent Civic building type
   
   **Standard:**
   Lot Size and Area
   2.5 – 5 acres; larger lot sizes permitted only as part of a campus plan through the planned development process that considers internal access and circulation with surrounding areas.

   **Proposed:** This lot is 11.65 acres, far exceeding the range allowed.

   **Applicant Response:** This request is due to the following factors:
   1. Size of proposed church including 1092-seat sanctuary, Sunday school classrooms, church offices, Christian school, and basketball court that will also serve as a community use space.
   2. Amount of parking required for church and community use basketball court.
   3. Land dedicated for above ground BMPs and detention areas.
   4. Open ground for use as soccer field and vacation Bible school outside activities, etc.
   5. Open space on south side of property for community open space.

   **Staff Comment:** Staff recommends approval of this deviation as the applicant is using the planned development process, and the plan is designed around internal access and circulation patterns that improve vehicular, pedestrian, and bicycle mobility and connect appropriately with surrounding areas.

6. Chapter 17.07 BUILDING STANDARDS
   Section 17.07.040 Specific Building Type Standards: Lot 9, Prominent Civic building type
   
   **Standard:**
   Building Placement – Front setback = 20’ – 50’

   **Proposed:** The building is placed at over 287’ setback.

   **Applicant Response:** There are several factors and constraints that are driving the need for the requested ~288’ front yard setback. The front of the church needs to face south to have the potential to be seen from interstate I-35 to the south. Although a 20’-50’ front setback would seem to be advantageous for better visibility to I-35, there are other constraining factors that necessitate the requested ~288’ building setback. These constraining design factors include the shape of the site, the orientation and configuration of the building footprint (due to economics and function), and location of the majority of parking spaces that need to have close proximity to the main entrance of the church. Since the lot is rectangular-shaped with the long leg running north to south, there is not enough room to have substantial parking on the east or west side of the building based on the configuration of the building footprint and width of the site.

   We are proposing a community use site amenity area on the south side of the property along the 188th Street ROW to provide a use to meet the intent of a close Prominent Civic building type setback. This area will have park benches, picnic tables with shade structures, butterfly bushes, and limestone fence post along the walking trail.
**Staff Comment:** Staff encouraged the applicant to re-orient this prominent civic use nearer to the street as intended. Applicant response is included above. As an alternative, staff asked the applicant to include elements better addressing the streetscape, such as civic open space, public art, benches along the trail, a decorative street wall, etc. As a result, the applicant provided a winding trail within a 60’ easement that includes park benches with shelter, picnic tables with shelters, and a row of butterfly bushes. Other amenities will be addressed at time of final development plan, as they are not typically shown on a preliminary development plan. Staff recommends approval of this deviation based on the proposed amenities that establish a built relationship with the public realm.

7. Chapter 17.07 BUILDING STANDARDS
Section 17.07.050 Frontage Design: Lots 5, 6, 7, 8, and 9, Terrace frontage type

**Standard:**
Required building frontage = 70% (a minimum of 70% of the lot frontage that shall be occupied by the principal structure at the front building line – appropriate for buildings which have a 10’ – 25’ setback from the street). An exception may be granted for up to 50% of this requirement through the administrative adjustment process, provided:

a. The site provides active pedestrian space comparable to the Open and Civic Space System; and
b. A vertical element such as a low hedge, ornamental wall, or fence complementing the design and materials of the building is substituted as an extension of the building line.

**Proposed:** Lots 5-9 – 0% of the frontage is occupied by the principal structures within the “appropriate” 10’ – 25’ setback range.

**Applicant Response:** A deviation is requested for the required building frontage of 70%. Additional landscaping, berming or other feature would be provided on these lots as an amenity. This will be detailed further on the final development plans. On lot 9 see plan for amenities, trail, and landscaping. See also the attached narrative from the architect (shown under Condition #6).

**Staff Comment:** Staff has determined that although deviations are needed, this frontage type best meets the intent of the Code with regard to enhancement of the public realm in this context. The intent of the required building frontage is to create a consistent relationship and rhythm of buildings along a block face. This may not be as important in this context in which this large lot is surrounded by open space. Additionally, there are some utility infrastructure concerns that prevent close building placement along W. 188th Street. However, it is still important to create a comfortable sense of enclosure and interest for pedestrians using the trail system or sidewalk network.

Staff recommends that the applicant implement an acceptable vertical element along at least 35% of the front building line, either via a building or other elements such as plantings, or an ornamental wall or fence complimenting the design of the buildings. These amenities will be addressed at time of final development plan, as they are not typically shown on a preliminary development plan. However, to ensure understanding of what is intended to be implemented to create a more intimate public space, staff recommends asserting this as a condition of approval to be enforced on the final development plan.

8. Chapter 17.07 BUILDING STANDARDS
Section 17.07.050 Frontage Design: Lots 5, 6, 7, 8, and 9, Terrace frontage type
Standard: Direct sidewalk connections at least 8’ wide to the streetscape shall occur at least every 50’.

Proposed: The applicant has provided one required 8’ wide sidewalk connecting the public sidewalk to the building entrance for each lot, and has also provided 5’ wide “public” sidewalks along every private street.

Applicant Response: A deviation is requested for direct sidewalk connections every 50 feet. Having a sidewalk every 50’ would be not needed due to the large lot size and single user of the facility, and if sidewalks were placed every fifty feet they would not be used and be a maintenance and unnecessary expense to the owner.

Staff Comment: This requirement is meant to support walkable development patterns. As designed, each lot utilizing the Terrace Frontage Type has 2-3 pedestrian connections to the “public” sidewalk along the streets. Because of the configuration of the larger individual lots and internal vehicular circulation patterns, additional sidewalk connections would be ineffective and possibly unsafe. Staff recommends approving this deviation.

REVIEW CRITERIA-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 character of this area is general undeveloped with the exception of a small amount of single story commercial to the west and south and a large drainage area between the subject properties and one- to two-story single-family residential. 188th Street is constructed about 160’ from the east of S. Gardner Road with the remainder to the east end of the subject property being a dirt farm access. An existing asphalt trail is located on the east side of S. Gardner Road adjacent to the subject properties. Currently the subject properties are undeveloped and being utilized for crop agricultural purposes. The proposed development plan creates improved road and trail connections that integrate well with existing land uses.

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

   Staff Comment: To the north of the subject properties is R-1 zoning with single-family residential uses. Much of the other surrounding land is unimproved agricultural land, with the exception of a restaurant, gas station and retail use on properties zoned C-2, C-3 and CP-2. This rezoning request is based on the standards of the C-2 zoning district, with the additional requirement that the development include at least one use that is compatible with the Community Mixed-Use future land use category per the Activity Center Planned District. Several uses are compatible with the Community Mixed-Use future land use category as explained on page 5. The proposed district is compatible with those adjacent commercial uses and districts. The development will be well-buffered from the adjacent residential uses, and will provide beneficial goods and services for the neighborhood. Staff finds that the proposed zoning is compatible with the nearby zoning and uses.

3. The suitability of the subject property for the uses to which it has been restricted;
Staff Comment: The property is currently zoned C-2 (General Business) District, and the rezoning request is to a planned district based on this C-2 District. Based on the subarea plan and Land Development Code guidance for Regional Commercial future land use designations, the properties could be zoned for even more intense commercial uses. However, this rezoning request implements the recently adopted Activity Center Planned District which is designated for areas near the I-35 interchanges, and proposes uses that are compatible with the intent of that district. Staff finds that this rezoning request brings the property more in alignment with the comprehensive plan (and associated subarea plan) than the current restrictions.

4. The extent to which removal of the restrictions will detrimentally affect nearby property;

Staff Comment: The proposed development meets most of the standards for the C-2 District. The Activity Center Planned District provides for exceptions to the deviations that could be permitted in other planned districts. These exceptions ensure that the final development will not depart from the intended standards pertaining to well-connected internal circulation patterns; enhanced civic spaces, building design and landscape design along major roadways; appropriate height transitions; and preferred amenities. Removal of the restrictions will not detrimentally affect nearby property, and should enhance nearby property.

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

Staff Comment: The property is has never been developed.

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 current restrictions do not provide for the enhanced design that is a relative gain to the community in relation to public health and welfare. There is no change in the development standards that would be applied per the current base zoning district as that will remain the same. The developer would be able to develop on the property similar to what is proposed without some economic benefits and deviations that are permitted with the Activity Center Planned District. The net impact is perceived by staff to be positive.

7. The recommendations of professional staff;

Staff Comment: Staff recommends approval of this rezoning request subject to the conditions of approval included in the recommended motion.

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: Please see discussion on pages 3-4 of this report regarding conformance with the Comprehensive Plan. Staff finds this request is consistent with the adopted Comprehensive Plan and the associated I-35 and Gardner Road Interchange Subarea Plan, and furthers the intent statement for the proposed Activity Center Planned District as follows:

- Better integrates regional- and community-serving uses along and near key commercial corridors;
- Ensures the provision of infrastructure to support multi-modal transportation services along and through key commercial corridors;
- Ensures improved public realm designs are implemented along key commercial corridors;
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 development provides for greater connections of the public utility and street infrastructure. Stormwater and traffic impacts are still being evaluated, therefore conditions of approval regarding these improvements are recommended.

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

Staff Comment: No further considerations.

REVIEW CRITERIA-PRELIMINARY DEVELOPMENT PLAN

17.03.040 (C) Review Criteria:

1. The plan represents an improvement over what could have been accomplished through strict application of otherwise applicable base zoning district standards, based on the goals of the Comprehensive Plan, and based upon generally accepted planning and design practice.

Staff Comment: The plan provides for some additional public space amenities at the streetscape to mitigate greater building setbacks. This would not have been accomplished thorough the strict application of the base zoning district. The proposed development plan improves multi-modal connections and walkability with smaller blocks.

2. The benefits from any flexibility in the standards proposed in the plan promote the general public health, safety and welfare of the community, and in particular of the areas immediately near or within the proposed project, and are not strictly to benefit the applicant.

Staff Comment: The improved streetscape amenities will further encourage walkability and public health in this southern gateway, which will become more important as more multi-family, retail and medical uses are developed as planned in the area.

3. The benefits from any flexibility in the standards proposed in the plan allow the project to better meet or exceed the intent statements of the base zoning district(s) and the standards proposed to be modified when applied to the specific project or site.

Staff Comment: The base C-2 General Business District intent is to provide retail, service and employment uses that do not require a central location or that are not easily integrated with supporting compatible uses, or to provide for specific uses that are not easily integrated into the compact pattern of neighborhood or mixed-use centers but that can contribute to the overall vitality and mix of uses of these areas at strategic locations. The development proposes a beneficial mix of regional- and neighborhood-serving uses that may provide for residential living within walking distance of essential goods and medical services along a designated transit route and near major highway systems.

4. The plan reflects generally accepted and sound planning and urban design principles with respect to applying the Comprehensive Plan and any specific plans to the area;
Staff Comment: The plan meets most development regulations that are based on sound planning and urban design principles, and where deviations are requested, mitigating solutions have been proposed or are recommended. The development is consistent with adopted community plans.

5. The plan meets all of the review criteria for a zoning map amendment.

Staff Comment: Per the previous section, staff finds this criteria is met.

STAFF ANALYSIS – INFRASTRUCTURE / OTHER

Utilities available along the west property line include an 8" gas line, gravity and force sanitary sewer lines, and stormwater infrastructure. There is also overhead electric on a portion of the west property line. Utilities available along the south property line include overhead electric and gravity and force sanitary sewer lines. There is a gravity sanitary sewer line directly east of the subject property. Along the entire northern property line is an approximately 270’ deep lot used for stormwater detention basins for the Aspen Creek subdivision and overhead power lines.

Staff Comment: Construction plans for all public improvements are required to be approved before the final plat is released for recording.

ATTACHMENTS

I. Preliminary development plan document
II. Public notice
III. Applications

ACTIONS

Per Section 17.03.010 (G) of the Gardner Land Development Code, a review body may take the following actions (or recommend the following actions):

1. Approve the application.
2. Approve the application with conditions or modifications to lessen or mitigate a potential impact from the proposed application.
3. Deny the application.
4. Continue the application to allow further analysis. The continued application shall not be more than 60 days from the original review without consent of the applicant. No application shall be continued more than once by each review body without consent of the applicant.

EFFECT OF DECISION

Zoning Map Amendment (Rezoning) – Amendments to the official zoning map (rezoning) shall be approved by the Governing Body in the form of an ordinance. Approved changes shall be indicated on the official zoning map by the Director within 30 days following such action.

Preliminary Development Plan – Approval of a preliminary development plan shall constitute acceptance of the overall planning concepts and development parameters. In reviewing and approving a preliminary development plan, the Planning Commission may recommend or the Governing Body may require conditions that must be met before an applicant submits a final development plan. An approved preliminary development plan shall lapse and be of no further force and effect if a final development plan (or a final development plan for a designated phase
of the preliminary development plan) has not been approved within two years of the date of approval of the preliminary development plan.

RECOMMENDATION

Staff recommends approval of Z-19-02 Zoning Map Amendment and PDP-19-02 Preliminary Development Plan for Plaza South and recommends forwarding the application to the Governing Body with the conditions outlined below.

Recommended Motion:

After review of applications Z-19-02 and PDP-19-02 for Plaza South (property located at the northeast corner of S. Gardner Road and W. 188th Street, (Tax IDs CF221436-2001 and CF221436-2011), a rezoning from C-2 (General Business) District to ACP-2 (Activity Center Planned General Business) District according to the associated preliminary development plan dated 3/15/19, received 3/21/19, and staff report dated March 26, 2019, the Planning Commission recommends the Governing Body approve the applications as proposed, provided the following conditions are met:

1. The trail along W. 188th Street shall be constructed of concrete.
2. The applicant shall provide for a common area maintenance agreement or property maintenance agreement for all common areas at time of the first final development plan/final plat applications, including the infrastructure within all access and sidewalk easements.
3. All easements shall be approved prior to approval of any final development plan.
4. The stormwater plan and traffic study shall be approved prior to approval of any final development plan.
5. Lots 5, 6, 7, 8 and 9 – To better meet the intent of the required building frontage within this development context, shall include an acceptable vertical element along at least 35% of the front building line, either via a building, plantings, or an ornamental wall or fence complimenting the design of the buildings.

Optional Motions:

Recommend denial of the applications as proposed for the following reasons:

Continue the applications to allow further analysis pertaining to:
Know what's below. Call before you dig.
Know what's below. Call before you dig.
March 5, 2019

Dear Property Owner:

The Gardner Planning Commission will hold their regular meeting on Tuesday, March 26, 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:


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,

Kelly Drake Woodward, AICP
Chief Planner

Enclosure
ZONING MAP AMENDMENT (REZONING) APPLICATION

OWNER INFORMATION
Name(s) Vankeirschbick Contracting Co., Inc.
Contact Tom Vankeirschbick
Address 6756 Maurer Road
City Shawnee State Kansas Zip 66217
Phone 913-915-7852 Email tsvtom@hotmail.com

APPLICANT/AGENT INFORMATION
Name(s) Phelps Engineering, Inc.
Contact Judd Claussen
Address 1270 N. Winchester
City Olathe State Kansas Zip 66061
Phone 913-393-1155 Email jclaussen@phelpsengineering.com

SITE INFORMATION
Property Address/Location: Northeast corner of 188th Street and Gardner Road
Legal Description (Attach If Necessary) See Attached
Total Site Area 29.99 Acres
Present Zoning C-2 Proposed Zoning
Present Land Use Agriculture Proposed Land Use Retail / Office / Church / Senior Living
Proposed Building Type(s) 

Please indicate a reason for the request:

__________________________________________________________

__________________________________________________________

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): Judd Claussen, Phelps Engineering

Date 2/13/19

Revised 10/24/16
Rezoning Application
Page 1 of 4
ZONING MAP AMENDMENT (REZONING) APPLICATION CHECKLIST

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 To be provided prior to Planning Commission
   ✔
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:

Additional retail will provide additional business opportunities. Senior living development will provide more senior housing options in Gardner. The church will provide an additional place of worship to the city.

________________________________________________________________________
________________________________________________________________________

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

Public utility extensions will be provided with the project. 188th Street east of Gardner road will be constructed.

________________________________________________________________________
________________________________________________________________________

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]
Signature of Applicant 2/13/19
Date
OWNER AFFIDAVIT

I/WE Tom VanKeirsbilck, President of VanKeirsbilck Contracting Co., Inc., hereby referred to as the "Undersigned", being of lawful age, do hereby on this ___/___/2019__ day of January, 2019, 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 Judd Claussen with Phelps Engineering, Inc. _____________________________ (Herein referred to as "Applicant"), to act on my/our behalf for the purpose of making application with the City of Gardner, regarding Rezoning and Preliminary Devel. Plan of property at 188th and Gardner Road, (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.

   [Signature]

   Owner

   [Signature]

   Owner

STATE OF Kansas

COUNTY OF Johnson

The foregoing instrument was acknowledged before me on this ___/___/2019__ day of January, 2019, by

[Signature]

Tom VanKeirsbilck

My Commission Expires: 8-28-2019

[Signature]

Notary Public
PRELIMINARY DEVELOPMENT PLAN
APPLICATION

OWNER INFORMATION

Name(s) Vankeirsbilck Contracting Co., Inc.
Contact Tom Vankeirsbilck
Address 6756 Maurer Road
City Shawnee State Kansas Zip 66217
Phone 913-915-7852 Email tsvtom@hotmail.com

APPLICANT/AGENT INFORMATION

Name(s) Phelps Engineering, Inc.
Contact Judd Claussen
Address 1270 N. Winchester
City Olathe State Kansas Zip 66061
Phone 913-393-1155 Email jclaussen@phelpsengineering.com

SITE INFORMATION

Property Address/Location Northeast corner of 188th Street and Gardner Road
Legal Description (Attach If Necessary) See Attached
Number of Existing Lots N/A - Unplatted Number of Proposed Lots 9
Total Site Area 29.99 Acres Present Zoning C-2
Present Land Use Agriculture Proposed Use(s) Retail / Office / Church / Senior Living
Proposed Street Design Type(s) & Class 188th Street = collector; Internal Private Streets
Proposed Type(s) Open & Civic Space
Proposed Frontage Type(s)
Proposed Building Types(s)

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 a preliminary development plan as indicated above.

Signature(s):

Date 2/13/19

Revised 8/1/16
Preliminary Development Plan Application
Page 1 of 6
## APPLICATION SUBMITTAL REQUIREMENTS

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1. **Complete application packet**
2. **Application fee**
3. **10 complete sets of plans printed**
4. **Digital copies (PDF) of the completed application, plans, and legal description**
5. **Sign posting affidavit** To be provided prior to Planning Commission
6. **Preliminary Stormwater Management Plan** (2 printed and 1 digital copy)
7. **Preliminary Traffic Assessment** See Access Management Code. (2 printed and 1 digital copy)

## PRELIMINARY DEVELOPMENT PLAN REQUIREMENTS

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1. **Public Realm Plan**
   A plan outlining the general location, design characteristics, and functions of all proposed streets, storm water management, open spaces, civic spaces, and circulation networks – whether public, common or private – that will create the public realm for the plan.

2. **Development Plan**
   A plan indicating the specific land uses and their density/intensity, block and lot patterns, building types and scale, design characteristics, and other building and site design elements that reflect the proposed character of the plan. This plan shall have a particular emphasis on how these elements relate to the public realm plan and where transitions between these elements occur at a parcel or block scale, both within the development and in coordination with abutting property. The development plan shall specifically identify where development standards may differ from those otherwise applicable through the base zoning districts and general development requirements of this Code.

3. **Existing Conditions**
   Analysis identifying the general layout of any existing structures, streets or infrastructure and the location of natural features such as watercourses, steep grades, significant stands of trees, specimen trees or other features.

4. **Phasing or Implementation**
   A strategy indicating the estimated timing of development, and any other administrative details of implementing the plan through future final site plans.

5. **Names, addresses, and phone numbers** of all companies, firms, or individuals involved in the preparation of the plat (i.e. property owner, engineer, surveyor, etc.).
6. Date of preparation and/or revisions.

7. Vicinity map (drawn at a scale of 1"=2,000', locating the proposed subdivision in relation to the section of land, including township and range, section street names, and a north arrow.)

8. A legal boundary description with angular bearings and linear distances, referenced to section or quarter-section corners, Point of Commencing and/or Point of Beginning, and the overall area of the plat in acres.

9. Location of monuments, shown in reference to existing official monuments or the nearest established ¼ section corner, including the bearings and distances to such reference points or monuments.

10. Boundary lines of the subdivision shall be enclosed with one continuous bold line, showing approximate dimensions (bearings and distances).

11. Lots and tracts identified clearly, with blocks numbered or lettered boldly and clearly in the center of the block, and lot dimensions with bearings and distances, and area in square feet.

12. Building setback lines along public and private streets with dimensions in feet.

13. Existing streets and driveways which abut, touch upon or extend through the subdivision and/or streets located within 400 feet of the plat. The description shall include types and widths of existing surfaces, right-of-way widths, and dimensions of any bridges and culverts.

14. Location of existing open space, alleys, parks, streams, ponds, or other similar features within plat, and whether they are to be retained or removed.

15. Location of existing buildings and structures within 200 feet of the plat.

16. Existing utilities, including sanitary sewer, force main, water main, gas mains, culverts and storm sewer pipe, street lights, electric conduits, and invert elevations of sewers at points of proposed connection.

17. Topography of the area contained in the plat and within 20 feet of the plat boundary shown by 2-foot contour intervals and proposed preliminary grading. Contour lines shall be legible but not overpowering.

18. Proposed street network, including right-of-way, bearings, tangents, and horizontal and vertical curvature data (use of flow direction arrows and percent of grade is permitted at preliminary for vertical curve data, unless otherwise specified/required) along the centerline of each street.

19. Proposed sidewalks and/or trail locations including proposed widths.

20. Proposed utilities, including approximate location of sanitary sewer, water main, street lights, and storm sewer.

21. Existing and proposed easements with dimensions. Existing easements shall be labeled with book and page number. A 10-foot utility easement shall be shown adjacent to arterial streets.

22. Any area within a federally designated floodplain. Location, stations, and elevations of the 100-year floodplain within the plat and 100-year elevations at rear lot corners adjacent to FEMA and Shaded Zone X floodplains. The source of the floodplain information shall be clearly labeled (example: FIRM, Map #20091C0041D, September 27, 1991).
23. Stream corridor boundary and dimensions.
24. Intersection site distance analysis.
25. Vehicle maneuvering/turning templates reflecting the site can accommodate a minimum SU-30 class vehicles (for emergency access to all areas of the site), and the appropriate site-design vehicle for any other special areas of the site (such as delivery or dock areas, etc.), as necessary.
26. All public streets within the plat conform to the applicable minimum design standards set forth in the Land Development Code and Technical Specifications.

I hereby submit all information required for preliminary development plan 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]

[Agent]

2/13/19

Date
OWNER AFFIDAVIT

I/WE Tom VanKeirsbilck, President of VanKeirsbilck Contracting Co., Inc., hereby referred to as the “Undersigned”, being of lawful age, do hereby on this 14th day of January, 2019, 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 Judd Claussen with Phelps Engineering, Inc. (Herein referred to as “Applicant”), to act on my/our behalf for the purpose of making application with the City of Gardner, regarding Rezoning and Preliminary Devel. Plan of property at 188th and Gardner Road, (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 WHEREOF, 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 14th day of January, 2019, by

Tom VanKeirsbilck

My Commission Expires: 8-28-2019

Notary Public

Revised 10/24/16
Rezoning Application
Page 3 of 4
Agenda Item: Consider adopting a resolution establishing the date and time limitations for the discharge of fireworks within the City limits of Gardner for the observance of the July 4th holiday.

Strategic Priority: Maintain Quality of Life

Department: Police Department

Board/Commission Recommendation:
The Citizens Police Advisory Committee recommends approval of the dates and times listed below for the legal discharge of fireworks during the 2019 July 4th holiday.

Staff Recommendation:
Adopt a resolution establishing the dates and time limitations for the legal discharge of fireworks within the City limits of Gardner for the observance of the July 4th holiday.

Background/Description of Item:
Section 9.05.030, 10.30 B.1.a. of the Gardner Municipal Code requires that the City Council establish on an annual basis the dates and times when the discharge of fireworks is allowed within the City of Gardner for the observance of the July 4th holiday.

On March 25, 2019, the Citizens Police Advisory Committee held its quarterly meeting and discussed potential dates and times to recommend to the City Council for the discharge of fireworks during this year’s July 4th holiday. After much discussion regarding the appropriate number of discharge days, whether to include discharge days before and/or after the holiday, and the appropriate times of day to allow for discharge, the committee reached a consensus on the following dates and times as a recommendation to the City Council:

- July 3rd through July 5th; 10 a.m. to 11 p.m.

Financial Impact:
None.

Attachments included:
Proposed Resolution No. 2017

Suggested Motion:
Adopt Resolution 2017 establishing the dates and time limitations for the legal discharge of fireworks within the City limits of Gardner for the observance of the July 4th holiday in accordance with the provisions established in Section 9.05.030 of the Gardner Municipal Code.
RESOLUTION NO. 2017

A RESOLUTION ESTABLISHING THE DATE AND TIME LIMITATIONS FOR THE DISCHARGE OF FIREWORKS WITHIN THE CITY LIMITS OF GARDNER FOR THE OBSERVANCE OF THE JULY 4TH HOLIDAY IN ACCORDANCE WITH THE PROVISIONS ESTABLISHED IN SECTION 9.05.030 OF THE GARDNER MUNICIPAL CODE.

WHEREAS, on January 3, 2017 the Governing Body amended Section 9.05.030, 10.30 B.1.a. of the Gardner Municipal Code to allow the Governing Body the flexibility on an annual basis to set the dates and times when the discharge of fireworks is allowed within the city limits of Gardner.

WHEREAS, the 2019 July 4th holiday falls on a Thursday and the Governing Body recognizes and has taken into consideration when establishing the dates and times that the discharge of fireworks will be allowed within the City limits of Gardner in 2019 that many Gardner residents will gather with friends and family to celebrate the holiday, to include the Friday after the holiday.

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

SECTION ONE: The Governing Body establishes the following dates and times when the discharge of fireworks will be allowed in City limits of Gardner for the observance of the 2019 July 4th holiday:

   Wednesday, July 3rd, 10 a.m. to 11 p.m.
   Thursday, July 4th, 10 a.m. to 11 p.m.
   Friday, July 5th, 10 a.m. to 11 p.m.

SECTION THREE: Resolution No.1968, and any other resolutions not in conformity herewith, are hereby repealed or amended to conform hereto.

SECTION FOUR: This resolution shall take effect and be in force from and after its passage and approval as provided by law.

ADOPTED this 15th day of April, 2019.

CITY OF GARDNER, KANSAS

__________________________
Steve Shute, Mayor

Attest:

__________________________
Amy Waller, City Clerk
New Business Item No. 1

Meeting Date: April 15, 2019

Staff Contact: Matthew Wolff, CPFO Finance Director

Agenda Item: Consider adopting a resolution authorizing the public sale of approximately $[3,820,000] principal amount of General Obligation Temporary Notes and approximately $[2,020,000] of principal amount of General Obligation Bonds of the City of Gardner, Kansas.

Strategic Priority: Fiscal Stewardship

Department: Finance

Staff Recommendation:
Adopt a resolution authorizing the public sale of approximately $[3,820,000] principal amount of General Obligation Temporary Notes to fund certain infrastructure improvements to serve the Tuscan Farm residential development and approximately $[2,020,000] principal amount of General Obligation Bonds for certain sewerage system improvements.

Background/Description of Item:
The City has scheduled to sell approximately $[3,820,000] in General Obligation Temporary Notes and approximately $[2,020,000] principal amount of General Obligation Bonds on May 20, 2019, at 11:00 a.m.

The attached temporary note and bond sale documents prepared by Municipal Advisor Kimmel include the estimated costs of issuance and debt service schedules for the Tuscan Farm Lift Station and related site improvements, phase 1 of Tuscan Farm infrastructure improvements, and certain sewerage system improvements (south lift station storage tank, overhead crane, and other related improvements). Council will note that the term of the bonds/repayment period for certain sewerage improvements is 10 years.

Tuscan Farm Lift Station Special Benefit District
At the February 18, 2019 meeting, Council approved 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).

Tuscan Farm Phase 1 Infrastructure Special Benefit District
At the February 18, 2019 meeting, Council approved 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 improvements in accordance with the findings of the Governing Body and K.S.A. 12-6a01 Et seq. (Tuscan Farm Phase 1 Infrastructure Special Benefit District).

Sewerage System Improvements
At the October 11, 2018 meeting, Council approved Resolution No. 1997 authorizing the design and construction of certain sewerage improvements and authorizing the future issuance of General Obligation Bonds in an amount not to exceed $2,020,000 to pay the cost of such improvements, all pursuant to K.S.A 12-617 and 12-618 (South Lift Station Storage Tank and Bridge Crane at the Kill Creek Lift Station).
The attached resolution authorizes all preparations to facilitate sale of the temporary notes and bonds.

Bond Counsel Ellsworth and Municipal Advisor Kimmel will be present at the meeting to answer any questions.

Financial Impact:
- Tuscan Farm Lift Station Special Benefit District – General Obligation Bonds will be issued after the infrastructure has been completed. The bond proceeds will be used to pay off the temporary notes. Special Assessments will be levied against the property for the repayment of the bonds.
- Tuscan Farm Phase 1 Infrastructure Special Benefit District – The developer intends to pay off the temporary notes before permanent debt financing issued (General Obligation Bonds) to avoid having additional special assessments on the property. In the event that the developer does not pay off the temporary notes related to Phase 1 Infrastructure improvements, special assessments will be levied against properties benefiting from the Phase 1 Infrastructure Improvements.
- Sewerage System Improvements – Annual estimated debt service is approximately $255,300 and will be paid from Wastewater Fund.

Attachments Included:
- Resolution 2018 authorizing the sale of the General Obligation Bonds
- Series 2019A GO Temporary Notes (Municipal Advisor Kimmel’s note sale document)
- Series 2019B GO Bonds (Municipal Advisor Kimmel’s bond sale document)

Suggested Motion:
RESOLUTION NO. 2018

A RESOLUTION AUTHORIZING THE PUBLIC SALE OF APPROXIMATELY $3,820,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION TEMPORARY NOTES AND APPROXIMATELY $2,020,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION BONDS OF THE CITY OF GARDNER, KANSAS.

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

Section 1. The General Obligation Temporary Notes, Series 2019A, of the City of Gardner, Kansas (the “City”), in the principal amount of approximately $3,820,000 (the “Notes”) and the General Obligation Bonds, Series 2019B, of the City in the principal amount of approximately $2,020,000 (the “Bonds”) shall be offered at competitive public sale on May 20, 2019, at 11:00 a.m., Central Time, or at such other date and time approved by the City’s Finance Director, provided such date is a City Council meeting date.

Section 2. The Finance Director, in conjunction with Ehlers & Associates, Inc., the City’s Municipal Advisor, is authorized and directed to receive bids for the purchase of the Bonds and Notes (collectively, the “Securities” and each a “Security”) on behalf of the City at the specified time and place and to deliver a report on all bids so received to the Governing Body at its meeting to be held at 7:00 p.m. on the sale date at which meeting the Governing Body shall review the bids and act on the acceptance of the best bid. Such bids may be received electronically through an experienced municipal bond electronic bid provider and through other means determined by the Finance Director, in consultation with the City’s Bond Counsel, Kutak Rock LLP, and Municipal Advisor, to be in the best interest of the City. The issuance of the Securities is conditioned on receipt of an opinion of the City’s Bond Counsel to the effect that the Securities have been validly issued and that the interest on the Securities is exempt from federal income taxation subject to the standard exceptions.

Section 3. The Mayor and City Clerk are authorized to cause to be prepared and executed a preliminary official statement and notice of sale for use in connection with the public sale of the Securities.

Section 4. The Finance Director is authorized and directed to give, or cause to be given, notice of the sale by publishing a summary of the notice of sale not less than six days before the date of the sale in the official City newspaper and the Kansas Register and by making copies of the notice of sale and preliminary official statement available to prospective purchasers of the Securities.

Section 5. For the purpose of enabling each purchaser of a Security (collectively, the “Original Purchasers” or individually, an “Original Purchaser”) to comply with the requirements of Rule 15c2-12(b)(i) of the Securities and Exchange Commission, the appropriate officers of the City are authorized, if requested, to provide each Original Purchaser a letter or certification to the effect that the City deems the information contained in the preliminary official statement to be “final” as of its date, except for the omission of such information as is permitted by
Rule 15c2-12(b)(i), and to take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary to enable each Original Purchaser to comply with the requirements of such Rule.

Section 6. The City agrees to provide to each Original Purchaser within seven business days of the date of the sale of the Securities or within sufficient time to accompany any confirmation that requests payment from any customer of each Original Purchaser, whichever is earlier, sufficient copies of the final official statement to enable the Original Purchasers to comply with the requirements of Rule 15c2-12(b)(4) of the Securities and Exchange Commission and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

Section 7. The City agrees to enter into a written agreement or contract on or before the date of delivery of each Security and to provide ongoing disclosure about the City for the benefit of the holders of such Security as required by Rule 15c2-12(b)(5)(1) of the Securities and Exchange Commission. The City may further designate Kutak Rock LLP, upon the request of the City, as an agent of the City for the purpose of obtaining and disseminating information in connection with the Rule.

Section 8. The Interim City Administrator; the Finance Director; the City Clerk; the City’s Bond Counsel; the Municipal Advisor; and the other officers and representatives of the City are authorized and directed to take such other action as may be necessary to carry out the public sale of the Securities.

Section 9. This Resolution shall be in full force and effect from and after its adoption.

[remainder of page intentionally left blank]
ADOPTED by the Governing Body of the City of Gardner, Kansas, on April 15, 2019.

CITY OF GARDNER, KANSAS

__________________________________________
Mayor

(Seal)

ATTEST:

__________________________________________
City Clerk
April 15, 2019

Pre-Sale Report for

City of Gardner, Kansas

$3,820,000 General Obligation Temporary Notes, Series 2019A

Prepared by:

Bruce Kimmel, CIPMA
Senior Municipal Advisor

Nick Anhut, CIPMA
Senior Municipal Advisor

Chris Mickelson,
Financial Specialist
## Executive Summary of Proposed Debt

<table>
<thead>
<tr>
<th>Proposed Issue:</th>
<th>$3,820,000 General Obligation Temporary Notes, Series 2019A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purposes:</td>
<td>The proposed issue provides temporary financing to build public improvements for the Tuscan Farms residential development area. The city anticipates paying the full principal amount due on October 1, 2021 from the proceeds of a long-term general obligation bond issuance.</td>
</tr>
<tr>
<td>Authority:</td>
<td>The Series 2019A Notes are being issued pursuant to K.S.A. 10-123 and 12-6a01 et seq., all as amended and supplemented. The Notes will be general obligations of the City for which its full faith, credit and taxing powers are pledged.</td>
</tr>
<tr>
<td>Term/Call Feature:</td>
<td>The Notes are being issued for a 2.5-year term. Principal on the Notes will be due on October 1, 2021. Interest is payable every six months beginning October 1, 2019 from capitalized interest included in the note issue. The Notes will be subject to prepayment at the discretion of the City on October 1, 2020 or any date thereafter.</td>
</tr>
<tr>
<td>Bank Qualification:</td>
<td>Because the City is expecting to issue no more than $10,000,000 in tax exempt debt during the calendar year, the City will be able to designate the Notes as “bank qualified” obligations. Bank qualified status broadens the market for the Notes, which can result in lower interest rates.</td>
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<td>Rating:</td>
<td>The City’s most recent bond issues were rated AA- / Stable by Standard &amp; Poor’s. The City will request a new rating for the Notes.</td>
</tr>
<tr>
<td>Basis for Recommendation:</td>
<td>The proposed general obligation issue is the most cost-efficient means of funding the specified purpose, and is expected to yield the lowest possible interest cost while also preserving future prepayment flexibility. Moreover, the competitive sale approach described below is consistent with the City’s historical debt issuance method, as well as best practices published by the Governmental Finance Officers Association.</td>
</tr>
<tr>
<td>Method of Sale/Placement:</td>
<td>In order to obtain the lowest interest cost to the City, we will competitively bid the purchase of the Notes from local and national underwriters/banks. We have included an allowance for discount bidding equal to 1.20% of the principal amount of the issue. The discount is treated as an interest item and provides the underwriter with all or a portion of their compensation in the transaction. If the Notes are purchased at a price greater than the minimum bid amount, the unused allowance may be used to lower your borrowing amount. Premium Bids: Under current market conditions, most investors in municipal bonds prefer “premium” pricing structures. A premium is achieved when the coupon for any maturity (the interest rate paid by the issuer) exceeds the yield to the investor, resulting in a price paid that is greater than the face value of the Notes. The sum of the amounts paid in excess of face value is considered “reoffering premium.” The amount of the premium varies, but it is not uncommon to see premiums for new issues in the range of 2.00% to 10.00% of face value. For this Note issue, the City expects to use any net premium to reduce the size of the issue. The adjustments may slightly change the true interest cost of the original bid, either up or down.</td>
</tr>
<tr>
<td>Review of Existing Debt:</td>
<td>We have reviewed all outstanding indebtedness for the City and find that there are no refunding opportunities at this time. We will continue to monitor the market and the call dates for the City’s outstanding debt and will alert you to any future refunding opportunities.</td>
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<td>Continuing Disclosure:</td>
<td>Because the City has more than $10,000,000 in outstanding debt (including this issue) and this issue is over $1,000,000, the City will be agreeing to provide certain updated Annual Financial Information and its Audited Financial Statement annually as well as providing notices of the occurrence of certain reportable events to the Municipal Securities Rulemaking Board (the “MSRB”), as required by rules of the Securities and Exchange Commission (SEC). The City is already obligated to provide such reports for its existing bonds. It files the required annual information itself and engages Kutak Rock to file material event notices, as applicable.</td>
</tr>
<tr>
<td>Arbitrage Monitoring:</td>
<td>Because the Notes are tax-exempt securities, the City must ensure compliance with certain Internal Revenue Service (IRS) rules throughout the life of the issue. These rules apply to all gross proceeds of the issue, including initial bond proceeds and investment earnings in construction, escrow, debt service, and any reserve funds. How issuers spend bond proceeds and how they track interest earnings on funds (arbitrage/yield restriction compliance) are common subjects of IRS inquiries. Your specific responsibilities, along with any applicable exemptions from the rules, will be detailed in the Closing Certificate prepared by your Bond Attorney and provided at closing. The City has retained Kutak Rock to assist in complying with these rules.</td>
</tr>
<tr>
<td>Other Service Providers:</td>
<td>This debt issuance will require the engagement of other public finance service providers. This section identifies those other service providers, so Ehlers can coordinate their engagement on your behalf. Where you have previously used a</td>
</tr>
</tbody>
</table>

Presale Report
City of Gardner, Kansas

April 15, 2019
Page 2
particular firm to provide a service, we have assumed that you will continue that relationship. Fees charged by these service providers will be paid from proceeds of the obligation, unless you notify us that you wish to pay them from other sources. Our pre-sale bond sizing includes a good faith estimate of these fees, but the final fees may vary. If you have any questions pertaining to the identified service providers or their role, or if you would like to use a different service provider for any of the listed services please contact us.

**Bond Counsel:** Kutak Rock LLP  
**Paying Agent:** State of Kansas - Office of the State Treasurer  
**Rating Agency:** Standard & Poor's Global Ratings (S&P)

### Proposed Debt Issuance Schedule

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-Sale Review by City Council:</td>
<td>April 15, 2019</td>
</tr>
<tr>
<td>Due Diligence Call to review Official Statement:</td>
<td>Week of April 22, 2019</td>
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<tr>
<td>Distribute Official Statement:</td>
<td>Week of April 29, 2019</td>
</tr>
<tr>
<td>Conference with Rating Agency:</td>
<td>Week of May 6, 2019</td>
</tr>
<tr>
<td>City Council Meeting to Award Sale of the Bonds:</td>
<td>May 20, 2019</td>
</tr>
<tr>
<td>Estimated Closing Date:</td>
<td>June 12, 2019</td>
</tr>
</tbody>
</table>

### Attachments

- Sources and Uses of Funds
- Proposed Debt Service Schedule

### Ehlers Contacts

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipal Advisors:</td>
<td>Bruce Kimmel</td>
<td>(651) 697-8572</td>
</tr>
<tr>
<td></td>
<td>Nick Anhut</td>
<td>(651) 697-8507</td>
</tr>
<tr>
<td></td>
<td>Chris Mickelson</td>
<td>(651) 697-8556</td>
</tr>
<tr>
<td>Disclosure Coordinator:</td>
<td>Jen Chapman</td>
<td>(651) 697-8566</td>
</tr>
<tr>
<td>Financial Analyst:</td>
<td>Alicia Gage</td>
<td>(651) 697-8551</td>
</tr>
</tbody>
</table>
City of Gardner, Kansas

$3,820,000 General Obligation Temporary Notes, Series 2019A
Assumes Current Market BQ AA- Rates plus 25bps

Sources & Uses
Dated 06/12/2019 | Delivered 06/12/2019

<table>
<thead>
<tr>
<th>Sources Of Funds</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Par Amount of Bonds</td>
<td>$3,820,000.00</td>
</tr>
<tr>
<td>Total Sources</td>
<td>$3,820,000.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Uses Of Funds</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Underwriter’s Discount (1.200%)</td>
<td>45,840.00</td>
</tr>
<tr>
<td>Costs of Issuance</td>
<td>50,000.00</td>
</tr>
<tr>
<td>Deposit to Capitalized Interest (CIF) Fund</td>
<td>197,923.75</td>
</tr>
<tr>
<td>Deposit to Project Construction Fund</td>
<td>3,525,000.00</td>
</tr>
<tr>
<td>Rounding Amount</td>
<td>1,236.25</td>
</tr>
<tr>
<td>Total Uses</td>
<td>$3,820,000.00</td>
</tr>
</tbody>
</table>
City of Gardner, Kansas

$3,820,000 General Obligation Temporary Notes, Series 2019A
Assumes Current Market BQ AA- Rates plus 25bps

Debt Service Schedule

<table>
<thead>
<tr>
<th>Date</th>
<th>Principal</th>
<th>Coupon</th>
<th>Interest</th>
<th>Total P+I</th>
<th>Fiscal Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>06/12/2019</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>10/01/2019</td>
<td>-</td>
<td>-</td>
<td>26,023.75</td>
<td>26,023.75</td>
<td>26,023.75</td>
</tr>
<tr>
<td>04/01/2020</td>
<td>-</td>
<td>-</td>
<td>42,975.00</td>
<td>42,975.00</td>
<td>85,950.00</td>
</tr>
<tr>
<td>10/01/2021</td>
<td>3,820,000</td>
<td>2.25%</td>
<td>42,975.00</td>
<td>3,862,975</td>
<td>3,905,950</td>
</tr>
<tr>
<td>Total</td>
<td>$3,820,000</td>
<td>-</td>
<td>$197,923.75</td>
<td>$4,017,923.75</td>
<td>-</td>
</tr>
</tbody>
</table>

Yield Statistics

Bond Year Dollars $8,796.61
Average Life 2.303 Years
Average Coupon 2.250000%
Net Interest Cost (NIC) 2.7711098%
True Interest Cost (TIC) 2.7925070%
Bond Yield for Arbitrage Purposes 2.2506694%
All Inclusive Cost (AIC) 3.3928560%

IRS Form 8038

Net Interest Cost 2.250000%
Weighted Average Maturity 2.303 Years
City of Gardner, Kansas
$3,820,000 General Obligation Temporary Notes, Series 2019A
Assumes Current Market BQ AA- Rates plus 25bps

Net Debt Service Schedule

<table>
<thead>
<tr>
<th>Date</th>
<th>Principal</th>
<th>Coupon</th>
<th>Interest</th>
<th>Total P+I</th>
<th>CIF</th>
<th>Net New D/S</th>
<th>Fiscal Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>06/12/2019</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10/01/2019</td>
<td>-</td>
<td>-</td>
<td>26,023.75</td>
<td>26,023.75</td>
<td>(26,023.75)</td>
<td>-</td>
<td></td>
</tr>
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<td>-</td>
<td>-</td>
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<td>3,820,000.00</td>
<td>2.25%</td>
<td>42,975.00</td>
<td>3,862,975.00</td>
<td>(42,975.00)</td>
<td>3,820,000.00</td>
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</tr>
</tbody>
</table>

Total     $3,820,000.00 | - | $197,923.75 | $4,017,923.75 | (197,923.75) | $3,820,000.00 | - |
April 15, 2019

Pre-Sale Report for

City of Gardner, Kansas

$2,020,000 General Obligation Bonds, Series 2019B

Prepared by:

Bruce Kimmel, CIPMA
Senior Municipal Advisor

Nick Anhut, CIPMA
Senior Municipal Advisor

Chris Mickelson,
Financial Specialist
## Executive Summary of Proposed Debt

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<tr>
<th>Proposed Issue:</th>
<th>$2,020,000 General Obligation Bonds, Series 2019B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purposes:</td>
<td>The proposed issue includes financing to fund wastewater system improvements. Debt service will be paid from wastewater utility revenues.</td>
</tr>
<tr>
<td>Authority:</td>
<td>The Series 2019B Bonds are being issued pursuant to K.S.A. 12-617 and 12-618, as amended and supplemented. The Bonds will be general obligations of the City for which its full faith, credit and taxing powers are pledged.</td>
</tr>
<tr>
<td>Term/Call Feature:</td>
<td>The Bonds are being issued for a 9.5-year term. Principal on the Bonds will be due on October 1 in the years 2020 through 2028. Interest is payable every six months beginning October 1, 2019. The Bonds will be subject to prepayment at the discretion of the City on October 1, 2025 or any date thereafter.</td>
</tr>
<tr>
<td>Bank Qualification:</td>
<td>Because the City is expecting to issue no more than $10,000,000 in tax exempt debt during the calendar year, the City will be able to designate the Bonds as “bank qualified” obligations. Bank qualified status broadens the market for the Bonds, which can result in lower interest rates.</td>
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**Method of Sale/Placement:**

In order to obtain the lowest interest cost to the City, we will competitively bid the purchase of the Bonds from local and national underwriters/banks.

We have included an allowance for discount bidding equal to 1.20% of the principal amount of the issue. The discount is treated as an interest item and provides the underwriter with all or a portion of their compensation in the transaction. If the Bonds are purchased at a price greater than the minimum bid amount, the unused allowance may be used to lower your borrowing amount.

Premium Bids: Under current market conditions, most investors in municipal bonds prefer “premium” pricing structures. A premium is achieved when the coupon for any maturity (the interest rate paid by the issuer) exceeds the yield to the investor, resulting in a price paid that is greater than the face value of the Bonds. The sum of the amounts paid in excess of face value is considered “reoffering premium.”

The amount of the premium varies, but it is not uncommon to see premiums for new issues in the range of 2.00% to 10.00% of face value. For this Bond issue, the City expects to use any net premium to reduce the size of the issue. The adjustments may slightly change the true interest cost of the original bid, either up or down.

**Review of Existing Debt:**

We have reviewed all outstanding indebtedness for the City and find that there are no refunding opportunities at this time.

We will continue to monitor the market and the call dates for the City’s outstanding debt and will alert you to any future refunding opportunities.

**Continuing Disclosure:**

Because the City has more than $10,000,000 in outstanding debt (including this issue) and this issue is over $1,000,000, the City will be agreeing to provide certain updated Annual Financial Information and its Audited Financial Statement annually as well as providing notices of the occurrence of certain reportable events to the Municipal Securities Rulemaking Board (the “MSRB”), as required by rules of the Securities and Exchange Commission (SEC). The City is already obligated to provide such reports for its existing bonds. It files the required annual information itself and engages Kutak Rock to file material event notices, as applicable.

**Arbitrage Monitoring:**

Because the Bonds are tax-exempt securities, the City must ensure compliance with certain Internal Revenue Service (IRS) rules throughout the life of the issue. These rules apply to all gross proceeds of the issue, including initial bond proceeds and investment earnings in construction, escrow, debt service, and any reserve funds. How issuers spend bond proceeds and how they track interest earnings on funds (arbitrage/yield restriction compliance) are common subjects of IRS inquiries. Your specific responsibilities, along with any applicable exemptions from the rules, will be detailed in the Closing Certificate prepared by your Bond Attorney and provided at closing. The City has retained Kutak Rock to assist in complying with these rules.

**Other Service Providers:**

This debt issuance will require the engagement of other public finance service providers. This section identifies those other service providers, so Ehlers can coordinate their engagement on your behalf. Where you have previously used a
particular firm to provide a service, we have assumed that you will continue that relationship. Fees charged by these service providers will be paid from proceeds of the obligation, unless you notify us that you wish to pay them from other sources. Our pre-sale bond sizing includes a good faith estimate of these fees, but the final fees may vary. If you have any questions pertaining to the identified service providers or their role, or if you would like to use a different service provider for any of the listed services please contact us.

Bond Counsel: Kutak Rock LLP
Paying Agent: State of Kansas - Office of the State Treasurer
Rating Agency: Standard & Poor's Global Ratings (S&P)

Proposed Debt Issuance Schedule

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<td>May 20, 2019</td>
</tr>
<tr>
<td>Estimated Closing Date:</td>
<td>June 12, 2019</td>
</tr>
</tbody>
</table>

Attachments
Sources and Uses of Funds
Proposed Debt Service Schedule

Ehlers Contacts
Municipal Advisors: Bruce Kimmel (651) 697-8572
Nick Anhut (651) 697-8507
Chris Mickelson (651) 697-8556
Disclosure Coordinator: Jen Chapman (651) 697-8566
Financial Analyst: Alicia Gage (651) 697-8551
## Sources & Uses

**Dated 06/12/2019 | Delivered 06/12/2019**

### Sources Of Funds

<table>
<thead>
<tr>
<th>Source</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Par Amount of Bonds</td>
<td>$2,020,000.00</td>
</tr>
<tr>
<td>Planned Issuer Equity contribution</td>
<td>200,000.00</td>
</tr>
<tr>
<td><strong>Total Sources</strong></td>
<td><strong>$2,220,000.00</strong></td>
</tr>
</tbody>
</table>

### Uses Of Funds

<table>
<thead>
<tr>
<th>Use</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Underwriter's Discount (1.200%)</td>
<td>24,240.00</td>
</tr>
<tr>
<td>Costs of Issuance</td>
<td>51,500.00</td>
</tr>
<tr>
<td>Deposit to Project Construction Fund</td>
<td>2,143,817.00</td>
</tr>
<tr>
<td>Rounding Amount</td>
<td>443.00</td>
</tr>
<tr>
<td><strong>Total Uses</strong></td>
<td><strong>$2,220,000.00</strong></td>
</tr>
</tbody>
</table>
City of Gardner, Kansas
$2,020,000 General Obligation Sewer Revenue Bonds, Series 2019B
Assumes Current Market BQ AA- Rates plus 25bps

Debt Service Schedule

<table>
<thead>
<tr>
<th>Date</th>
<th>Principal</th>
<th>Coupon</th>
<th>Interest</th>
<th>Total P+I</th>
<th>Fiscal Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>06/12/2019</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>04/01/2020</td>
<td>-</td>
<td>-</td>
<td>25,151.25</td>
<td>25,151.25</td>
<td>-</td>
</tr>
<tr>
<td>10/01/2020</td>
<td>205,000.00</td>
<td>2.150%</td>
<td>25,151.25</td>
<td>230,151.25</td>
<td>255,302.50</td>
</tr>
<tr>
<td>04/01/2021</td>
<td>-</td>
<td>-</td>
<td>22,947.50</td>
<td>22,947.50</td>
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<tr>
<td>10/01/2021</td>
<td>210,000.00</td>
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<td>22,947.50</td>
<td>232,947.50</td>
<td>255,895.00</td>
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<tr>
<td>04/01/2022</td>
<td>-</td>
<td>-</td>
<td>20,585.00</td>
<td>20,585.00</td>
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<tr>
<td>10/01/2022</td>
<td>215,000.00</td>
<td>2.300%</td>
<td>20,585.00</td>
<td>235,585.00</td>
<td>256,170.00</td>
</tr>
<tr>
<td>04/01/2023</td>
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<td>-</td>
<td>18,112.50</td>
<td>18,112.50</td>
<td>-</td>
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<tr>
<td>10/01/2023</td>
<td>215,000.00</td>
<td>2.400%</td>
<td>18,112.50</td>
<td>233,112.50</td>
<td>251,225.00</td>
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<tr>
<td>04/01/2024</td>
<td>-</td>
<td>-</td>
<td>15,532.50</td>
<td>15,532.50</td>
<td>-</td>
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<tr>
<td>10/01/2024</td>
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<td>256,065.00</td>
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<tr>
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<td>-</td>
<td>12,776.25</td>
<td>12,776.25</td>
<td>-</td>
</tr>
<tr>
<td>10/01/2025</td>
<td>230,000.00</td>
<td>2.550%</td>
<td>12,776.25</td>
<td>242,776.25</td>
<td>255,552.50</td>
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<tr>
<td>04/01/2026</td>
<td>-</td>
<td>-</td>
<td>9,843.75</td>
<td>9,843.75</td>
<td>-</td>
</tr>
<tr>
<td>10/01/2026</td>
<td>235,000.00</td>
<td>2.650%</td>
<td>9,843.75</td>
<td>244,843.75</td>
<td>254,687.50</td>
</tr>
<tr>
<td>04/01/2027</td>
<td>-</td>
<td>-</td>
<td>6,730.00</td>
<td>6,730.00</td>
<td>-</td>
</tr>
<tr>
<td>10/01/2027</td>
<td>240,000.00</td>
<td>2.750%</td>
<td>6,730.00</td>
<td>246,730.00</td>
<td>253,460.00</td>
</tr>
<tr>
<td>04/01/2028</td>
<td>-</td>
<td>-</td>
<td>3,430.00</td>
<td>3,430.00</td>
<td>-</td>
</tr>
<tr>
<td>10/01/2028</td>
<td>245,000.00</td>
<td>2.800%</td>
<td>3,430.00</td>
<td>248,430.00</td>
<td>251,860.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,020,000.00</strong></td>
<td>-</td>
<td><strong>$285,447.98</strong></td>
<td><strong>$2,305,447.98</strong></td>
<td>-</td>
</tr>
</tbody>
</table>

Yield Statistics

- Bond Year Dollars: $11,016.61
- Average Life: 5.454 Years
- Average Coupon: 2.5910689%
- Net Interest Cost (NIC): 2.8111002%
- True Interest Cost (TIC): 2.8286462%
- Bond Yield for Arbitrage Purposes: 2.5862320%
- All Inclusive Cost (AIC): 3.3573198%

IRS Form 8038

- Net Interest Cost: 2.5910689%
- Weighted Average Maturity: 5.454 Years
Agenda Item: Consider approving the City’s contribution to health, dental and vision insurance premiums for the 2019-2020 plan year.

Strategic Priority: Fiscal Stewardship

Department: Administration & Finance

Staff Recommendation:
Approved the City’s continued contribution to employees’ health insurance premiums of 100% to the high deductible health plan (HDHP) CF 1500 Single and an amount equal to 82% of the HDHP CF 1500 for Family and Tier II equating to $558.56 for Single, $1,063.02 for Tier II, and $1,260.26 for Family; and continue to fund employees’ Health Savings Accounts (H.S.A.‘s) “up front” at $1,500 for Single and $3,000 for Tier II and Family; and continue the City’s contributions to the OAP 750 (PPO) plan and INO (similar to HMO) plans to an amount equivalent to 80% of the premiums:

- For OAP 750 the City would contribute $673.81 for Single; $1,548.70 for Tier II; and $1,818.83 for Family
- For INO 1 the City would contribute $690.24 for Single; $1,629.98 for Tier II; and $1,821.17 for Family
- For INO 2 the City would contribute $615.78 for Single; $1,455.39 for Tier II and $1,628.91 for Family; and

continue the contribution to employees’ vision insurance premiums at 100% / 80% equating to $7.92 for Single, $12.67 for Tier II, and $18.11 for Family coverage; and

contribute 50% of dental insurance premiums at $17.94 for Single and $44.68 for Family.

Background/Description of Item:
An important component of the Priority-Based Budgeting process it to evaluate previous budget decisions.

Following input from the Employee Engagement Committee, in 2016 Council approved increased funding to 80% of all health insurance plans (and continued 100% funding of HDHP Single) to provide additional affordable choices to employees and also included funding for a Wellness Program.

Subsequently in 2017, Council continued the 80% funding level for all plans (except HDHP) for the 2017-2018 plan year to continue providing affordable employee choice. However, Council incentivized participation in HDHP plans by increasing City funding for HDHP plans to 82% (vs.
80% for all others) and increasing “up front” funding of H.S.A.’s to fully cover deductibles, thus further encouraging employee wellness.

For the 2019-2020 plan year, the MPR Board of Directors approved the specific plan increases below. However, the MPR Board also approved a 1% discount for utilization rate of less than 75%. As Gardner’s utilization rate was less than 75%, the City received a 1% rate discount on all plans. Below are MPR’s standard increases vs. the discounted increase for the City’s insurance plans.

<table>
<thead>
<tr>
<th>Plan</th>
<th>Standard Increase</th>
<th>Gardner's Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>OAP 750</td>
<td>18.5%</td>
<td>17.5%</td>
</tr>
<tr>
<td>INO 1 &amp; 2</td>
<td>17.9%</td>
<td>16.9%</td>
</tr>
<tr>
<td>CF 1500(HDHP)</td>
<td>21.59%</td>
<td>20.59%</td>
</tr>
</tbody>
</table>

Council has continued to fund the City’s robust, seven-step wellness program, which received the “Healthy KC Silver Level Certification” award from KC Area Chamber of Commerce. Currently 96% of employees participate in the wellness program perhaps contributing to the insurance utilization rate of less than 75% and earning a 1% reduction in premiums.

**Financial Impact:**
The 2019 budget included a General Fund budget of $1,066,500 for health insurance. Based on continuing the current employer health insurance contributions and the new rates, the City projects the cost to be approximately $1,045,528. The 2019 General Fund health insurance budget was able to absorb the large rate increase due to turnover and new employees electing less expensive options or declining insurance. Across all funds, the estimated 2019 health insurance costs are expected to exceed the 2019 total health insurance budget by $17,637.

The 2020 budget included a General Fund budget of $1,101,500 for health insurance. Based on continuing the current employer health insurance contributions and the new rates, the City projects the cost to exceed the 2020 budgeted amount by $39,571 in the General Fund. Across all funds, the estimated 2020 health insurance costs are expected to exceed the 2020 total health insurance budget by $119,358.

**Attachments Included:**
- N/A

**Suggested Motion:**
Approve the City’s contributions to health, vision, and dental insurance premiums for the 2019-2020 plan year (all dollar amounts as noted in "staff recommendation" above):
- 100% for *CF1500 Single* (HDHP) and 82% of *CF 1500* (HDHP) *Tier II and Family*
- 80% contribution to all other health insurance plans

And fund employees’ H.S.A.’s “up front” at $1,500 for *Single* and $3,000 for *Tier II and Family*

And contribute to employees’ vision insurance premiums at 100% for *Single* and 80% for *Tier II and Family*

And contribute 50% of dental insurance premiums
Council Action Form

New Business Item No. 3

Meeting Date: April 15, 2019
Contact: Mayor Steve Shute

Agenda Item: Approve and authorize the Mayor to sign an agreement with James Pruetting for the position of City Administrator.

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

Department: Mayor and Council

Background/Description of Item:
The final step in the City Administrator selection process is the authorization of an employment agreement between the City of Gardner and James Pruetting.

This agreement has been reviewed by the City Attorney.

Attachments:
City Administrator Employment Agreement

Suggested Motion:
Approve and authorize the Mayor to sign an agreement with James Pruetting for the position of City Administrator.
EMPLOYMENT AGREEMENT

This Agreement made and entered into the ____ day of April, 2019, by and between the City of Gardner, Kansas, (hereinafter referred to as the “City”) and James Pruetting, (hereinafter referred to as “Pruetting” or “Employee”).

RECITALS

WHEREAS, the City is a municipal corporation duly authorized and existing under the constitution and laws of the State of Kansas;

WHEREAS, James Pruetting is an individual who possesses the requisite training, education and experience to serve as the City Administrator of the City;

WHEREAS, the City desires to employ the services of James Pruetting as City Administrator to devote his full time and efforts to the business of the City’s management, and James Pruetting desires to be so employed by the City in the executive capacity described herein;

WHEREAS, it is the desire of the City to provide certain benefits, establish certain conditions of employment, and to set working conditions of Employee;

WHEREAS, it is the desire of the City to (1) retain the services of Pruetting and to provide an inducement for him to remain in such employment, (2) to provide for Pruetting’s future security in case Pruetting is terminated without “just cause,” and (3) to provide a procedure for terminating Pruetting’s services when the City may desire to terminate his employment;

WHEREAS, the City and Pruetting have determined it is in their mutual interests to adopt terms and conditions of Pruetting’s employment as set forth herein.

NOW, THEREFORE, in and for good consideration, the sufficiency of which is hereby mutually acknowledged, and for the mutual covenants and agreements contained herein the parties hereto agree as follows:

Section 1. Duties.

City hereby agrees to employ Pruetting as City Administrator of said City to perform the functions and duties of said office as set forth by law, ordinance and the City Charter, and to perform such other legally permissible and proper duties and functions as the Governing Body shall from time to time assign to Employee. Initiatives will be established by the Governing Body as part of the budgeting and evaluation process. The initiatives and metric goals will be monitored and tied to the previous evaluation and budget, and progress reports will be provided for evaluation. Employee shall serve at the pleasure of the Governing Body and shall diligently and conscientiously perform such duties and responsibilities as may be assigned or delegated by the Governing Body.
Section 2. Term.

A. The City, in consideration of the promises of Pruetting contained herein, hereby employs, and Pruetting hereby accepts employment as City Administrator, in consideration of the promises of the City contained herein, for a term of four (4) years commencing April 29, 2019 and ending April 28, 2023, unless terminated earlier or extended in writing by the parties. The City and Pruetting may, by formal action of the Mayor and City Council and with the execution of a written contract or addendum to this Agreement enter into an extension of the existing contract. In the event this Agreement is extended, such extension shall be in writing and any change to the terms and conditions, including compensation and benefits, shall be made in the form of a written addendum or a new contract, signed by both parties. Employee does not have a property or liberty interest, or any other legally recognized and/or protected interest or expectation in any such possible extension, possible written addendum, or possible new contract, by the City; provided that, the City agrees to provide six (6) months’ advance notice to Pruetting if it does not intend to renew the Agreement for one or more years.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Mayor with the consent of the majority of the entire City Council to terminate the services of Employee at any time, subject only to the provisions set forth in Section 3 of this Agreement.

C. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Employee to voluntarily resign at any time from his position with the City subject only to the provisions set forth in Section 3 of this Agreement.

D. Pruetting agrees to remain in the exclusive employ of the City for four (4) years of the effective date of commencement of this Agreement, and neither to accept, nor to become employed by any other employer until said termination date, unless City or Pruetting has terminated this Agreement prior to that date.

E. This Agreement does not preclude the Employee from occasional teaching or consulting as long as it does not interfere with the business of the City and that no conflict, impropriety, or appearance of impropriety exists or is created.

Section 3. Termination and Severance Benefits.

A. In the event Pruetting is terminated by the City before expiration of the term of this Agreement or without six months’ notice of the City’s intention not
to renew or extend this Agreement, and without “just cause”, and during such time that Pruetting is willing and able to perform the duties of City Administrator, the City agrees to pay Employee a lump sum cash payment equal to six (6) months of Employee’s aggregate salary and benefits and any additional accrued compensation consistent with the uniform personnel policies of the City upon Pruetting’s execution of the Separation of Employment and General Release, attached hereto as Exhibit A.

B. In the event Pruetting is terminated from employment for “just cause” as defined herein, then City’s only obligation to Employee is to pay him his accrued compensation as of the date of such termination.

C. If the City reduces the base salary, compensation or any other financial benefit of Pruetting set forth in this Agreement, unless it is applied in no greater percentage than the average reduction for all exempt City employees, or in the event the City refuses, following written notice, to comply with any other material provisions benefiting Pruetting contained in this Agreement, such action shall constitute a breach of this agreement and will be regarded as a “termination without just cause.”

D. “Termination for just cause” is defined for the purposes of this Agreement to termination of Employee for any of the following reasons: (1) act(s) of misfeasance or malfeasance; (2) act(s) constituting gross dereliction of duty; (3) material breach of this Agreement; or (4) conviction of a crime involving moral turpitude, financial impropriety, or any felony. Prior to termination for cause, Employee shall be provided with notice of the reasons for termination in writing and an opportunity to appear before the Governing Body in executive session to provide any reasons why this Agreement should not be terminated. The Governing Body reserves the right, in its sole discretion, to take other corrective action instead of termination.

E. In the event that Employee becomes totally disabled or dies during the term of his employment with the City, then the City’s only obligation (other than those that may be provided by insurance) to Employee shall be his accrued but unpaid compensation to include salary and any additional accrued compensation consistent with the uniform personnel policies of the City.

F. In the event Employee voluntarily resigns his position with the City other than for medical reasons or under circumstances covered in paragraphs 3C or 3G, then Employee shall give City forty-five (45) days’ written notice, unless such notice is not possible under the circumstances, in advance, and
the City’s only obligation to Employee then City’s only obligation to Employee will be to pay him his accrued compensation as of the date of such termination.

G. Notwithstanding anything contained herein to the contrary, if the Mayor and a majority of the entire City Council determines that it is in the best interest of the City for Employee to resign and Employee has committed no acts or omissions to warrant “termination for just cause,” as defined herein, then upon such resignation, Employee shall receive all rights and benefits to be accorded him as if he had been terminated as set forth in Section 3.A. upon Employee’s execution of the Separation of Employment and General Release, attached hereto as Exhibit A. It is the intention of this subparagraph to distinguish between this type of resignation and a voluntary resignation as that term is used in subparagraph F of Section 3.

Section 4. Suspension.

City may suspend the Employee with full pay and benefits at any time during the term of this Agreement if the Mayor and a majority of the entire City Council determines that it is in the best interest of the City.

Section 5. Compensation.

A. City agrees to pay Pruettting for his services rendered pursuant to this Agreement an annual base salary payable in installments at the same time as other employees of the City are paid in the amount of $150,000.00 per year, with authorized amounts for social security, Medicare, federal and state taxes, and insurance premiums, if any, or other monies withheld in accordance with applicable law and the City’s policies and procedures.

B. The Governing Body shall conduct an annual written review and evaluation of Employee’s performance in accordance with the City’s personnel policies; the Governing Body will establish goals, performance standards, and objectives and may direct the Employee to participate in a discussion of his performance and the satisfaction of or failure to satisfy the goals, performance standards, and objectives established annually by the Governing Body. As part of each such evaluation, the Governing Body shall provide Employee with a summary of its input and comments. The Employee’s evaluation will be in writing, and Employee will have the opportunity to respond in writing within fourteen (14) days of receiving the evaluation. Within sixty (60) days of completing each evaluation, the Governing Body shall establish annual goals and objectives for the City Administrator. To assist the Governing Body with this responsibility, the Employee may provide proposed goals, performance standards, and
objectives. Merit pay increases to Employee’s base salary will be awarded to Employee upon appraisal of the Governing Body in the same manner as and pursuant to the City’s personnel policies for all employees, if any.

C. Upon successful completion of all required coursework for a Graduate Certificate in City and County Management and receipt of said Certificate, the City agrees to provide Pruetting with a one-time, lump sum payment in the amount of $15,000.00. The City shall pay such lump sum bonus in full to the Employee and “gross-up” said bonus payment to account for taxes, withholding and contributions required state or federal law. In order to be eligible to receive this lump sum payment, Employee shall be required to complete the referenced Graduate Certificate within two (2) years from the commencement of the Term referenced in Paragraph 2(A) above.

D. Employee will be entitled to bonus payment of $2,500.00 for every 250 acres annexed into the City up to a maximum of 4,000 acres, at which point no further bonus(es) shall be paid. The City shall pay such “annexation bonus” in full to the Employee and “gross-up” said bonus payment to account for taxes, withholding and contributions required state or federal law.

Section 6. Indemnification.

To the extent permitted by the Kansas Tort Claims Act, the City agrees to indemnify and defend Employee from claims, liabilities and actions arising out of the course and scope of his employment; provided however, that this shall not apply to punitive damages. The City shall not be obligated to provide for a criminal defense of the Employee against any charge involving abuse of office or illegal activity.

Section 7. Hours of Work.

It is recognized that Employee must devote a great deal of his time outside normal office hours on the business of the City and it is agreed by the parties hereto that Employee shall not be entitled to any additional salary; provided, however, that the Mayor may award, in his or her discretion, non-statutory compensatory leave to Employee to attend to personal matters in recognition of extraordinary efforts or hours worked and such time shall not count as vacation. Employee shall not receive payment or compensation for any such accumulated compensatory leave upon separation under any circumstances.

Section 8. Automobile Allowance.

Employee’s duties require that he shall have the use of an automobile during his employment, and the Employee agrees to provide a personal automobile for this use. The City agrees to make a one-time payment of $3,000.00 to Employee defray the expense of obtaining an automobile through ownership or lease; the City agrees to pay the Employee said amount
in full and to “gross-up” said payment to fully account for taxes, withholding and contributions required state or federal law. In addition, Employee shall receive an automobile allowance of $500.00 per month to defray the expense of obtaining an automobile through ownership or lease. The automobile may be used by Employee for business and personal purposes. Employee shall maintain automobile liability, property damage and comprehensive insurance on his automobile and shall name City as an additional insured on all policies. All normal and necessary expenses for operation and use of such automobile, whether said use is personal or business-related, including but not limited to fuel expenses and maintenance, shall be the responsibility of Employee; provided that, the Employee may receive travel reimbursement consistent with the City’s policy for travel outside of the Kansas City Metropolitan Area. Employee agrees to keep any personal vehicle used for official business in good cosmetic and operating condition.

Section 9. **Dues and Subscriptions.**

City agrees to pay budgeted professional dues and subscriptions of Employee necessary for his full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional growth, and advancement, and for the good of the City, including but not limited to the International City Management Association (“ICMA”) and the Kansas City Managers Association.

Section 10. **Professional Development.**

A. The City agrees to pay required courses for Employee to obtain a Graduate Certificate in City and County Management. The City agrees to pay for said courses in advance and to reimburse employee for any related travel expenses consistent with the City’s policy for travel outside of the Kansas City Metropolitan Area; provided that, if Employee fails to complete and obtain said Graduate Certificate in City and County Management, he agrees to repay fifty percent (50%) of said course fees; further provided that, said tuition and educational payments shall be subject to successfully achieving the letter grade requirements upon completion of individual courses consistent with the City’s tuition reimbursement policy and that Employee shall repay the City for any failure to successfully complete a course at the required grade level.

B. The City agrees to pay budgeted professional dues and subscriptions of Employee necessary for his participation in the International City Management Association (“ICMA”) at the national, regional, state, and local level. The City agrees to pay for budgeted registration, travel, lodging, and subsistence expenses in accordance with adopted City policies for attendance at the Annual ICMA Conference. Upon the written approval of the Mayor, subject to available budgetary resources, the City may approve and pay professional dues and expenses for Employee’s participation in
other national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation and growth and for the good of the City.

C. Upon the approval of the Mayor, subject to available budgetary resources, City also agrees to pay budgeted travel and subsistence expenses in accordance with adopted City policies for short courses, institutes, and seminars that are necessary for his professional development and for the good of the City.

Section 11. Benefits.

A. Vacation Leave. Employee is presently employed in another capacity by the City. Within thirty (30) days of the effective date of this Agreement, the City agrees to pay Employee and Employee agrees to accept as full and complete payment his accrued and unused vacation leave at his prior rate of pay for the position of Chief of Police. Employee shall be provided six (6) weeks of paid vacation effective April 29, 2019 and accrue six (6) weeks of paid vacation leave annually thereafter; provided that, Employee’s accrual of vacation leave shall be capped at 500 hours.

B. Sick Leave. Employee shall retain his current accrued and unused sick leave, which shall be transferred in his new position as City Administrator. Employee shall accrue and accumulate sick leave at the same rate as other general full-time employees of the City.

C. Holiday Pay. Employee shall receive paid holidays for City-recognized holidays in the same manner as other full-time employees of the City consistent with the City’s personnel policies.

D. Health Insurance. The Employee shall be covered under the City-provided health insurance plans (medical, dental, and vision) as available to other eligible employees and at the same rates and terms provided to other eligible City employees. Costs for employee contribution, copays, deductibles, or the like shall be the responsibility of Employee in accordance with the terms of the applicable insurance plan.

E. Disability and Life Insurance. The Employee is eligible to participate in any other benefits provided to City employees under the same terms and conditions, subject to the provisions of this Agreement.

F. Retirement and Pension.
1) The City participates in the Kansas Public Employee Retirement System (KPERS) and the Employee shall be considered a KPERS-covered employee; the position of City Administrator is not and shall not be considered a Kansas Police & Fire (KP&F) eligible position. City agrees to budget and to pay for the same KPERS retirement benefits for Employee as afforded other general full-time employees of the City. KPERS is inclusive of retirement benefits, life insurance benefits and long-term disability benefits. Additional optional benefits may be available through KPERS, which Employee may choose to participate.

2) KPERS Disclaimer: Employee shall be responsible for his retirement benefits under KPERS. The City makes no representations regarding Employee’s KPERS retirement benefits or KPERS’ treatment of any of the compensation or payments of leave set forth in this Agreement. Pruetting has not relied, and agrees that he will not rely, upon any statement or representation of the City regarding his final average salary, KPERS benefits, or interpretations of the same. Employee agrees to hold the City harmless from any adverse changes to his or her KPERS or KP&F retirement benefits by the Kansas legislature or administration of the KPERS program. The City has not made any representations with respect to any taxes owed by the Employee under this Agreement, and the Employee agrees that he has not and will not rely upon any statement or representation made thereon by the City. Furthermore, the parties agree that this Agreement shall be construed, to the extent possible, so as not to require the City to make a KPERS “spike” payment under K.S.A. 74-49,126, as amended.

3) The City agrees to budget and pay ten percent (10%) of Employee’s base salary into an eligible deferred compensation plan of his choosing for which the City may contribute on without incurring additional taxation, withholding, or contribution.

G. Other Benefits. Employee is eligible to participate in any other benefits provided to City employees under the same terms and conditions, subject to the provisions of this Agreement.

Section 12. Qualifications.

Employee represents that he possesses the qualifications for the position and shall hold and furnish to the City throughout the term of this Agreement all bonds, credentials and qualifications which are required by law, ordinance, or City policy to serve in the position of
City Administrator. Should Employee be unable to obtain any required bond or licensure, this Agreement shall be considered void. Employee represents that as of April 29, 2019, he is not under contract with any other public or private entity which would or might cause any conflict with any duty he owes to the to the City, nor will he enter into any such contract with any other public or private entity for the term of this Agreement.

Section 13. **Cooperation.**

Employee agrees that, even after the termination of this Agreement, he will cooperate with the City’s defense or prosecution of any matters about which he has knowledge or expertise that was derived out of or during the course and scope of his employment. Employee agrees to testify truthfully and fully in connection with any claims made by or litigation brought against the City or in any governmental or regulatory investigations. Employee agrees to make himself available at mutually convenient times to be interviewed by the City’s counsel and to respond to all inquiries with respect to such matters and will promptly notify the Mayor and City Attorney of all requests or demands for information regarding the City he receives in connection with any legal, governmental or other proceeding or investigation unless otherwise prohibited by law.

Section 14. **Other Terms and Conditions of Employment.**

A. The Council shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Ordinances of the City of Gardner, State of Kansas Statutes governing municipalities, or any other law.

B. All provisions of the Ordinances of the City of Gardner, the Kansas Statutes Annotated, and regulations and rules of City limited to vacation and sick leave, retirement and pension system contributions, holidays, and other fringe benefits and working conditions as they may now exist or may be hereafter amended, also shall apply to Employee as they would to other employees of the City, in addition to said benefits enumerated specifically for the benefit of Employee, except as herein modified or otherwise provided.

C. Residency Requirement. Employee shall be a resident of the City of Gardner at the time of the effective date of this Agreement and through the duration of the contract.

D. Expenses. Subject to the provisions of this Agreement, in accordance with City policy, Employee will be reimbursed for all reasonable expenses incurred in the performance of his duties, other than mileage reimbursement.
within the Kansas City Metropolitan Area, including reasonable expenses for meals, entertainment and civic obligations in representation of the City or on its behalf. Such expenses shall be approved in advance by the Governing Body through the operating budget. The reasonable expenses shall be documented with appropriate receipts, submitted not less than on a monthly basis, in accordance with the City’s purchasing and expense reimbursement policies, and may be reviewed by auditors reviewing the books of the City.

E. Notice of Search for Other Employment. Employee shall immediately provide written notice to the Governing Body, should Employee become a finalist in the selection process for a position with any other employer.

F. Publicity Release. Employee consents to the use of his name, voice and picture (including but not limited to use in photographs, videotape, film formats, and digital formats in any media both during and after his period of employment at with the City) for advertising, promotional, public relations, and other civic purposes (including use in its websites, online communication forums, social media, publications, journals, broadcasts, films, or videotapes) by the City and hereby knowingly waives any right or demand for additional compensation or preapproval for release or use of same in consideration for the covenants made herein.

Section 15. State Law – Limitations.

This Agreement is to be governed by the laws of the State of Kansas. Notwithstanding any provision or agreement herein contained, it is specifically understood and agreed between the parties that the commitments made hereby by the City are subject to any valid limitation placed thereon by the constitution, statutes, and laws of the State of Kansas.


A. Entire Agreement. This Agreement and the attached Exhibit 1 constitutes the entire agreement and understanding between the parties. The parties acknowledge that there are no oral understandings, terms, conditions, representations or other matters which form any part of this Agreement. Each party has cooperated in the drafting and preparation of this Agreement. This Agreement may only be modified in writing signed by the parties upon approval of the Governing Body in open session as required by Kansas law.

B. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon City, its successors and assigns and upon Employee, his heirs, executors, administrators and legal representatives. As this is an
Agreement for personal services, Employee may not assign or transfer any rights granted or obligations assumed under this Agreement.

C. Each party to this Agreement has had the opportunity to consult with legal counsel or other representatives before entering into this Agreement and, by signing this Agreement, agree that the contents are fully understood and accepted. City and Pruetting have participated equally in the writing of this Agreement, and no provision shall be construed in favor of or against any party. The parties agree to the terms of this document, and they are signing this document freely and voluntarily without coercion or undue influence.

D. Waiver. Any determination by the City permitting a deviation from any of the terms of this Agreement shall not be construed to be a waiver of any of the terms of this Agreement, nor shall any authorization by the City of any action by Employee constitute a waiver of any of the provisions of this Agreement.

E. Effective Date. This Agreement shall become effective commencing the 29th day of April, 2019.

F. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

G. Entire Agreement. This Agreement and the attached Exhibit 1 constitutes the entire agreement and understanding between the parties. The parties acknowledge that there are no oral understandings, terms, conditions, representations or other matters which form any part of this Agreement. Each party has cooperated in the drafting and preparation of this Agreement. This Agreement may only be modified in writing signed by the parties upon approval of the Governing Body in open session as required by Kansas law.

IN WITNESS WHEREOF, the City of Gardner, after formal action of the City Council, authorizing the Mayor to sign on the _____ day of April 2019, has caused this Agreement to be signed and executed on its behalf by Steve Shute, Mayor, and to be duly attested by its City Clerk, and the Employee has signed and executed this Agreement, in duplicate, the day and year first above written.

[Remainder of Page Intentionally Left Blank. Signature Page Follows Directly.]
COUNCIL ACTION FORM

NEW BUSINESS ITEM NO. 4

MEETING DATE: APRIL 15, 2019

STAFF CONTACT: STEVE SHUTE, MAYOR

Agenda Item: Consider appointment of James Pruetting as City Administrator

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

Recommendation:
Mayor Steve Shute recommends that Council authorize the Mayor to appoint James Pruetting as City Administrator, effective April 27, 2019.

Background/Description of Item:
Section 2.10.050 of the Gardner Municipal Code establishes the protocol for the appointment of the City Administrator

2.10.050 Appointment and tenure (of the City Administrator)
A qualified person shall be appointed City Administrator for the City of Gardner by the Mayor; such appointment shall be approved by the majority of the entire City Council. The person so appointed shall serve for an indefinite term. The City Council shall participate in the interviewing of applicants for the position of City Administrator.

Recruitment Process:
- At the November 5, 2018 City Council meeting, the Council authorized Mayor Shute to execute a contract with The League of Kansas Municipalities (LKM), through their League Executive/Administrative Position Search (LEAPS) Program to assist in the search of a new City Administrator.
  - The contract amount was $9,699.37 plus an estimated advertising fee of $1,800, for an approximate total cost of $11,500.
- The position was advertised by LKM through February 1, 2019.
  - LKM also collected all candidate resumes during this time
- On February 8, 2019, the LKM ranking committee (comprised of the LKM Executive Director, the LKM Deputy Director, an LKM Attorney, and the LKM Member Services Coordinator) provided a ranked Candidate Profile using a metric designed for City Administrators.
  - The metric had 160 possible points and three tiers of rankings: highly qualified, well qualified, and not considered qualified.
  - Forty-eight (48) applications were received, including one (1) internal application. Of these forty-eight applicants, twenty-two (46%) were ranked as not considered qualified, including the four (4) female applicants.
  - It should be noted that these rankings were determined by LKM, not by representatives or staff of the City of Gardner.
• On February 11, 2019, Mayor Shute, Interim City Administrator Laura Gourley, and Human Resources Manager Alan Abramovitz met to review the rankings and determine which candidates would be offered an interview with the selection committee.
  o Seven (7) candidates were chosen for interview with the selection committee, including the internal candidate.
    ▪ This included six (6) candidates scoring above 130 on LKM’s metric (top 19%). Four (4) of these candidates were within a five-point spread of one another
• From February 19, 2019 – February 21, 2019, the selection committee conducted interviews for the seven (7) selected candidates and subsequently provided input for the three (3) finalists.
  o The selection committee consisted of the following individuals:
    ▪ Mayor Steve Shute
    ▪ Council President Lee Moore
    ▪ Council Vice President Rich Melton
    ▪ 3 citizens chosen by remaining 3 councilmembers
      1. Heath Freeman
      2. Tim Miller
      3. Kacy Deaton
    ▪ Chamber Representative Jason Camis
    ▪ SWEDC Representative Greg Martinette
    ▪ USD 231 Representative Bruce Kracl
    ▪ Jo Co Fire District No. 1 Representative Chief Rob Kirk
    ▪ Interim City Administrator Laura Gourley
  o Human Resources Director Alan Abramovitz was also present for all seven (7) interviews, but was not part of the selection committee
• On March 1, 2019, the three (3) finalists were named
• On March 11, 2019, the City held a Meet and Greet with the three (3) finalists in order to obtain public input.
• Also on March 11, 2019, the three (3) finalists met with staff leadership and City Administrator direct reports.
• Also on March 11, 2019, the Governing Body held a Special Meeting and interviewed the three (3) finalists during Executive Session
• On March 12, 2019, Mayor Shute met with staff leadership and City Administrator direct reports to allow staff to provide input.

Suggested Motion:

Authorize the Mayor to appoint James Pruetting as City Administrator effective April 27, 2019
The City Council took the following actions at the April 15, 2019, meeting:

1. Approved the minutes as written for the regular meeting on April 1, 2019 (Passed unanimously)
2. Approved the City expenditures prepared March 29, 2019, in the amount of $1,923,762.19; April 5, 2019, in the amount of $284,791.66 (Passed unanimously)
3. Authorized the City Administrator to execute a contract with Gardner Disposal, Inc. for the 2019 City-wide Clean Up for the unit price bid amount of $175 per ton (Passed unanimously)
4. Accepted the agreement between KDOT and the City of Gardner for the Airport Design and Planning of the sewer installation project, approve the expenditure of $781.25 of revenues in the City’s Airport Fund for the required matching funds, and authorize the Mayor to sign the agreement (Passed unanimously)
5. Accept the agreement between KDOT and the City of Gardner for the Airport Modernization (Sewer installation) Project, approve the expenditure of $21,037.50 of revenues in the City’s Airport Fund for the required matching funds, and authorize the Mayor to sign the agreement (Passed unanimously)
6. Authorized the City Administrator to purchase the DJI Mavic 2 Enterprise drone and listed accessories from an authorized DJI dealer for the cost of $3,979.00 (Passed unanimously)
7. Authorized the City Administrator to enter into a 3-year agreement with Incident Response Technologies Inc. for the Rhodium Incident Management Suite, a web-based incident management system, at a cost not to exceed $14,527.50 for the three-year term (Passed unanimously)
8. Authorized the Interim City Administrator to execute an agreement with Information Matrix (Passed unanimously)
9. Authorized the Interim City Administrator to execute an extension of the agreement for professional services with dPlanit, LLC (David Knopick, Owner) (Passed unanimously)
10. Authorized the purchase of a skid steer loader from KC Bobcat and lease purchase financing from Arvest Bank) (Passed unanimously)
11. Adopted Ordinance 2612 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)
12. Adopted Resolution 2017 establishing the dates and time limitations for the legal discharge of fireworks within the City limits of Gardner for the observance of the July 4th holiday in accordance with the provisions established in Section 9.05.030 of the Gardner Municipal Code (Passed unanimously)
14. Approved the City’s contributions to health, vision, and dental insurance premiums for the 2019-2020 plan year at 100% for CF1500 Single (HDHP) and 82% of CF 1500 (HDHP) Tier II and Family, and 80% contribution to all other health insurance plans; And fund employees’ H.S.A.’s “up front” at $1,500 for Single and $3,000 for Tier II and Family; And contribute to employees’ vision insurance premiums at 100% for Single and 80% for Tier II and Family; And contribute 50% of dental insurance premiums (Passed unanimously)
15. Entered into Executive Session for a total of forty-five minutes to discuss personnel matters related to non-elected personnel (Passed unanimously)
16. Approved and authorized the Mayor to sign an agreement with James Pruetting for the position of City Administrator (Passed 4-1; Councilmember Gregorcyk voted No)
17. Authorize the Mayor to appoint James Pruetting as City Administrator effective April 27, 2019 (Passed 4-1; Councilmember Gregorcyk voted No)