AGENDA
GARDNER CITY COUNCIL
City Hall – 120 East Main Street -- Gardner, Kansas
Monday, May 20 2019
7:00 p.m.

CALL TO ORDER
PLEDGE OF ALLEGIANCE
PRESENTATION
1. Girl Scouts
2. Census 2020

PUBLIC HEARING

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 May 6, 2019
2. Standing approval of City expenditures prepared May 3, 2019, in the amount of $250,000.16; May 8, 2019, in the amount of 1,222,234.31; May 10, 2019, in the amount of $189,454.70.
3. Consider authorizing the execution of a Pole Attachment Agreement with Charter Communications
4. Consider authorizing an agreement for professional engineering services for the Design and Preparation of Construction Plans and Specifications for the Gardner Lake Dam Spillway
5. Consider Position Title Changes in the Utilities Department
6. Consider Extending the outgoing Planning Commission members’ terms of office for 60 days

COMMITTEE RECOMMENDATIONS

OLD BUSINESS

NEW BUSINESS
1. Consider appointing Sharon Rose as City of Gardner Interim City Clerk and administer the Oath of Office
2. Consider adopting a resolution authorizing the issuance and delivery of $[3,820,000] principal amount of General Obligation Temporary Notes, Series 2019A, of the City of Gardner, Kansas, for the purpose of temporarily financing the cost of certain internal improvements of the City
3. Consider adopting an ordinance authorizing the issuance and delivery of $[2,020,000] principal amount of General Obligation Bonds, Series 2019B, of the City of Gardner, Kansas; and providing for the levy and collection of an annual tax for the purpose of paying the principal of and interest on the bonds as they become due
4. Consider adopting a resolution prescribing the form and details of and authorizing the delivery of $[2,020,000] principal amount of General Obligation Bonds, Series 2019B, of the City of Gardner, Kansas, previously authorized by an ordinance of the City
5. Consider adopting a resolution revising a section of the Personnel Policy Manual, 2018 Edition
6. Consider adopting a resolution revising the Municipal Water Conservation Plan for the City of Gardner
7. Consider adopting an ordinance revising the Water Conservation Policy for the City of Gardner

COUNCIL UPDATE – Oral presentation unless otherwise noted

EXECUTIVE SESSION

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, the Girl Scouts of the USA has existed for 107 years inspiring millions of girls and women with the highest ideals of character, conduct and patriotism; and

WHEREAS, through Girl Scouting, girls gain courage, confidence and character while making their local communities and the world a better place; and

WHEREAS, more than 2.5 million current Girl Scout members nationwide celebrate this American tradition, with nearly 60 million women who are former Girl Scouts and living proof of the impact of this Movement;

WHEREAS, in 2019, nine scouts in Troops 1031, 539, and 880 have been recognized by the Girl Scouts of the USA for successfully completing all requirements for Scouting’s highest awards; and,

WHEREAS, we are gathered here on this occasion, as friends, family and neighbors of these scouts to support them on their attainment of these awards and to recognize the faithful and steady path taken within the Scouting organization; and

NOW, THEREFORE BE IT RESOLVED, that I, Steve Shute Mayor of the City of Gardner, Kansas, do hereby recognize and congratulate these scouts for attaining the

**Bronze, Silver and Gold Awards**

And ask that the Community join in celebrating them for this outstanding accomplishment and extending to them our deepest appreciation for all of their dedicated work and wishing them the best in all of their future endeavors.

In witness whereof, I have hereunto set my hand and caused the Seal of the City of Gardner, Kansas to be affixed this 20th day of May, 2019.

CITY OF GARDNER, KANSAS

___

Steve Shute, Mayor

(SEAL)

Attest:

___

Sharon Rose, Deputy City Clerk
Agenda Item:  Census 2020

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

Department:  Administration

Background:

Steve Hale, Partnership Specialist, will be present and has prepared a presentation on the 2020 Census. The US Census Bureau is the federal government’s largest statistical agency. They are dedicated to providing current facts and figures about America’s people, places, and economy. Federal law protects the confidentiality of all individual responses the Census Bureau collects. The US Constitution requires that each decade they take a count – or a census – of America’s population. The census provides vital information for your community.
The 2020 Census at a Glance

Counting everyone once, only once, and in the right place.

The U.S. Census Bureau is the federal government’s largest statistical agency. We are dedicated to providing current facts and figures about America’s people, places, and economy. Federal law protects the confidentiality of all individual responses the Census Bureau collects.

The U.S. Constitution requires that each decade we take a count—or a census—of America’s population.

The census provides vital information for you and your community.
- It determines how many representatives each state gets in Congress and is used to redraw district boundaries. Redistricting counts are sent to the states by March 31, 2021.
- Communities rely on census statistics to plan for a variety of resident needs including new roads, schools, and emergency services.
- Businesses use census data to determine where to open places to shop.

Each year, the federal government distributes hundreds of billions of dollars to states and communities based on Census Bureau data.

In 2020, we will implement new technology to make it easier than ever to respond to the census. For the first time, you will be able to respond online, by phone, as well as by mail. We will use data that the public has already provided to reduce followup visits. And, we are building an accurate address list and automating our field operations—all while keeping your information confidential and safe.

KEY MILESTONES

2018
- 2018 End-to-End Census Test
- 2020 Census questions sent to Congress by March 31, 2018
- Six regional 2020 Census offices and 40 area census offices open

2019
- Partnership activities launch
- Complete Count Committees establish
- Remaining 248 area census offices open

2020
- Advertising begins in early 2020
- Public response (online, phone, or mail) begins
- **Census Day**—April 1, 2020
- In-person visits to households that haven’t responded begin
- Apportionment counts sent to the President by December 31, 2020

2021
- Redistricting counts sent to the states by March 31, 2021
Overview of Census Bureau Programs

CENSUSES

- The **decennial census** is the once-a-decade population and housing count of all 50 states, the District of Columbia, Puerto Rico, and the Island Areas. The results of the census determine the number of seats for each state in the U.S. House of Representatives and are used to draw congressional and state legislative districts. Federal agencies use the results to distribute more than $675 billion in federal funds each year.

- The **economic census** measures the nation’s economy every five years, providing vital statistics for virtually every industry and geographic area in the country.

- The **Census of Governments** provides comprehensive data about the 90,000 state and local governments in the nation every five years.

SURVEYS

- The **American Community Survey** (ACS) is an ongoing national survey—sampling approximately 3.5 million addresses annually—that provides vital information about our nation’s housing and people. The ACS is the only source of comparable, quality information about the people in all our communities. These data show what the U.S. population looks like and how it is changing. ACS data are used to assess the past and present and to plan for the future.

- **Demographic surveys** measure income, poverty, education, health insurance coverage, housing quality, crime victimization, computer usage, and many other subjects.

- **Economic surveys** are conducted monthly, quarterly, and yearly. They cover selected sectors of the nation’s economy and supplement the economic census with more-frequent information about the dynamic economy. These surveys yield more than 400 annual economic reports, including principal economic indicators.

- **Sponsored surveys** are demographic and economic surveys that we conduct for other government agencies. They include the Current Population Survey, the National Health Interview Survey, and the National Survey of College Graduates.

For more information, go to [census.gov](http://census.gov). Follow us @uscensusbureau

Contact us at:

Your information is protected by law

The law requires the Census Bureau to keep your information confidential and use your responses only to produce statistics. We cannot publicly release your responses in any way that could identify you. We will never share your information with immigration enforcement agencies such as ICE, law enforcement agencies such as the FBI or police, or allow it to be used to determine your eligibility for government benefits.

Our Mission

To serve as the nation’s leading provider of quality data about its people and economy.

Our Vision

To be the trusted source for timely and relevant statistical information, and the leader in data-driven information.

Census History

Thomas Jefferson directed the first decennial census in 1790. As required by the U.S. Constitution, a census has been taken every 10 years thereafter. In 1840, the Census Act authorized the establishment of a centralized Census Office. In 1902, the Census Office became a permanent organization within the Department of the Interior. A year later, it was renamed the Bureau of the Census and moved to the new Department of Commerce and Labor.
KANSAS

In FY2016, Kansas received $6,054,507,586 through 55 federal spending programs guided by data derived from the 2010 Census.

The Counting for Dollars 2020 Project aims to understand 1) the extent to which the federal government will rely on data from the 2010 Census to guide the distribution of federal funding to states, localities, and households across the nation and 2) the impact of the accuracy of the 2020 Census on the fair, equitable distribution of these funds.

The project has analyzed spending by state for 55 federal programs ($883,094,826,042 in FY2016). Three types of programs are analyzed:

- **Domestic financial assistance programs** provide financial assistance – including direct payments to individuals, grants, loans, and loan guarantees – to non-federal entities within the U.S. – such as individuals and families, state and local governments, companies, and nonprofits – in order to fulfill a public purpose.

- **Tax credit programs** allow a special exclusion, exemption, or deduction from gross income or provide a special credit, a preferential rate of tax, or a deferral of tax liability.

- **Procurement programs** award a portion of Federal prime contract dollars to small businesses located in areas selected on the basis of census-derived data.

The four uses of census-derived datasets to geographically allocate funding are:

- **Define eligibility criteria** – that is, identify which organizations or individuals can receive funds.

- **Compute formulas** that geographically allocate funds to eligible recipients.

- **Rank project applications** based on priorities (e.g., smaller towns, poorer neighborhoods).

- **Set interest rates** for federal loan programs.

The two categories of census-derived datasets are:

- **Geographic classifications** – the characterization (e.g., rural), delineation (e.g., Metropolitan Areas), or designation (e.g., Opportunity Zones) of specific geographic areas.

- **Variable datasets**
  - **Annual updates** of population and housing variables collected in the Decennial Census.
  - **Household surveys** collecting new data elements (e.g., income, occupation) by using the Decennial Census to design representative samples and interpret results.

### Reports of the Counting for Dollars 2020 Project:

- **Report #1**: Initial Analysis: 16 Large Census-guided Financial Assistance Programs (August 2017)*

- **Report #2**: Estimating Fiscal Costs of a Census Undercount to States (March 2018)*

- **Report #3**: Role of the Decennial Census in Distributing Federal Funds to Rural America (December 2018)*

- **Report #4**: Census-derived Datasets Used to Distribute Federal Funds (December 2018)

- **Report #5**: Analysis of 55 Large Census-guided Federal Spending Programs (forthcoming)*

- **Report #6**: An Inventory of 320 Census-guided Federal Spending Programs (forthcoming)

* Data available by state
+ Source for this state sheet

For further information:

Andrew Reamer, Research Professor
The George Washington University
areamer@gwu.edu
## COUNTING FOR DOLLARS 2020: KANSAS

### Allocation of Funds from 55 Large Federal Spending Programs
**Guided by Data Derived from the 2010 Census (Fiscal Year 2016)**

### Total Program Obligations: $6,054,507,586

<table>
<thead>
<tr>
<th>Program</th>
<th>Dept.</th>
<th>Obligations</th>
<th>Program</th>
<th>Dept.</th>
<th>Obligations</th>
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<td>Financial Assistance Programs</td>
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<td>Community Facilities Loans/Grants</td>
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<td>Social Services Block Grant</td>
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<td>Rural Rental Assistance Payments</td>
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<td>Business and Industry Loans</td>
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<td>Career and Technical Education - Basic Grants to States</td>
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<td>WIOA Dislocated Worker Grants</td>
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<td>Unemployment Insurance Administration</td>
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Prepared by Andrew Reamer, the George Washington Institute of Public Policy, the George Washington University. Spending data analysis provided by Sean Moulton, Open Government Program Manager, Project on Government Oversight. | January 30, 2019

**Note:** The sequence of the above programs is consistent with U.S. rank order by program expenditures. (See U.S. sheet in series.)

For further information:

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GW Institute of Public Policy
THE GEORGE WASHINGTON UNIVERSITY

For official use only:

Counting for Dollars 2020 publications and spreadsheets with above data available at
The City Council of the City of Gardner, Kansas met in regular session on May 6, 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 City Administrator James Pruett; Interim Chief of Police Jay Belcher; 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; Deputy City Clerk Sharon Rose; and City Attorney Chuck Dunlay. 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 7:01 p.m.

PLEDGE OF ALLEGIANCE

Mayor Shute led those present in the Pledge of Allegiance.

PRESENTATIONS

1. Proclaim April 26, 2019 as Laura Gourley Day in the City of Gardner

2. Gardner Lake

   Public Works Director Michael Kramer presented information regarding Gardner Lake. Council has heard from staff, members of the public, and the Gardner lake board about the desire to be able to repair or replace tier 2 docks. There are about 17 docks currently classified as tier 2.

   Prior to 2012, there was no code regarding tier 1 and tier 2 docks. In August of 2012, codes were put in place via Ordinance 2400 that included the definitions of tier 1 and tier 2 docks, and also included the provision that there could be no new tier 2 docks installed and no full reconstruction of those docks, only minor repairs. This was put in place partially to limit the overall number of docks. Before this, there was nothing in the code that would limit any resident from installing a dock.

   The definition of a tier 2 dock includes all lot owners in the Gardner Lake subdivision property that adjacent to or continuous with city property comprising the lake shore. In the image shown, the lot highlighted doesn’t have to cross any other property other than City of Gardner property to get to their dock. Interpreting the code that way makes them a tier 1 dock and no longer tier 2. In the next image, the property highlighted, there’s an easement in between two properties down to the water whereby they could access a dock. In the third image, this is where they have the most tier 2 docks clustered in one location. These were all considered tier 2 because they are on the other side of an access road. Reading the code strictly, they don’t have to cross any other property other than City of Gardner property to get to the dock, so if you interpret the code that way, these can be considered tier 1 docks. They are adjacent and contiguous to City of Gardner property that is the lake shore. The next image is the property that Mr. Hutsell and Mr. Pflumm brought to council in April. The decision that was made then is that the property they own is adjacent to and contiguous to the water and they can split that property and move forward with another dock. This was the direction and guidance received from council.

   The Evans’ own the property to the north and they have some reservations about the decision. Director Kramer believes Mr. Pflumm has already moved forward with the lot split and that it’s been recorded with the county and they’ve paid a deposit on a dock. Director Kramer hasn’t issued a dock permit yet because he needs to see that the property split is all in order.
Mayor Shute asked, with strict interpretation of the code, are there any properties at Gardner Lake that would be considered tier 2 docks? Director Kramer read the code and worked with planners and looked at different codes. Director Kramer believes some of the docks in the first image, where they are across the street and maybe there’s not an access easement, there are some tier 2 properties. The code existing as it is, Kramer believes all existing tier 2 docks are tier 1. Based on prior conversations of wanting to see tier 2 docks brought up to code or replaced would improve the quality of the lake. The road crossing was a qualifier in the past. The lake board wants to see those existing docks maintained. The code does protect from having unlimited number of docks, and prevents someone outside of the Gardner Lake subdivision permitting a dock. Director Kramer asked council for consensus to move forward with his interpretation.

Councilman Melton asked if we need to amend the code so there’s no tier 2. Director Kramer doesn’t believe so. Mayor Shute clarifies that people accessing the docks are doing so through their property, that’s the qualifier. They have to own property that is contiguous to the lake through city property in order to qualify.

Attorney Chuck Dunlay stated the city can amend the code for clarification, but that is not on the agenda for tonight. The current interpretation that Director Kramer has used and is suggesting to continue using would not require amendment of the code.

Councilman Baldwin requested to see image of the land proposing a new dock on the split property, and asked about the lots to the north. The property is now contiguous to their property, but it is not. If the road is removed, the land is across the street from the house to the south, not the property owner. Councilman Melton clarified that it can be accessed from city property. Councilman Baldwin asked what would keep anyone from buying a house in the middle of the lake area and just having a piece of land along the edge and install a dock in 8 places. Councilman Melton stated that someone else already owns that land along the edge. Councilman Baldwin stated it could be bought and sold, so do you want it tied to the property along the lake shore or to the property owner that home. Director Kramer stated that it is tied to the property along the lake shore. Councilman Moore sees no relationship between the house and the dock. He sees the relationship between the property and the dock.

Mayor Shute asked if there should be stipulation that should be added that individuals that have property such as this must have a domicile at Gardner Lake. This would cause problems. Councilman Winters asked how many would that be? There can’t be many. Director Kramer doesn’t know of any other similar situations.

Mayor Shute asked if council wanted to keep the current interpretation. Council arrived at a consensus to keep the current interpretation. Councilman Moore suggested that if staff wanted to make the language clearer, then council will review. Director Kramer will take another look at the code with city attorney, and will also see if there are any other properties of concern. Mayor Shute stated this should be done with Lake Association consultation. Councilman Gregorcyk asked if the city is holding up anyone from doing they are already planning to do and have permits in order. Director Kramer believed with this clarification, he did not believe so.

Director Kramer provided an update on the inspection of the dam. Staff asked engineer to look at the spillway and different alternatives to improving it. They looked at various low water crossings and pedestrian bridges, but did not look into anything involving vehicular access because it is not feasible from a cost standpoint. The result ends up with replacing the existing spillway in-kind: removing it, performing slope protection, reconstructing and reinforcing the structure underneath, and then rebuilding the spillway as it is. It would still be closed to vehicular traffic, but is the only alternative that keeps the lake elevation where it is currently. The other options would either lower the lake elevation slightly for so the flood pool would remain the same, or keep the elevation as existing and the flood pool would increase, which would require FEMA approval and map changes. Staff returned to restoring the existing riprap along the face of the dam and replace the spillway in-kind. The project is estimated at approximately $750,000, and is in the CIP. The CIP has $300,000. Director Wolff believes the project is doable, and staff will move forward and will bond the project. Director
Kramer hopes the costs come in lower, because a few hundred thousand dollars of the project is the riprap restoration. Staff may be able to get the estimate down by filling in some gaps rather than redoing the whole thing. Staff is moving forward with scope and fees with Olsson. Olsson has been the city’s consultant on the lake, have done the last several dam inspections, and provided dam breach analysis. Staff expects to return to council with an agreement.

Mayor Shute asked if the spillway was originally in the 2020 CIP. Director Kramer believed it was in 2018, but with a smaller number.

PUBLIC HEARING

1. Hold a public hearing for the purpose of receiving comments to a request for a Waiver of the Distance Limitation to allow for the sale of cereal malt beverages within 200 feet of a school, church or library during the Smoke on the Trails BBQ Competition to be held September 27 and 28, 2019 at Celebration Park

Councilmember Moore made a motion to open a public hearing for the purpose of receiving public comments on the Waiver of the Distance Limitation to allow for the sale of cereal malt beverages within 200 feet of a school, church or library during the Smoke on the Trails BBQ Competition

Councilmember Melton 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.

2. Hold a public hearing for the purpose of receiving comments to a request for a Waiver of the Distance Limitation to allow for the distribution of cereal malt beverage, wine, and spirits samples within 200 feet of a school, church or library during the Craft Beer and Wine Festival to be held September 28, 2019 at Celebration Park

Councilmember Melton made a motion to open a public hearing for the purpose of receiving public comments on the Waiver of the Distance Limitation to allow for the distribution of cereal malt beverage, wine, and spirits samples within 200 feet of a school, church or library during the Craft Beer and Wine Festival

Councilmember Winters Seconded.

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

Councilmember Moore made a motion to close the public hearing

Councilmember Melton Seconded.

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

Mark Evans, 15640 Gardner East Rd: In image of the lake property, the yellow blocks to the north is our house. The house across the street used to belong to the Hutsells, and they had a dock that was grandfathered in. Mr. Pflumm bought property not even seen on map. By your own code, he's not contiguous or adjacent, by your own definition. Its 500 feet away. As Councilman Baldwin mentioned, anybody that's tier 2 that's hooked to the road, they can find someone to sell them a little lot and put up a dock. If you allow Pflumm to change the rule, change it for all and change code. Director Kramer and prior directors and council have not allowed tier 2 docks. There's a reason for that, it's a quiet, almost private lake. There are few lakes in Johnson County you can still have a boat dock. I would ask you to respect his thoughts on exactly what your code means.

Joy Evans, 15640 Gardner East Rd: Along those same lines, the property in blue, adjacent to lake, was originally part of our plat. Back in the 60s, Mrs. Myer gave it to the people that owned 104 acres across the street so he could fish. I don't believe it was ever legally divided and probably should have never left our plat of property. The Hutsells bought a foreclosed house across the street, contacted the estate and they purchased that lot. They took a grandfathered dock that was grandfathered to the Licums (sp), which is directly across from a grandfathered lot and dock, because they used to mow the property for the estate, they switched that dock, the Licums voluntarily removed it, and the Hutsells put their dock there. Over the last several years, Director Kramer has told us a dozen times or so, they've tried to put other docks down there. The Hutsells have since moved and bought a property on the lake, this property was deeded to their children. Bill Pflumm bought the lot to the north of that and now they've made an agreement based on what council said at the April meeting that this was contiguous property and he could put a dock there. Now there are two tier 2 docks. Licums are moving and new owners will want a dock. In recent weeks, they've cut down our bushes on the corner because the Sprague family, which was the Hutsell house, couldn't see dock, and they have started to put up a shed that was not permitted. They said they don't need a permit because the shed is going to be on blocks, they'll run power and security cameras because when they're on tier 2, they can't see this property. Bill Pflumm can't see, he's 500 feet away. You are opening up piece of property that was meant for some light fishing to docks and sheds. At July 4th, there were 10 cars parked down there, with loud music. We had nothing but beer bottles and bottle rockets on our property and someone urinating in our bushes, this is not what this was designed for. What's to stop us from parceling out our land every 20 feet and letting people put docks in, and if they are tier 2, according to you, that's possible. It's just a lot of problems that should have never transpired to begin with.

Chuck Lawrence, 15500 Lake Road 4: I am a board member of the Gardner Lake Association. I want to thank you for clarifying tier 1 and tier 2 dock information. There are a lot of rumors around the lake, and I think now you've clarified them. I want to thank Michael Kramer for work being done. I think the lake will be a better place and we'll have residents that understand, and once you understand your feelings don't get hurt.

Bill Pflumm, 15634 Gardner East Rd: I want to split the lot and build dock. We've got the lot split. The county told us the lot was splittable, but we can't build a permanent structure on that, which we are not doing. We're putting out a dock. We're not 500 feet away, we're about 300 feet away because that lot is only 150 feet long, and the lot I bought, I bought from you (Mark & Joy Evans). I'm trying to be a good neighbor. Everything I've done, I've done legally through the council, we ruled on that in April. I assume that ruling still stands and we're moving forward with the dock. As far as the shed that's being put up, I'm not doing a shed, but it's my understanding that you can put a 120 sq. ft. non-removable building on a lot and I'm not doing that. If my house is sold, the lot and dock will be sold with the house because it'll be part of the deed on the lot across the street so there's not going to be anybody splitting or selling it. It's going to be part of one property, that's how we're going to get it recorded and that will be in our trust. I've already made a deposit on the dock, the permit is going. That's where I'm at. Thank you.

Kendra Sprague 15645 Gardner E Rd: We bought house in blue block (on image). I was at the courthouse today and thought I'd throw out the information that we have everything in place and we don't need a permit for an 8x12
foot shed. We’re off the property line and measured over. Everything is taken care of with the meeting I had today, and I just wanted you to know that.

Walt Hutsell, 15298 Lake Road 1: Joy Evans said cutting bushes down along the property line that’s because the bushes were on the property in question. They weren’t on her property. You’re allowed to cut bushes that are growing on your own property. Regarding urinating in the bushes, I take that as a reflection on us. We live there and I’ve never seen that done. I’ve never allowed anyone to go down there and urinate in public. Also, Joy Evans does not live at the property. She rents it out, it’s a rental house. She’s not there during the weekends. We’ve already made arrangements, we’ve already spent money, he’s (Bill Pflumm) already put deposits on the dock. It’s already been approved, that was my understanding, because we didn’t move forward until we had permission to move forward. Now we feel like the arrangements have been made and when you spent money and time having it surveyed, Bill’s already put a deposit on the boat dock, there’s money that’s been spent. We feel like approval has been made and we didn’t try to do something without coming to the City Council. Thank you.

CONSENT AGENDA

1. Standing approval of the minutes as written for the regular meeting on April 15, 2019

2. Standing approval of City expenditures prepared April 12, 2019, in the amount of $797,391.80; April 19, 2019, in the amount of $656,168.40; April 19, 2019, in the amount of $1,065,241.10; April 26, 2019, in the amount of $214,402.18

3. Consider authorizing the City Administrator to enter into a contract with J,J. & J. dba Topeka Sod Farm for fairway rehabilitation at the Gardner Golf Course

4. Consider granting an easement to KCP&L to extend electric service for Gardner Golf Course

5. Consider the purchase of four (4) 2020 Ford Police Interceptor Sport Utility Vehicles (SUV) from Shawnee Mission Ford (Shawnee)

6. Consider approving an agreement for the Engineering Professional Services for the Design and Constructions Services for internal improvements in the City of Gardner, Kansas as authorized by Resolution 2012 of the City (Tuscan Farm Sanitary Lift Station)

7. Consider approving an agreement for the Engineering Professional Services for the Design and Constructions Services for internal improvements in the City of Gardner, Kansas as authorized by Resolution 2013 of the City (Tuscan Farm Phase I Improvements)

8. Consider authorizing the purchase of 8,000 gallons of fuel for the Gardner Municipal Airport

Councilmember Gregorcyk asked to remove Item 3 from the Consent Agenda

Councilmember Melton made a motion to approve items 1-2 and items 4-8 on the Consent Agenda.

Councilmember Moore Seconded.

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

Discussion of Consent Agenda Item 4

Councilmember Gregorcyk asked to clarify that this is already in the budget. Mayor Shute answered he believed that is the case. It is part of the dollars that were allocated. Parks & Recreation Director Jason Bruce stated for the record that yes, it is part of the $290,000 in additional renovations to the golf course.
Councilmember Gregorcyk made a motion to approve Consent Agenda item
Councilmember Melton Seconded. With all of the Councilmembers voting in favor of the motion, the motion carried.

COMMITTEE RECOMMENDATIONS

OLD BUSINESS

NEW BUSINESS

1. Consider approving an ordinance levying and assessing special assessments on certain lots, pieces and parcels of land liable for such special assessments to pay the costs of internal improvements in the City of Gardner, Kansas as authorized by Resolution 2012 of the City (Tuscan Farm Sanitary Lift Station)

Finance Director Matt Wolff stated this and the next item are housekeeping items related to the Tuscan Farms benefit districts approved February 18, 2019. This first ordinance is levying $1.325 million for benefit district improvements for a lift station and related site improvements for Tuscan Farms property over 15 years. Director Wolff pointed out that Bond Counsel Tyler Ellsworth and Senior Municipal Advisor Bruce Kimmel are here for questions.

Councilmember Melton made a motion to adopt Ordinance No. 2613 levying and assessing special assessments on certain lots, pieces and parcels of land liable for such special assessments to pay the costs of internal improvements in the City of Gardner, Kansas as authorized by Resolution 2012 of the City (Tuscan Farm Sanitary Lift Station Special benefit District).

Councilmember Moore Seconded. With all of the Councilmembers voting in favor of the motion, the ordinance passed and was assigned Ordinance number 2613

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

2. Consider approving an ordinance levying and assessing special assessments on certain lots, pieces and parcels of land liable for such special assessments to pay the costs of certain infrastructure improvements to serve the Tuscan Farm residential development in the City of Gardner, Kansas (Tuscan Farm Phase 1 Infrastructure)

Director Wolff stated this is similar to the last item but for the other benefit district. This ordinance levies $2.62 million dollars for benefit district improvements for Phase I infrastructure improvements for Tuscan Farms property over 15 years.
Councilmember Gregorcyk made a motion to adopt Ordinance No. 2614 levying and assessing special assessments on certain lots, pieces and parcels of land liable for such special assessments to pay the costs of certain infrastructure improvements in the City of Gardner, Kansas as authorized by Resolution 2013 of the City (Tuscan Farm Phase 1 Infrastructure Special Benefit District)

Councilmember Winters Seconded.

With all of the Councilmembers voting in favor of the motion, the ordinance passed and was assigned Ordinance number 2614

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

3. Consider adopting a resolution revising multiple sections of the Personnel Policy Manual, 2018 Edition

Human Resources Manager Alan Abramovitz brought two sections of the personnel policy manual, 2018 edition, to be updated with one resolution. The first is the police career ladders. As council may recall, at the April 1st meeting, staff revise the pay plan to include a Police Officer II position. This required 5 years’ experience and a performance rating of exceptional. After feedback from council, particularly from Councilman Winters, staff changed the requirement to state that the officer would need a performance evaluation of ‘high quality’, which is one level below exceptional, in addition to the 5 years of experience. Based on current longevity and the 2018 performance evaluations, the additional estimated cost for the Police Officer II changes is $18,886.

Mr. Abramovitz: the next item is the longevity bonus brought up by Councilman Gregorcyk requesting additional rewards for employees with longevity. Currently, the longevity bonus is $1 per month, with a minimum of $50 to start, distributed around Thanksgiving. To further enhance this program and reward longer tenured employees, staff recommends increasing the bonus to $2 a month or a minimum of $100. The current annual cost of the longevity bonus program is $16,252, and would increase to $32,504. Staff did survey some other cities. Many cities do not have any kind of bonus program. Some other cities do, but they are not as generous as ours. Some cities only reward exempt employees, but not the non-exempt employees, which defeats the purpose. Staff recommends passing the resolution to revise the personnel policies.

Mayor Shute asked Councilman Gregorcyk if he had any further concerns. Councilman Gregorcyk stated he had no more concerns, and appreciated staff working on this and finding value in it. He believes it’s a great opportunity to distinguish the City of Gardner from other cities. The cost benefit is outweighed by the tenure. Tribal knowledge is so important. He appreciates Alan and his team’s work on this.

Councilmember Gregorcyk made a motion to Adopt Resolution No. 2021 providing for the adoption of a revision to multiple sections 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 2021
4. Consider a request for a Waiver of the Distance Limitation and a special event permit to allow for the sale of cereal malt beverages within 200 feet of a school, church or library during the Smoke on the Trails BBQ Competition to be held September 27 and 28, 2019 at Celebration Park

Parks & Recreation Director Jason Bruce: this is a housekeeping item to get approval for a waiver of distance limitation for the event on September 27 and 28 for the Smoke on the Trails BBQ event. The next item is for the craft beer and wine event.

Councilmember Melton made a motion to approve a request for a Waiver of the Distance Limitation to approve a special event permit to allow for the sale of cereal malt beverages within 200 feet of a school, church or library during the Smoke on the Trails BBQ Competition to be held September 27 and 28, 2019 at Celebration Park

Councilmember Moore Seconded.

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

5. Consider a request for a Waiver of the Distance Limitation and a special event permit to allow for the distribution samples of cereal malt beverages and wine within 200 feet of a school, church or library during the Craft Beer and Wine Festival to be held September 28, 2019 at Celebration Park

Councilmember Gregorcyk made a motion to approve a request for a Waiver of the Distance Limitation and for a special event permit to allow for the distribution of samples of cereal malt beverages and wine within 200 feet of a school, church or library during the Craft Beer and Wine Festival to be held September 28, 2019 at Celebration Park

Councilmember Melton Seconded.

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

COUNCIL UPDATES

Public Works Director Michael Kramer: Last week, KDOT announced their Kansas airport improvement grants program for 2020 which starts this July 1st. Gardner Municipal Airport was awarded another grant of $100,000 for pavement improvements. This includes runway 826, striping and improvements around the taxiways and aprons. Mayor Shute stated this is great news. Director Kramer shared that this has been in their queue since 2016. Mayor Shute clarified this is for 2020 work. Director Kramer confirmed yes, this is for Kansas fiscal year 202 which actually begins July 1 of 2019.

Business & Economic Development Director Larry Powell reminded council about a regional economic development conference on May 8th, which will be held at the Johnson County Community College as part of the Johnson County Economic Development annual meeting, at 2:45. If interested in attending, please RSVP through
Director Powell’s office. The event is free, but the annual meeting does have a cost to it. It is on the city’s website if people wish to attend.

Utilities Director Gonzalo Garcia: on the Friday minute memo two weeks ago, there was an item regarding Senate Bill 69. To give a brief summary, on April 10, 2019, the Kansas governor passed Senate Bill 69 that requires the top three largest municipal electric utilities by consumer count to participate in a statewide electric rate study. Right now, the top two for sure are BPU and Garden City, and it looks like McPherson is the third, but Gardner is 4th. Right now, we are fighting between 3 and 4. We’re having a meeting on Thursday during the KMU conference to talk about this issue. Councilman Melton asked if we wanted to be 4th, correct? Director Garcia said yes, because it’s his understanding the cost of the study is $1 million.

Mayor Shute gave a quick shout out to Director Garcia’s crew for the work they did last Tuesday on the water main breaks. The water main break at Main Street was significant. It wasn’t just one break, it was several breaks that were serial in nature, in the middle of a strong rainstorm and at night. The water team did a great job with that.

Councilman Gregorcyk: While riding his bike recently, he’s ridden on some neighborhoods to the south of the railroad tracks and west of moonlight, and west of Gardner Rd. He noticed a lot of curbs in disrepair. Heavy rains have washed out some of the loose gravel as well. Question for Director Kramer, will staff reevaluate all the curbing versus when staff evaluated a year ago? Director Kramer said this has been one of his staff’s concerns as well. Kramer visited a few streets with the Public Works Superintendent. Part of the area Councilman Gregorcyk referenced was prior to Director Kramer being in his position and prior to the city doing much, if any, curb work. Some of the streets, Hawthorn, Dogwood, Acorn, etc, were in 2016 or 2017 and were skipped over due to lack of funding and lack of direction as far as if curbs were part of the project. Some of those streets, like Acorn east toward Cedar is some of the worst curb in the city, and there are several areas like that. Staff intends on going back and addressing. One area north of 167th that staff received emails about has been added to our bid on the project. Staff is concerned about neighboring streets that look worse now than when staff was out even a couple months ago. This is due primarily to the original construction of the curb and the bad aggregate. Staff plans to look at the curb program again. Councilman Gregorcyk just wanted to make sure that staff will take another look before they get engaged in the project. Director Kramer stated that some of those may not occur with this year’s project but will move forward or may do a fall project. Staff will have to see where prices come in.

Councilman Baldwin: When talking about the riprap on the spillway, if you need new material for it, is it possible to reuse some of the spillway that is torn out for that material to save costs? Director Kramer answered that it is possible but it would be pretty small for riprap.

Councilman Baldwin asked what restrictions does the city have on how big a piece of property has to be to put a dock on it? Director Kramer said the code doesn’t really speak to a size, but there are some widths of the docks themselves that are eliminated, but those are not codified. Those are in our design criteria and guidelines. Councilman Baldwin asked if there are any restrictions on the number of docks a person or property owner can have. Director Kramer was not sure that, by code, anyone could have more than one dock for their piece of property. Hearing everything, Councilman Baldwin said if we removed the roads, which everyone agreed to, you have a piece of property against the lake, everything else is semi-irrelevant, so it comes down to the side of that piece of property. They can’t keep splitting the property over and over and have pieces just big enough for a dock. If there is any clarification in council’s guidance, Councilman Baldwin believes it should be about how big a parcel has to be along the lake so that it is clear. Mayor Shute asked if they want to put a width limitation on the parcels, because the problem will be situations where there are parcels already on the lake that are tier 1 that already narrow that already have docks on them. Councilman Melton suggested making it a square footage requirement going forward. Moving forward they can’t be parcelled into something small than that. Councilman Moore asked if that was already codified. Melton said yes at the county level. Moore said the county isn’t going to let them split infinitely. Mayor Shute said the county requires any more than two divisions to be run through County
Commission. With regard to the docks, Shute suggests that staff work with the Gardner Lake Association and lake owners, they can provide good feedback.

Councilman Melton asked to show a video. He has spoken before about a crosswalk around 183rd St and Canton/Mulberry, and then another one down the street at Spruce. His video shows a child in the foreground on a bicycle crossing the street, and then at the top of the screen, there’s another child walking toward the intersection. The child comes into the intersection and looks, and finally gets a car to stop for her. As she crosses, a vehicle behind the stopped car passes and drives through the intersection because they aren’t paying attention. Melton is asking again that staff do something with these two intersections and put in a crosswalk or flashing lights so drivers don’t pass a stopped car on a double yellow line. Councilman Gregorcyk supports this as well. There are several kids that come out of that neighborhood and the one just to the west to get over to the elementary and middle schools. Melton is aware of traffic counts and other studies, but staff needs to make something happen here before someone is hurt. Director Kramer said staff did do a study when this came up previously and the city does need to do some improvements there. The improvements include extending the sidewalk on the south, changing some ramps on the north side. In order to complete the work, it requires the culvert across Mulberry to be extended. Staff is currently working with an engineer on scope and fee to do that design work. Kramer stated that the following vehicle violated our traffic ordinance and wasn’t paying attention. He urges all drivers to pay attention to what is in front of them and drive safely. Melton requested that staff do whatever it takes to get the work done before the next school year.

Councilman Winters believes all council members and some staff got an email about beaver dams. Can Director Bruce provide an update on that? Director Bruce said this is a problem staff has had in the past at Celebration Park and the Greenway. Staff hired a trapper to catch the beaver. Once the beaver is gone, staff can clear the areas.

Council President Moore: no updates

Councilman Baldwin applauded the new City Administrator. Baldwin has been asking numerous questions, and he appreciates the quick answers and support from staff.

Mayor Shute mentioned again his thanks to staff who got ahead of the bad storm last week. The city had a water pressure warning on one of our water towers. If staff were not quick and attentive, we would have had water emergencies in town and could have had a boil order. It was their quick response and the fact they stayed out until 3am to get that fixed. That’s a great testament to the customer service to the community. Staff doesn’t get enough credit when things are done right.

State of the City is next week. It will be the first official event at the new Hampton Inn Gardner Conference Center. We would like to invite all members of the community who can make it to go. It starts at 11:30am and ends at 1:00pm. Please RSVP to staff for a head count. It’s going be a great event and will showcase a new business in our community

EXECUTIVE SESSION

1. Consider entering into executive session to discuss matters of attorney/client privilege.

Mayor Shute amended the executive session by motion. The executive session originally published as discussion of the acquisition of real property was incorrect. The executive session is to discuss advice of counsel under attorney-client privilege communication.

Councilmember Melton made a motion to recess into executive session pursuant to K.S.A. 75-4319 (b) (2), for the preliminary discussion of the acquisition of real property, beginning at 8:10 p.m.; and returning to regular session at 8:55 p.m.

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

Councilmember Gregorcyk made a motion to resume regular session at 8:55 p.m.;
Councilmember Melton 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 Melton and seconded by Councilmember Winters the meeting adjourned at 8:56 p.m.

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| GARDNERPBC12 19002826 |        |                               | 00 04/30/2019      | 301-9100-491.71-02 | 2012A PBC PAYMENT                                    | CHECK #: 105  | 13,537.50
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**VENDOR TOTAL**

**HAND ISSUED TOTAL**

**EFT/EPPAY TOTAL**

**TOTAL EXPENDITURES**

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**PREPARED 05/10/2019, 8:48:30**

**PROGRAM: GM339L**

**CITY OF GARDNER**

**EXPENDITURE APPROVAL LIST**

**AS OF: 05/10/2019**

**PAYMENT DATE: 05/10/2019**

**PAGE 7**
COUNCIL ACTION FORM                                    CONSENT ITEM NO. 3
MEETING DATE:    MAY 20, 2019
STAFF CONTACT:  GONZ GARCIA, Utilities Director

Agenda Item:    Consider authorizing the execution of a Pole Attachment Agreement with Charter Communications

Strategic Priority:  Infrastructure and Asset Management

Department:    Utilities – Electric Division

Background/Description of Item:
On October 3, 2005, a pole attachment charge was added to the Municipal Code establishing an annual fee of $8.00, payable quarterly under Ordinance 2169. Embarq and Time Warner were the two telecommunication companies using the utility poles to attach their telecommunication cables.

On October 3, 2013, the Electric Utility Board (EUB) passed Resolution EUB-006 increasing the pole attachment fee to $17.95. The new fee was established following the American Public Power Association (APPA) Pole Attachment Workbook which provides municipal electric utilities with guidelines and instructions for preparing pole attachment agreements and calculating annual pole attachment fees.

With the dissolution of the EUB, on April 6, 2015, City Council passed Ordinance 2483 to revise Chapter 13.25 “Electric Rates” and incorporate previous EUB resolutions into the Municipal Code including the pole attachment fee of $17.95.

On July 16, 2015, the City received a letter from Time Warner Cable attorney to renew discussions to negotiate a new pole attachment agreement, protest the pole attachment fee and to determine a fair pole attachment fee in the new agreement. On August 11, 2015, the Utilities Director responded to the letter and provided documentation supporting the fee increase from $8.00 to $17.95 and renewing discussions to negotiate a new agreement.

The City and Time Warner Cable re-established discussion on a new agreement, but it was further delayed when Spectrum (aka Charter Communications) took over Time Warner Cable.

Staff Recommendation:
Approve Pole Attachment Agreement between City of Gardner and Charter Communications.

Financial Impact:
None.

Attachments:
- Pole Attachment Agreement
Suggested Motion:
Authorize the City Administrator to execute a Pole Attachment Agreement with Charter Communications.
POLE ATTACHMENT LICENSE AGREEMENT

This Pole Attachment Licensing Agreement (the “Agreement”) dated this ___ day of ________, 2019 is made by and between the City of Gardner, Kansas (hereinafter referred to as the “the City”), and Spectrum Mid-America, LLC (hereinafter referred to as “Licensee”).

Recitals

A. Whereas, Licensee proposes to install and maintain Communications Facilities and associated communications equipment on the City’s Poles to provide Communications Services to the public; and

B. Whereas, the City is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee’s Attachments on the City’s Poles, provided that the City may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, generally applicable engineering purposes and/or any other Applicable Standard; and

F. Therefore, in consideration of the mutual covenants, terms and conditions and remunerations herein provided, and the rights and obligations created hereunder, the parties hereto agree as follows:

AGREEMENT

Article 1—Definitions

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given herein, unless more specifically defined within a specific Article or Paragraph of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

1.1 Affiliate: when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.

1.2 Applicable Standards: means all applicable engineering and safety standards governing the installation, maintenance and operation of facilities and the performance of all work in or around electric the City Facilities and includes the most current versions of National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), current at the time of installation of such Communications Facilities, and the regulations of the Occupational Safety and Health Administration (“OSHA”), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of the City,
when not inconsistent with the NESC or the NEC, as set forth in Appendix D hereto; or other federal, state or local authority with jurisdiction over the City or Communications Facilities.

1.3 **Assigned Space:** means space on the City’s Poles or within the City’s Conduit System that can be used, as defined by and subject to the Applicable Standards, for the attachment or placement of wires, cables and associated equipment for the provision of Communications Service or electric service. The neutral zone or safety space is not considered Assigned Space.

1.4 **Attaching Entity:** means any public or private entity, other than the City or Licensee, who, pursuant to a license agreement with the City, places an Attachment on the City’s Pole or within the City’s Conduit System to provide Communications Service.

1.5 **Attachment(s):** means Licensee’s Communications Facilities that are placed directly on the City’s Poles by means of a through bolt within one foot of vertical space, or Overlashed onto an existing Attachment or that are placed within the City’s Conduit System, but does not include either a Riser or a service drop attached to a single Pole where Licensee has an existing Attachment on such Pole. Notwithstanding the foregoing, Overlapping, as defined in Section 1.16 of this agreement and service drops, shall not require a permit application or incur any separate or additional Attachment Fee.

1.6 **Capacity:** means the ability of a Pole or Conduit System segment to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.

1.7 **Climbing Space:** means that portion of a Pole’s surface and surrounding space that is free from encumbrances to enable the City and Licensee’s respective employees and contractors to safely climb, access and work on, respectively, the City Facilities and equipment or Licensee’s Attachments and Communications Facilities.

1.8 **Common Space:** means space on the City’s Poles that is not used for the placement of wires or cables but which jointly benefits all users of the Poles by supporting the underlying structure and/or providing safety clearance between the facilities of Licensee and Attaching Entities and electric the City Facilities.

1.9 **Communications Facilities:** means wire or cable facilities including but not limited to fiber optic, copper and/or coaxial cables or wires utilized to provide Communications Service including any and all associated equipment.

1.10 **Communications Service:** means the transmission or receipt of voice, video, data, Internet or other forms of digital or analog signals over Communications Facilities.

1.11 **Conduit System:** means the City’s conduits, Innerduct, manholes, vaults, Risers, pull-boxes and trenches.
1.12 **Innerduct:** means flexible conduit installed inside a larger rigid conduit for the placement of wire or cable.

1.13 **Licensee:** means Time Spectrum Mid-America, LLC, its authorized successors and assignees.

1.14 **Make-Ready Work:** means all work, as reasonably determined by the City, required to accommodate Licensee’s Communications Facilities and/or to comply with all Applicable Standards. Such work may include, but is not limited to, Pre-Construction Survey, rearrangement and/or transfer of the City Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), pole replacement and construction, or Conduit System clearing.

1.15 **Occupancy:** means the use or specific reservation of Assigned Space for Attachments on the same the City Pole or portion of the City’s Conduit System.

1.16 **Overlash:** means to place an additional wire or cable Communications Facility onto an existing Attachment owned by Licensee.

1.17 **Pedestals/Vaults/Enclosures:** means above- or below-ground housings that are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices, or other facilities, and/or to provide a service connection point.

1.18 **Permit:** means written or electronic authorization (see Appendix C) of the City for Licensee to make or maintain Attachments to specific the City Poles or spans of the Conduit System pursuant to the requirements of this Agreement.

1.19 **Pole:** means a pole owned by the City used for the distribution of electricity and/or Communications Service that is capable of supporting Attachments for Communications Facilities.

1.20 **Post-Construction Inspection:** means an inspection that may be conducted by the City to determine and verify that the Attachments have been made in accordance with Applicable Standards and the Permit.

1.21 **Pre-Construction Survey:** means all work or operations required by Applicable Standards and/or the City to determine the potential Make-Ready Work necessary to accommodate Licensee’s Communications Facilities on a Pole or within a span of the Conduit System. Such work may include, but is not limited to, field inspection and administrative processing. The Pre-Construction Survey shall be coordinated with the City and include Licensee’s professional engineer, or other qualified Licensee employee or contractor.
1.22 **Reserved Capacity**: means capacity or space on a Pole or within a portion of the Conduit System that the City has identified and reserved for its own electric utility requirements at the time of the Permit grant, including the installation of communications circuits solely for operation of the City’s electric system, pursuant to a bona fide development plan that reasonably and specifically projects a need for such space.

1.23 **Riser**: means metallic or plastic encasement materials placed on the Pole to guide and protect communications wires and cables.

1.24 **Tag**: means to place distinct markers on wires and cables, coded by color or other means the City that will readily identify the Attachment owner.

1.25 **City Facilities**: means all personal property and real property owned or controlled by the City, including Poles and Conduit System.

**Article 2—Scope of Agreement**

2.1 **Grant of License.** Subject to the provisions of this Agreement, the City hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain Permitted Attachments to the City’s Poles and to install its Communications Facilities within the City’s Conduit System.

2.2 **Parties Bound by Agreement.** Licensee and the City agree to be bound by all provisions of this Agreement.

2.3 **Permit Issuance Conditions.** The City will issue a Permit(s) to Licensee on a nondiscriminatory basis. The City may deny Licensee access to the City poles only if the following conditions are met (i) the City Facilities have insufficient Capacity to accommodate the requested Attachment(s) (and their Capacity cannot be expanded pursuant to Paragraph 2.8 herein), or (ii) for reasons of safety and reliability, and (iii) Licensee is unable to or has not resolved these issues.

2.4 **Reserved Capacity.** Access to Assigned Space on City Poles will be made available to Licensee with the understanding that the City may reclaim such Assigned Space subject in each case to the provisions of Paragraph 1.22 of this Agreement and the provisions of this Paragraph 2.4. On giving Licensee at least one hundred twenty (120) calendar days prior notice, the City may reclaim such Reserved Capacity anytime during the period following the installation of Licensee’s Attachment in which this Agreement is effective if such space is reasonably required for the City’s future electric service use, including the attachment of communications lines solely for internal utility operational or public safety emergency communications requirements. The City shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity so that Licensee can maintain its Attachment on
the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Article 9. The City shall timely consider Licensee’s application and shall complete required Make-Ready Work on the affected Pole(s), or necessary to make ready any alternative Capacity, in a timely fashion pursuant to the terms hereof.

2.5 **No Interest in Property.** No use, however lengthy, of any City Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of the City’s rights to City Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a licensee only.

2.6 **Licensee’s Right to Attach.** Nothing in this Agreement, other than a Permit issued pursuant to Article 6, shall be construed as granting Licensee any right to attach Licensee’s Communications Facilities to any specific Pole or within any specific portion of the Conduit System.

2.7 **The City’s Rights over Poles.** The parties agree that this Agreement does not in any way limit the City’s right to locate, operate, maintain or remove its Poles or Conduit System in the nondiscriminatory manner that will best enable it to fulfill its core electric utility service requirements.

2.8 **Expansion of Capacity.** The City will take reasonable steps, pursuant to Applicable Standards, to expand Pole/Conduit System Capacity on a nondiscriminatory basis when necessary to accommodate Licensee’s request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require the City to install, retain, extend or maintain any Pole or portion of the Conduit System for use when such Pole/Conduit System is not needed for the City’s service requirements.

2.9 **Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit the City from fulfilling any agreement or arrangement regarding Poles into which the City has previously entered, or may enter in the future on a nondiscriminatory basis, with others not party to this Agreement. Such other agreements or arrangements shall not interfere with the rights granted to Licensee by this Agreement and specific Permits issued pursuant to this Agreement.
2.10 **Permitted Uses.** This Agreement is limited to the uses specifically stated in the recitals stated above and no other use shall be allowed without the City’s express written consent to such use. Nothing in this Agreement shall be construed to require the City to allow Licensee to use the City’s Poles or Conduit System after the final and effective termination of this Agreement, provided that Licensee may continue to use such the City Facilities during the pendency of good faith negotiations to renew or replace this Agreement or the resolution of a good faith dispute regarding the terms hereof.

2.11 **Overlashing.** The following provisions will apply to Overlashing:

2.11.1 Notwithstanding the requirements of Article 6, a Permit shall not be required for Overlashing Licensee’s existing Attachments.

2.11.2 Licensee shall provide notice of Overlashing Licensee’s existing Attachments within thirty (30) days of completion. Overlashing performed pursuant to this Paragraph 2.11.2 shall not increase the Annual Attachment Fee paid by Licensee pursuant to Appendix A, Item 1. Licensee, however, shall be responsible for all Make-Ready Work and other charges associated with the Overlashing but shall not be required to pay a separate Annual Attachment Fee for such Overlashed Attachment.

2.11.3 If Overlashing is required to accommodate facilities of a third party, such third party must enter into a license agreement with the City and obtain Permits and must pay a separate Attachment Fee (Appendix A, Item 1) as well as the costs of all necessary Make-Ready Work required to accommodate the Overlashing. No such Permits to third parties may be granted by the City allowing Overlashing of Licensee’s Communications Facilities unless Licensee has consented in writing to such Overlashing. Overlashing performed under this Paragraph 2.11.3 shall not increase the fees and charges paid by Licensee pursuant to Appendix A, Item 1. Nothing in this Agreement shall prevent Licensee from seeking a contribution from an Overlashing third party to defray fees and charges paid by Licensee.

2.11.4 Make-Ready Work procedures set forth in Article 7 shall apply, as necessary, to all Overlashing.

2.12 **Enclosures.** Licensee shall not place Pedestals, Vaults and/or other Enclosures on or within four (4) feet of any Pole or other the City Facilities without the City’s prior written permission. If permission is granted, all such installations shall be per the Specifications and Drawings in Appendix D of this Agreement and charges as provided in Appendix A. Such permission shall not be unreasonably withheld.

**Article 3—Fees and Charges**
3.1 **Payment of Fees and Charges.** Licensee shall pay to the City the fees and charges specified in Appendix A and shall comply with the terms and conditions specified herein.

3.2 **Payment Period.** Unless otherwise expressly provided, Licensee shall pay any undisputed invoice it receives from the City pursuant to this Agreement within thirty (30) calendar days after Licensee receives the invoice.

3.3 **Billing of Attachment Fee.** The City shall invoice Licensee for the per-pole Attachment Fee annually. The City will submit to Licensee an invoice for the annual rental period no later than July 31st of each year. The initial annual rental period shall commence upon the execution of this Agreement and conclude on June 30th of the next year, and each subsequent annual rental period shall commence on the following July 1st and conclude on June 30th of the subsequent year. The invoice shall set forth the total number of the City’s Poles on which Licensee was issued and/or holds a Permit(s) for Attachments during such annual rental period, including any previously authorized and valid Permits, but excluding service drops. The City will bill Licensee for the per-pole Annual Attachment Fee on an annual basis.

3.4 **Refunds.** No fees and charges specified in Appendix A shall be refunded on account of any surrender of a Permit granted hereunder. Notwithstanding the foregoing, a refund of annual rental fees shall be made on a pro-rata basis for the period of time Licensee is unable to occupy Poles if a Pole or portion of Conduit System is abandoned by the City or the City reclaims Reserved Capacity that Licensee is occupying.

3.5 **Late Charge.** If the City does not receive payment for any undisputed fee or other amount owed within forty-five (45) calendar days after it becomes due, Licensee shall pay late penalties to the City, at the rate set for that period by the Internal Revenue Service for individual underpayments pursuant to Section 6621 of the Internal Revenue Code per annum.

3.6 **Payment for Work.** Licensee will be responsible for payment to the City for all reasonably necessary work the City or the City’s contractors perform pursuant to this Agreement to accommodate Licensee’s Communications Facilities.

3.7 **Advance Payment.** At the discretion of the City, Licensee may be required to pay in advance all reasonable costs that are not otherwise recovered in the annual Attachment Fee, including but not limited to administrative, construction, inspections and Make-Ready Work expenses set forth in this Agreement, in connection with the initial installation or rearrangement of Licensee’s Communications Facilities pursuant to the procedures set forth in Articles 6 and 7 below.

3.8 **True Up.** Wherever the City, at its discretion and pursuant to Paragraph 3.7, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Licensee and the actual, reasonable cost of activity exceeds the advance payment of estimated expenses, Licensee agrees to pay the City for the difference in cost. To the
extent that the actual cost of the activity is less than the estimated cost, the City agrees to refund to Licensee the difference in cost.

3.9 **Determination of Charges.** Wherever this Agreement requires Licensee to pay for work done or contracted by the City, the charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overhead costs not otherwise recovered in the annual Attachment Fee or recouped by City. The City shall bill its services based upon actual, reasonable costs, and such costs will be determined in accordance with the City’s cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed and materials used and cost of materials. If Licensee was required to perform work and fails to perform such work necessitating its completion by the City, Licensee shall reimburse City for such work pursuant to the terms of this Paragraph 3.9.

3.10 **Work Performed by the City.** Wherever this Agreement requires the City to perform any work, Licensee acknowledges and agrees that the City, at its sole and reasonable discretion, may utilize its employees or contractors, or any combination of the two to perform such work.

3.11 **Default for Nonpayment.** Nonpayment of any undisputed amount due under this Agreement beyond ninety (90) days shall constitute a material default of this Agreement.

**Article 4—Specifications**

4.1 **Installation/Maintenance of Communications Facilities.** When a Permit is issued pursuant to this Agreement, Licensee’s Communications Facilities shall be installed and maintained in accordance with the Applicable Standards, including but not limited to the requirements and specifications of Appendix D. All of Licensee’s Communications Facilities must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Communications Facilities. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards in effect at the time of attachment. Notwithstanding anything in this Agreement to the contrary, Licensee is not required to update or upgrade its Attachments where not required to do so by either the NESC or the NEC.

4.2 **Tagging.** Licensee shall Tag all of its Communications Facilities on a going forward basis, as specified in Appendix D and/or applicable federal, state and local regulations upon installation of such Facilities. Prior authorized Attachments of Licensee shall be tagged as and when Licensee performs routine maintenance on such Attachments.

4.3 **Interference.** Licensee shall not knowingly allow its Communications Facilities to impair the ability of the City or any third party to use the City’s Poles or Conduit System,
nor shall Licensee knowingly allow its Communications Facilities to interfere with the operation of any of the City Facilities.

4.4 **Protective Equipment.** Licensee, and its employees and contractors, shall utilize and install adequate protective equipment as required by Applicable Standards to ensure the safety of people and facilities. Licensee shall at its own expense install grounding equipment, as required by the NESC, designed to handle the voltage and current impressed on its Communications Facilities in the event of a contact with the supply conductor.

4.5 **Violation of Specifications.** If Licensee’s Communications Facilities, or any part thereof, are installed, used or maintained in violation of the Applicable Standards, and Licensee has not corrected the violation(s) within sixty (60) calendar days from receipt of written notice of the violation(s) from the City, or, if correction of the violation would reasonably require more than sixty (60) days to complete, upon a mutually agreed upon extended time period, the City at its option, may correct such conditions. The City will provide Licensee with thirty (30) calendar days’ notice in writing prior to performing such work whenever practicable. When the City reasonably determines, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of the City’s service obligations or pose an immediate threat to the physical integrity of the City Facilities, the City may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. In such event, the City shall provide oral notice or written notice as early as practicable prior to performing such work, and if no prior notice is possible, The City shall, as soon as practicable thereafter, advise Licensee of the work performed or the action taken. Licensee shall be responsible for all costs incurred by the City in taking action pursuant to this Paragraph.

4.6 **Restoration of City Service.** The City’s core electric service restoration requirements shall take precedence over any and all work operations of Licensee on the City’s Poles or within the City’s Conduit System.

4.7 **Interference Test Equipment.** To the extent Licensee furnishes cable television service it shall maintain test equipment, if and as required by the Federal Communications Commission, to identify signal interference to its customers, and shall not identify the City as the source of such interference absent a test report verifying the source.

4.8 **Removal of Nonfunctional Attachments.** At its sole expense, Licensee shall remove any of its Attachments or any part thereof that becomes nonfunctional and no longer fit for service (“Nonfunctional Attachment”) as provided in this Paragraph 4.9. A Nonfunctional Attachment that Licensee has failed to remove as required in this paragraph shall constitute an unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A, Item 3. Except as otherwise provided in this Agreement, Licensee shall remove Nonfunctional Attachments within one (1) year of the Attachment becoming nonfunctional, unless Licensee receives written notice from the City that removal is necessary to accommodate the City’s or another Attaching Entity’s use of the affected
Pole(s) or portion of the Conduit System, in which case Licensee shall remove the Nonfunctional Attachment within sixty (60) days of receiving the notice. Where Licensee has received a Permit to Overlash a Nonfunctional Attachment, such Nonfunctional Attachment may remain in place until the City notifies Licensee that removal is necessary to accommodate the City’s or another Attaching Entity’s use of the affected Pole(s) and need not be removed pursuant to this Paragraph 4.9.

Article 5—Private and Regulatory Compliance

5.1 Necessary Authorizations. Licensee shall be responsible for obtaining from the appropriate public authority and/or private party or other appropriate persons any required authorization to construct, operate and/or maintain its Communications Facilities on public and/or private property before it occupies any portion of the City’s Poles. Licensee’s obligations under this Article 5 include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way and to pay costs chargeable to Licensee and associated therewith. Lawful Purpose and Use. Licensee’s Communications Facilities must at all times serve a lawful purpose, and the use of such Communications Facilities must comply with all applicable federal, state and local laws.

5.2 Forfeiture of the City’s Rights. No Permit granted under this Agreement shall extend to any Pole or within any Conduit System on/in which the Attachment of Licensee’s Communications Facilities would result in a forfeiture of the City’s rights. Any Permit, which on its face would cover Attachments that would result in forfeiture of the City’s rights, is invalid. Further, if any of Licensee’s existing Communications Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall remove its Communications Facilities within thirty (30) days of receipt of written notice from the City. The City will perform such removal at Licensee’s expense not sooner than the expiration of thirty (30) calendar days from Licensee’s receipt of the written notice.

5.3 Effect of Consent to Construction/Maintenance. Consent by the City to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization or an acknowledgment that Licensee has the authority required under Paragraph 5.1 to construct or maintain any other such Attachments.

Article 6—Permit Application Procedures

6.1 Permit Required. Licensee shall not install any Attachments on any Pole or within any of the City’s Conduit System without first applying for and obtaining a Permit pursuant to the applicable requirements of Appendix B. Unless otherwise notified, Pre-existing authorized Attachment(s) of Licensee as of the effective date of this Agreement shall be grandfathered with respect to Permitting, but shall be subject to the Attachment Fees. Attachments to or rights to occupy City Facilities not covered by this Agreement must be separately negotiated.
6.2 **Permits Not Required for Overlapping.** As set out in Paragraph 2.11, Permits are not required for any Overlapping allowed under this Agreement and Licensee, Licensee’s Affiliate or other third party, as applicable, shall pay any necessary Make-Ready Work costs to accommodate such Overlapping. **Notwithstanding anything to the contrary in this Agreement, Licensee may Overlash Licensee’s own Communications Facilities onto Licensee’s existing Attachments so long as Licensee provides notice within thirty (30) days after such Overlapping has been completed; provided, that Licensee shall ensure at the time of installation that such Overlash complies with Applicable Standards; provided further, that Licensee shall remain responsible, pursuant to the terms of Article 7, for Make-Ready Work, if any, necessary to accommodate the Overlash.**

6.3 **Qualified and Experienced Employee Statement.** Unless otherwise waived in writing by the City, as part of the Permit application process and at Licensee’s expense, a qualified and experienced senior employee or contractor of Licensee must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and state in writing that Licensee’s Attachments can be and were installed on the identified Poles or within specified portions of the Conduit System in compliance with the Applicable Standards and in accordance with the Permit. Such engineer’s, employee’s or contractor’s qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems.

6.4 **City Review of Permit Application.** Upon receipt of a properly executed Application for Permit (Appendix C), signed per Paragraph 6.3 above, and prepared in accordance with the requirements of Appendix D, the City will review the Permit Application as promptly as possible, conduct a Pre-Construction Inspection, and shall approve or deny the application within thirty (30) days. In considering Licensee’s Application, the City shall discuss any issues concerning approval or denial of the Application with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. City acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis.

6.5 **Permit as Authorization to Attach.** After receipt of payment for any necessary Make-Ready Work, the City will sign and return the Permit Application, which shall serve as authorization for Licensee to make its Attachment(s).

6.6 **Notification to the City.** Within thirty (30) days of completing the installation of an Attachment (including Overlash and/or Service Drops) Licensee shall provide written notice to the City.
Article 7—Make-Ready Work/Installation

7.1 Estimate for Make-Ready Work. In the event the City determines that it can accommodate Licensee’s request for Attachment(s), including Overlashing of an existing Attachment, it will advise Licensee of any estimated charges for Make-Ready Work necessary to accommodate the Attachment.

7.2 Payment of Make-Ready Work. Upon completion of the Make-Ready Work, the City shall invoice Licensee for the City’s actual, reasonable cost of such Make-Ready Work. Alternatively, the City, at its discretion, may require payment in advance for Make-Ready Work based upon the estimated cost of such work. In such case, pursuant to Paragraph 3.8, upon completion Licensee shall pay the City’s actual, reasonable cost of Make-Ready Work or the City shall provide a refund to Licensee for overpayments. The costs of the work shall be itemized as per Paragraph 3.9 and trued up as per Paragraph 3.8.

7.3 Who May Perform Make-Ready Work. Make-Ready Work shall be performed only by the City and/or a contractor authorized by the City to perform such work. If the City cannot perform the Make-Ready Work to accommodate Licensee’s Communications Facilities within thirty (30) calendar days of Licensee’s request for Attachments, Licensee may employ a qualified contractor to perform such work.

7.4 Scheduling of Make-Ready Work. In performing all Make-Ready Work to accommodate Licensee’s Communications Facilities, the City will endeavor to include such work in its normal work schedule. In the event Licensee requests that the Make-Ready Work be performed on a priority basis or outside of the City’s normal work hours, Licensee agrees to pay any reasonable resulting increased costs. Nothing herein shall be construed to require performance of Licensee’s work before other scheduled work or the City’s core electric utility service restoration.

7.5 Written Approval of Installation Plans Required. Before making any Attachments that are subject to Paragraph 6.1 to the City’s Poles or Conduit System, excluding Overlashing of Licensee’s existing Attachments, the applicant must obtain the City’s written approval of detailed plans for the Attachments. Such detailed plans shall accompany a Permit Application as required under Paragraph 6.4.

7.6 Licensee’s Installation/Removal/Maintenance Work.

7.6.1 All of Licensee’s installation, removal and maintenance work shall be performed at Licensee’s sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of the City’s Poles, Conduit System or other Facilities or other Attaching Entity’s facilities or equipment attached thereto. All such work is subject to the insurance requirements of Article 18.

7.6.2 All of Licensee’s installation, removal and maintenance work performed on the City’s Poles or within its Conduit System or in the vicinity of other the City
Facilities, either by its employees or contractors, shall be in compliance with the Applicable Standards. Licensee shall require any person installing, maintaining, or removing its Communications Facilities to be fully qualified and familiar with all Applicable Standards, and with the applicable provisions of Article 17. Notwithstanding anything in this Agreement to the contrary, Licensee is not required to update or upgrade its Attachments where not required to do so by either the NESC or the NEC.

Article 8—Transfers

8.1 **Required Transfers of Licensee’s Communications Facilities.** If the City reasonably determines that a transfer of Licensee’s Communications Facilities is necessary, Licensee agrees to allow such transfer. In such instances, and subject to the provisions of Paragraph 9.4 herein, Licensee shall perform such transfer within sixty (60) calendar days after receiving notice from the City for requests involving ten (10) Poles or less. For requests involving more than ten (10) Poles, Licensee shall perform such rearrangement or transfer in a mutually agreeable time period. If Licensee fails to transfer its Facilities within the applicable time period after receiving such notice from the City, the City shall have the right to transfer Licensee’s Facilities using its personnel and/or contractors at Licensee’s expense. The City shall not be liable for damage to Licensee’s Facilities except to the extent provided in Paragraph 16.1. The written advance notification requirement of this Paragraph shall not apply to emergency situations, in which case the City shall provide such advance notice as is practical given the urgency of the particular situation. The City shall then provide written notice of any such actions taken within ten (10) days of the occurrence. Irrespective of who owns them, Licensee is responsible for the transfer of Facilities that are overlashed on to Licensee’s Attachments.

8.2 **Billing for Transfers Performed by the City.** If the City performs the transfer(s), the City will bill Licensee for actual, reasonable costs per Paragraph 3.9 and subject to Paragraph 9.4 herein. Licensee shall reimburse the City within thirty (30) calendar days of the Licensee’s receipt of the invoice.

Article 9—Pole Modifications And/Or Replacements

9.1 **Licensee’s Action Requiring Modification/Replacement.** In the event that any Pole to which Licensee desires to make or maintain Attachment(s) does not have sufficient Capacity to support or accommodate Communication Facilities in accordance with all Applicable Standards, the City will notify Licensee of the Make-Ready Work necessary solely in order to accommodate Licensee’s Communications Facilities, and associated costs to perform such work or provide sufficient Capacity and an adequate Pole, including but not limited to replacement of the Pole and rearrangement or transfer of the City’s Facilities. the City shall facilitate Licensee contact with other Attaching Entities to negotiate any separate agreement with other Attaching Entities concerning the allocation of costs for the relocation or rearrangement of such entities’ existing Attachments.
Licensee elects to go forward with the necessary changes, Licensee shall pay to the City, subject to the terms of Paragraph 9.4, the actual, reasonable cost of the Make-Ready Work performed by the City, per Paragraph 3.9. The City, at its discretion, may require advance payment. Licensee shall also be responsible for obtaining, and furnishing to the City, upon the City’s reasonable request and before the commencement of any Make-Ready Work, agreements between Licensee and the other Attaching Entities (including Overlashers) concerning the relocation or rearrangement of their Attachments and the costs involved.

9.2 **Treatment of Multiple Requests for Same Pole.** If the City receives Permit Applications for the same Pole from Licensee and from one or more additional existing or prospective licensees within thirty (30) calendar days of the initial request for such pole, and accommodating their respective requests would require modification or replacement of the Pole, the City will allocate among such Licensee and such Attaching Entities the applicable costs associated with such modification or replacement. Such allocation applies only to work required to provide sufficient Capacity for Attachments and shall not apply to Risers and/or other equipment.

9.3 **Guying.** The use of guying to accommodate Licensee’s Attachments shall be provided by and at the expense of Licensee and to the satisfaction of the City as specified in Appendix D. Licensee shall not attach its guy wires to the City’s anchors without prior written permission of the City.

9.4 **Allocation of Costs.** The costs for any rearrangement or transfer of Licensee’s Communications Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming solely required in order to clear the new location of the City’s cables or wires) shall be allocated to the City and/or Licensee and/or other Attaching Entity on the following basis:

9.4.1 If the City intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole. Licensee, however, shall be responsible for all costs associated with the rearrangement or transfer of Licensee’s Communications Facilities. Prior to making any such modification or replacement the City shall provide Licensee written notification of its intent in order to allow Licensee a reasonable opportunity to elect to modify or add to its existing Attachment. Should Licensee so elect, it must seek the City’s written permission according to the terms of this Agreement. The notification requirement of this Paragraph 9.4.1 shall not apply to routine maintenance or emergency situations. If Licensee elects to add to or modify its Communications Facilities, Licensee shall bear the total incremental costs incurred by the City in providing additional Capacity solely for Licensee’s Attachments or otherwise incurred solely as a result of Licensee’s addition to or modification of its Communications Facilities.
9.4.2 If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than the City or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or transferring Licensee’s Communications Facilities. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee’s facilities.

9.4.3 If the Pole must be modified or replaced for other reasons unrelated to the use of the Pole by Attaching Entities (e.g., storm, accident, deterioration), the City shall pay the costs of such modification or replacement; provided, however, that Licensee shall be responsible for the costs of rearranging or transferring its Communications Facilities.

9.4.4 If the modification or replacement of a Pole is necessitated by the requirements of Licensee, Licensee shall be responsible for the costs related to the modification or replacement of the Pole and for the costs associated with the transfer or rearrangement of any other Attaching Entity’s Communications Facilities. Licensee shall reimburse all affected Attaching Entities for the transfer or rearrangement of Attaching Entities facilities. Subject to Paragraph 9.1, the City shall not be obligated in any way to enforce or administer Licensee’s responsibility for or payment of the costs associated with the transfer or rearrangement of another Attaching Entity’s Facilities pursuant to this Paragraph 9.4.4.

9.5 **City Not Required to Relocate.** No provision of this Agreement shall be construed to require the City to relocate its facilities or modify/replace its Poles for the benefit of Licensee, provided, however, that any denial by the City of Licensee’s request for modification of the pole shall be based on nondiscriminatory standards of general applicability.

**Article 10—Abandonment or Removal of City Facilities**

10.1 **Notice of Abandonment or Removal of City Facilities.** If the City desires at any time to abandon, remove or underground any City electric facilities to which Licensee’s Communications Facilities are attached, it shall give Licensee notice in writing to that effect at least ninety (90) calendar days prior to the date on which it intends to abandon or remove such City’s electric facilities. Notice may be limited if the City is required to remove or abandon the City’s electric facilities as the result of the lawful action of or the exercise of a contractual right by a third party. The City shall give notice of any removal for the benefit of a third party as soon as practicable, but not less than sixty (60) days. Such notice shall indicate whether the City is offering Licensee an option to purchase the Pole(s). In the event removal is required for the benefit of a third party, nothing in this Agreement shall prohibit Licensee from seeking reimbursement from such
third party for the costs associated with Licensee’s removal and/or transfer of its Communications Facilities, and the City agrees not to interfere with any such request. If, following the expiration of the applicable period, Licensee has not yet removed and/or transferred all of its Communications Facilities therefrom and has not entered into an agreement to purchase the City’s Facilities pursuant to Paragraph 10.2, the City shall have the right, subject to any applicable laws and regulations, to have Licensee’s Communications Facilities removed and/or transferred from the Pole at Licensee’s expense. The City shall give Licensee additional prior written notice of any such removal or transfer of Licensee’s Facilities.

10.2 **Option to Acquire Abandoned Poles.** Should the City desire to abandon any Pole, the City, in its sole and reasonable discretion, may grant Licensee the option of acquiring such Pole at a rate negotiated with the City. Licensee must notify the City in writing within sixty (60) calendar days of receipt of the City’s notice of abandonment that Licensee desires to acquire the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Pole within sixty (60) calendar days of Licensee’s receipt of such notice. Should Licensee fail to secure the necessary governmental approvals, or should the City and Licensee fail to enter into an agreement for Licensee to acquire the Pole prior to the end of the sixty (60) calendar days, the City may require Licensee to remove its Attachments as required under Paragraph 10.1. the City is under no obligation to sell Licensee Poles that it intends to remove or abandon, however, the City shall give Licensee option to acquire abandoned Poles on a nondiscriminatory basis whenever practicable.

10.3 **Underground Relocation.** If the City moves any portion of its aerial system underground, Licensee shall remove its Communications Facilities from any affected Poles within sixty (60) calendar days of receipt of notice from the City and either relocate its affected Facilities underground with the City or find other means to accommodate its Facilities or accept a transfer of ownership of the affected poles from the City.

**Article 11—Removal of Licensee’s Facilities**

**Removal on Expiration/Termination.** At the expiration or other termination of this License Agreement or individual Permit(s), and subject to Paragraph 2.10 hereof, Licensee shall remove its Communications Facilities from the affected Poles or portions of Conduit System at its own expense. If Licensee fails to remove such facilities within ninety (90) calendar days of expiration or termination of any Permit(s), or within such other greater period as allowed by the City, the City shall have the right to have such facilities removed at Licensee’s expense.
Article 12—Termination of Permit

12.1 **Automatic Termination of Permit.** Any Permit issued pursuant to this Agreement shall terminate upon a final determination that Licensee does not have or otherwise ceases to have authority to construct and operate its Communications Facilities on public or private property at the location of the particular Pole(s)/portion of the Conduit System covered by such Permit.

12.2 **Surrender of Permit.** Licensee may at any time surrender any Permit for Attachment and remove its Communications Facilities from the affected Pole(s) or segment of the Conduit System, provided, however, that before commencing any such removal Licensee shall notify the City of Licensee’s plans for removal, including the name of the party performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article 18. No refund of Attachment Fees or for any payments made by Licensee for Make-Ready Work on the affected Pole or segment will be made by the City upon removal by Licensee. If Licensee surrenders such Permit pursuant to the provisions of this Article, but fails to remove its Attachments from the City’s Facilities within sixty (60) calendar days thereafter, the City shall have the right to remove Licensee’s Attachments at Licensee’s expense.

Article 13—Inspection of Licensee’s Facilities

13.1 **Inspections.** The City may conduct an inventory and inspection of Attachments at any time at City’s expense. Licensee shall correct all Licensee Attachments that are not in compliance with Applicable Standards within sixty (60) calendar days of Licensee’s receipt of notification of such non-compliance. Licensee will not be responsible for the costs associated with violations caused by others that are not affiliated or acting under the direction of Licensee, but Licensee shall be responsible for the actual and documented cost of any necessary or appropriate corrective measures associated with violations caused by Licensee. The City shall reimburse Licensee for the actual reasonable costs associated with corrections of violations not caused by Licensee. If it is found that Licensee has made an Attachment without a Permit, Licensee shall pay a fee as specified in Appendix A, Item 3 in addition to applicable Application and Make-Ready charges. If it is undisputed that five percent (5%) or more of Licensee’s Attachments are either in non-compliance or not permitted, Licensee shall pay its pro-rata share of the costs of the inspection.

13.2 **Notice.** The City will give Licensee reasonable advance written notice of such inspections, except in those instances where safety considerations justify such inspections without waiting until written notice has been received.

13.3 **No Liability.** Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon the City any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability under this Agreement.
13.4 **Attachment Records.** Notwithstanding the above inspection provisions, Upon written request from the City, Licensee is obligated to furnish the City a map depicting the attachment routing of its Attachments in an electronic format; provided that Licensee shall not be obligated to purchase any new equipment or software, including but not limited to any specific mapping software, in order to comply with the requirements of this Paragraph 13.4; provided further that any such map furnished by Licensee hereunder shall be considered proprietary information of Licensee, and shall be accorded confidential treatment by the City to the fullest extent allowed by applicable law.

13.5 **Baseline Inventory.** In addition to the inventories described in Section 13.1, Licensor shall conduct a baseline inventory of any attached Poles that currently include Licensee’s Attachments. The baseline inventory shall be conducted in accordance with the requirements set forth in this Article 13 for inventories in general. All Attachments by Licensee that are identified in the baseline inventory shall be deemed authorized. The baseline inventory shall occur within twelve (12) months of the effective date of this Agreement.

**Article 14—Unauthorized Occupancy or Access**

14.1 **Unauthorized Attachment Fee** Except for existing Attachments as of the execution date of this Agreement, all of which are grandfathered and permitted hereby, if any of Licensee’s Attachments are found occupying any Pole or segment of the Conduit System for which no Permit has been issued, the City, without prejudice to its other rights or remedies under this Agreement, may assess an Unauthorized Attachment Fee as specified in Appendix A, Item 3, which shall be paid in lieu of back rent.

14.2 **No Ratification of Unlicensed Use.** No act or failure to act by the City with regard to any unlicensed use shall be deemed as ratification of the unlicensed use and if any Permit should be subsequently issued, such Permit shall not operate retroactively or constitute a waiver by the City of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities as set forth in this Agreement in regards to the unauthorized use from the inception of such use.

**Article 15—Reporting Requirements**

Concurrently with Licensee’s Attachment Fee payment and using the reporting form contained in Appendix E, Licensee shall report the following to the City:

15.1 The Poles on which Licensee has installed, during the relevant reporting period, Attachments.
Article 16—Indemnification

16.1 Indemnification. TO THE EXTENT PERMITTED BY LAW, EACH PARTY (THE “INDEMNIFYING PARTY”) HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE OTHER PARTY (THE “INDEMNIFIED PARTY”), ITS OFFICERS, EMPLOYEES AND AGENTS (AS APPLICABLE), FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, ACTIONS, LIABILITY, LOSS, DAMAGE, EXPENSE, COST (INCLUDING, WITHOUT LIMITATION, COSTS AND FEES OF LITIGATION) OF EVERY NATURE, KIND OR DESCRIPTION, WHICH MAY BE BROUGHT AGAINST, OR SUFFERED OR SUSTAINED BY, THE INDEMNIFIED PARTY, ITS OFFICERS, EMPLOYEES OR AGENTS CAUSED BY, OR ALLEGED TO HAVE BEEN CAUSED BY, THE NEGLIGENCE, INTENTIONAL TORTIOUS ACT OR OMISSION, OR WILLFUL MISCONDUCT OF OR BREACH OF CONTRACT BY THE INDEMNIFYING PARTY, ITS COUNCIL, BOARDS, COMMISSIONS, OFFICERS, EMPLOYEES OR AGENTS (AS APPLICABLE) IN THE PERFORMANCE OF ANY SERVICES OR WORK PURSUANT TO THIS AGREEMENT. THE DUTY OF THE INDEMNIFYING PARTY TO INDEMNIFY AND HOLD HARMLESS, AS SET FORTH HEREIN, SHALL INCLUDE THE DUTY TO DEFEND.

16.2 Procedure for Indemnification.

16.2.1 The Indemnified Party shall give prompt notice to the Indemnifying Party of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit or proceeding filed by a third party against the Indemnified Party, then the Indemnified Party shall give the notice to the Indemnifying Party no later than ten (10) calendar days after the Indemnified Party receives written notice of the action, suit or proceeding.

16.2.2 The Indemnified Party’s failure to give the required notice will not relieve the Indemnifying Party from its obligation to indemnify unless the Indemnifying Party is materially prejudiced by such failure.

16.2.3 The Indemnifying Party will have the right at any time, by notice to the Indemnified Party, to participate in or assume control of the defense of the claim with counsel of its choice, which counsel must be reasonably acceptable to the Indemnified Party. The Indemnified Party agrees to cooperate fully with the Indemnifying Party. If the Indemnifying Party so assumes control of the defense of any third-party claim, the Indemnified Party shall have the right to participate in the defense at its own expense. If the Indemnifying Party has received the required notice of the claim and does not so assume control or otherwise participate in the defense of any third-party claim, the Indemnifying Party shall
be bound by the results obtained by the Indemnified Party with respect to the claim.

16.2.4 If the Indemnifying Party assumes the defense of a third-party claim as described above, then in no event will the Indemnified Party admit any liability with respect to, or settle, compromise or discharge, any third-party claim without the Indemnifying Party’s prior written consent, and the Indemnified Party will agree to any settlement, compromise or discharge of any third-party claim which the Indemnifying Party may recommend which releases the Indemnified Party completely from such claim.

16.3 **Environmental Hazards.** Licensee represents and warrants that its use of the City’s Poles will not generate any Hazardous Substances, that it will not store or dispose on or about the City’s Poles/Conduit System or transport to the City’s Poles/Conduit System any hazardous substances and that Licensee’s Communications Facilities will not constitute or contain and will not generate any hazardous substance in violation of federal, state or local law now or hereafter in effect including any amendments. “Hazardous Substance” shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any federal, state, or local laws, regulations or rules applicable to Licensee that are now or hereafter in effect including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration or other disaster, its Communications Facilities would not release any Hazardous Substances in violation of any applicable law or regulation.

16.4 **Municipal Liability Limits.** The City indemnification obligations shall apply except to the extent prohibited by law. No indemnification provision contained in this Agreement under which either party indemnifies the other shall be construed in any way to limit any other indemnification provision contained in this Agreement.

16.5 **No Consequential Damages.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, LIQUIDATED, OR SPECIAL DAMAGES OR LOST REVENUE OR LOST PROFITS TO ANY PERSON ARISING OUT OF THIS AGREEMENT OR THE PERFORMANCE OR NONPERFORMANCE OF ANY PROVISION OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

**Article 17—Duties, Responsibilities, And Exculpation**

17.1 **Duty to Inspect.** Licensee acknowledges and agrees that the City does not warrant the condition or safety of the City’s Facilities, or the premises surrounding the Facilities, and
Licensee further acknowledges and agrees that it has an obligation to inspect the City’s Poles or Conduit System and/or premises surrounding the Poles or Conduit System, prior to commencing any work on the City’s Poles or within the City’s Conduit System or entering the premises surrounding such Poles or Conduit System.

17.2 **Knowledge of Work Conditions.** By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the City Facilities, and with the difficulties and restrictions attending the execution of such work.

17.3 **DISCLAIMER.** UTILITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO UTILITY’S POLES OR CONDUIT SYSTEM, ALL OF WHICH ARE HEREBY DISCLAIMED TO THE EXTENT ALLOWED BY LAW, AND UTILITY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. UTILITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

17.4 **Duty of Competent Supervision and Performance.** The parties further understand and agree that in the performance of work under this Agreement, Licensee and its agents, employees, contractors and subcontractors will work near electrically energized lines, transformers or other the City Facilities, and it is the intention that energy therein will not be interrupted during the continuance of this Agreement, except in an emergency endangering life, threatening grave personal injury or threatening property. Licensee shall take reasonable steps to ensure its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, employees of the City and the general public, from harm or injury while they are performing work permitted pursuant to this Agreement. In addition, Licensee shall provide for its employees, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of the City’s equipment, Licensee shall suspend its work until the equipment has been de-energized and shall not conduct such work unless and until the equipment is made safe.

17.5 **Requests to De-energize.** In the event the City de-energizes any equipment or line at Licensee’s request and for its benefit and convenience in performing any work, Licensee shall reimburse the City for all reasonable, actual costs and expenses incurred by the City, in accordance with Paragraph 3.9, in order to comply with Licensee’s request. Before the City de-energizes any equipment or line at Licensee request, the City shall provide an estimate of all costs and expenses to be incurred in accommodating Licensee’s request.
17.6 **Interruption of Service.** In the event that Licensee causes an interruption of service by damaging or interfering with any equipment of the City, Licensee at its expense shall immediately do all things reasonable to avoid injury or damages resulting therefrom and shall notify the City immediately.

17.7 **Duty to Inform.** Licensee further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on the City’s Poles or within the City Conduit System by Licensee’s employees, agents, contractors or subcontractors, and that Licensee shall notify and inform Licensee’s employees, agents, contractors or subcontractors of such dangers, and keep them informed regarding same.

**Article 18—Insurance**

18.1 **Policies Required.** At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below:

18.1.1 **Workers’ Compensation and Employers’ Liability Insurance.** Statutory workers’ compensation benefits and employers’ liability insurance with a limit of liability no less than that required by Kansas law at the time of the application of this provision for each accident. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.

18.1.2 **Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, contractual coverage, property damage, and independent contractor’s coverage with limits of liability not less than $2,000,000 general aggregate, $2,000,000 products/completed operations aggregate, $2,000,000 personal injury, $2,000,000 each occurrence.

18.1.3 **Automobile Liability Insurance.** Business automobile policy covering all owned, hired and nonowned private passenger autos and commercial vehicles. Combined single limits of liability for bodily injury and property damage not less than $1,000,000 each occurrence, $1,000,000 aggregate.

18.1.4 **Umbrella Liability Insurance.** Coverage is to be in excess of the limits required above for employers’ liability, commercial general liability, and automobile liability insurance. Limits of liability not less than $4,000,000 each occurrence, $4,000,000 aggregate.

18.1.5 **Property Insurance.** Each party will be responsible for maintaining property insurance on its own facilities, buildings and other improvements, including all equipment, fixtures, and utility structures, fencing or support systems that may be placed on, within or around the City Facilities to fully protect against hazards of
fire, and such other perils as may be covered by policies of insurance commonly referred to and known as “extended coverage” insurance or self-insure such exposures.

18.2 **Qualification; Priority; Contractors’ Coverage.** The insurer must be authorized to do business under the laws of the State of Kansas and have an “A-” or better rating in Best’s Guide. Such insurance will be primary.

18.3 **Certificate of Insurance; Other Requirements.** Prior to the execution of this Agreement and fourteen (14) days following policy renewal during the term of this Agreement, Licensee will furnish the City with a certificate of insurance (“Certificate”). The Certificate shall reference this Agreement and workers’ compensation and property insurance waivers of subrogation required by this Agreement. The Certificate Holder shall be given thirty (30) days advance notice of cancellation of insurance during the term of this Agreement. The City, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, “Additional Insureds”) shall be named as Additional Insureds under all of the policies, except workers’ compensation, which shall be so stated on the Certificate of Insurance. All policies, other than workers’ compensation, shall be written on an occurrence and not on a claims-made basis. Licensee shall defend, indemnify and hold harmless the City and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article.

18.4 **Limits.** The limits of liability set out in this Article 18 may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease Licensee’s exposure to risk.

18.5 **Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions (1) that exclude coverage of liability assumed by Licensee under this Agreement except as to infringement of patents or copyrights or for libel and slander in program material, (2) that exclude coverage of liability arising from excavating, collapse, or underground work, (3) that exclude coverage for injuries to the City’s employees or agents, or (4) that exclude coverage of liability for injuries or damages caused by Licensee’s contractors or the contractors’ employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.

18.6 **Deductible/Self-insurance Retention Amounts.** Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.
Article 19—Authorization Not Exclusive.

19.1 The City shall have the right to grant, renew and extend rights and privileges to others not party to this Agreement by contract or otherwise, to use the City Facilities covered by this Agreement. Such rights shall not interfere with the rights granted to Licensee by the specific Permits issued pursuant to this Agreement.

Article 20—Assignment

20.1 Limitations on Assignment. Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without written notice to the City; provided that no such notice to the City shall be required for an assignment of all of Licensee’s interests in this Agreement to its Affiliate.

20.2 Obligations of Assignee/Transferee and Licensee. No assignment or transfer under this Article 20, including assignment or transfer to Licensee’s Affiliate, shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement. Licensee shall furnish the City with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee.

20.3 Sub-licensing. Without the City’s prior written consent, Licensee shall not enter into a sub-license or lease to any third party, and shall not allow third parties to place Attachments on the City’s Facilities, overlash third party facilities to Licensee’s Attachments, or to place Attachments for the benefit of such third parties on the City’s Poles or within the City’s Conduit System. Any such action shall constitute a material breach of this Agreement. The use of Licensee’s Communications Facilities by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or Overlashing is not subject to this Paragraph 20.3.

Article 21—Failure to Enforce

Failure of the City or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.
Article 22—Termination of Agreement

22.1 The City shall have the right, pursuant to the procedure set out in Paragraph 22.2, to terminate this entire Agreement, or any Permit issued hereunder, due to any undisputed circumstance of Licensee’s default of any material term or condition of this Agreement, including but not limited to the following circumstances:

22.1.1 Construction, operation or maintenance of Licensee’s Communications Facilities in violation of law or in aid of any unlawful act or undertaking; or

22.1.2 Construction, operation or maintenance of Licensee’s Communications Facilities after any authorization required of Licensee has lawfully and finally been denied or revoked by any governmental or private authority; or

22.1.3 Construction, operation or maintenance of Licensee’s Communications Facilities without the insurance coverage required under Article 18.

22.2 The City will notify Licensee in writing within fifteen (15) calendar days, or as soon as reasonably practicable, of the alleged existence of any condition(s) applicable to Paragraph 23.1 above. Licensee shall immediately commence corrective action to eliminate any such condition(s) within thirty (30) calendar days of receipt of such notice, or such longer period mutually agreed to by the parties, and shall confirm in writing to the City that the cited condition(s) has (have) ceased or been corrected. If Licensee fails to discontinue such condition(s) or commence corrective action and/or fails to give the required confirmation, the City may terminate this Agreement or any Permit(s). In the event of termination of this Agreement or any of Licensee’s rights, privileges or authorizations hereunder, the City may seek removal of Licensee’s Communications Facilities pursuant to the terms of Article 11, provided, that Licensee shall be liable for and pay all fees and charges pursuant to terms of this Agreement to the City until Licensee’s Communications Facilities are actually removed.

Article 23—Term of Agreement

23.1 This Agreement shall become effective upon its execution and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of five (5) years. Either party may terminate this Agreement at the end of the initial five (5) year term by giving to the other party written notice of an intention to terminate this Agreement at least ninety (90) calendar days prior to the end of the term. If no such notice is given, this Agreement shall automatically be extended for an additional one (1) year term. Either party may terminate this Agreement at the end of the second one (1) year term by giving to the other party written notice of an intention to terminate this Agreement at least ninety (90) calendar days prior to the end of the second term. In the absence of such notice, this Agreement shall automatically continue in force until terminated by either party after ninety (90) calendar days written notice.
23.2 Even after the termination of this Agreement, Licensee’s responsibility and indemnity obligations shall continue with respect to any claims or demands related to Licensee’s Communications Facilities and arising during the term hereof as provided for in Article 16.

Article 24—Amending Agreement
Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties.

Article 25—Notices
25.1 Wherever in this Agreement notice is required to be given by either party to the other, such notice shall be in writing and shall be effective when personally delivered to, mailed by certified mail, return receipt requested, with postage prepaid or delivered via nationally recognized overnight courier, and, except where specifically provided for elsewhere in this Agreement, properly addressed as follows:

If to the City, at: City of Gardner, ATTN: Utilities Department, 120 E. Main St., Gardner, Kansas, 66030

If to Licensee, at: Spectrum Mid-America LLC, 6550 Winchester Ave., Kansas City, MO 64133

With a copy to: Charter Communications, Legal Operations, 12405 Powerscourt Drive, St. Louis, MO 63131

or to such other address as either party, from time to time, may give the other party in writing.

25.2 Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where the City can contact Licensee to report damage to Licensee’s facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to the City’s concerns and requests.

Article 26—Entire Agreement
This Agreement supersedes all previous agreements, whether written or oral, between the City and Licensee for placement and maintenance of Licensee’s Communications Facilities on the City’s Poles or within the City’s Conduit System within the geographical service area covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein.
Article 27—Severability
If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement but rather it is the intent of the parties that this Agreement be administered as if not containing the invalid provision.

Article 28—Governing Law
The validity, performance and all matters relating to the effect of this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Kansas.

Article 29—Incorporation of Recitals and Appendices
The recitals stated above and all appendices to this Agreement are incorporated into and constitute part of this Agreement.

Article 30—Force Majeure
30.1 In the event that either the City or Licensee is unavoidably prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of another government entity in its sovereign capacity, material changes of federal or state laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such use, in each case not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and such party shall endeavor to remove or overcome such inability as soon as reasonably possible.

30.2 The City shall not impose any charges on Licensee stemming solely from Licensee’s inability to perform required acts during a period of unavoidable delay as described in Paragraph 30.1, provided that Licensee presents the City with a written description of such force majeure event within a reasonable time after occurrence of the event or cause relied on, and further provided that this provision shall not operate to excuse Licensee from the timely payment of any fees or charges due the City under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the day and year first written above.
City of Gardner (UTILITY)  
BY: ____________________________  
Title: ____________________________  

Spectrum Mid-America, LLC (LICENSEE)  
BY: Charter Communications, Inc., its Manager  
Name: ____________________________  
Title: ____________________________  

ATTEST:  
______________________________  
City Clerk
UTILITY

STATE OF KANSAS

: ss

County of ________________________________

I, the undersigned, a Notary Public in and for the State of Kansas, hereby certify that on the _____ day of ____________, 2____, personally appeared before me _______________, (Title)___________________ to me known to be the individual described in and who executed the foregoing instrument and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year above written.

___________________________________
Notary Public in and for the State of Kansas residing at ________________________, (Insert State)
LICENSEE

STATE OF Missouri

: ss

County of Jackson

I, the undersigned, a Notary Public in and for the State of Missouri, hereby certify that on the 19th day of April, 2019, personally appeared before me (NAME) Tracy D. Carter, (TITLE) Sr. Admin. Asst., to me known to be the individual described in and who executed the foregoing instrument and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year above written.

[Signature]

Notary Public in and for the State of Missouri, residing at Jackson County, Missouri.

[Seal]

Tracy D. Carter
Notary Public — Notary Seal
Jackson County — State of Missouri
Commission Number 17849501
My Commission Expires Oct 5, 2021
APPENDIX A—FEES AND CHARGES

Pole Attachment Fees and Charges

Effective Date ___/___/___

1. Annual Pole Attachment Fee: .......................$ 17.95 per pole/per year per City of Gardner Ordinance No. 2483 and 2531, Title 13 Article 25 Section 13.25.070

2. Non-Recurring Fees:
   ζ One-time License Agreement Fee..............$ N/A at this time
   ζ Permit Application Fee .........................$ N/A at this time per Permit Application (1–50 Poles)
   ζ Permit Application Fee .........................$ N/A at this time per Permit Application (51 or more Poles)
   ζ Make Ready Work Charges ......................See Article 3 of Agreement
   ζ Miscellaneous Charges .........................See Article 3 of Agreement [or Attach Fee Schedule for Work Performed for the Licensee]
   ζ Inspection Fees....................................See Article 3 of Agreement

3. Unauthorized Attachment Penalty Fee:
   ζ 3 x annual attachment fee, per occurrence.

4. Failure To Timely Transfer, Abandon or Remove Facilities Penalty:
   ζ 1/5 annual attachment fee per day, per pole, first 30 days;
   ζ annual attachment fee per day, per pole, second 30 days and thereafter.
Conduit Fees and Charges

Conduit fees shall be determined at a later date as agreed by the parties.
APPENDIX B—POLE ATTACHMENT PERMIT APPLICATION PROCESS

Subject to Article 6 of the Agreement, the following procedure is to be followed by each Licensee seeking to make new Attachments on Utility’s Poles. Note that no entity may make any Attachments to Utility’s Poles without having first entered into a binding Pole Attachment Licensing Agreement.

1. Licensee shall submit a completed Permit Application (Appendix C) that includes a route map to request a Pre-Construction Inspection. The request must include a preliminary route description. Licensee shall have a qualified and experienced senior employee or contractor, participate in the Pre-Construction Inspection, which will include a review of the proposed Attachment(s) to determine the feasibility of the request and identify any potential Make-Ready Work.

2. Intentionally Blank

3. Pursuant to the Pre-Construction Inspection, the Utility will recommend the required Make-Ready Work and discuss any issues with the Licensee.

4. Upon receipt of written authorization, Utility will proceed with Make-Ready Work according to the specific agreed-upon installation plans and the terms of the Agreement, including payment for the Make-Ready Work charges as set out by Utility and agreed to by the Licensee.

5. Upon completion of the Make-Ready Work, the Utility will sign and return the Application for Permit authorizing the Licensee to make its Attachment(s) in accordance with agreed-upon installation plans.

6. The Licensee’s qualified and experienced employee or contractor shall sign the completed Post-Construction Inspection indicating that the installation was done in accordance with the provisions of the Permit. The Post-Construction Inspection shall be submitted within ninety (90) calendar days after installation is complete.
APPENDIX C—APPLICATION FOR PERMIT

Application Date: ____/____/____

To: City of Gardner, Utilities Department, 1150 E. Santa Fe Street. Gardner, Kansas, 66030

Desire to:_________ Attach to Utility Pole(s) _______ Remove Attachment from Utility Pole(s)

Permit No. _____________________ Superseded Permit No. _____________________

Number of Poles this permit _________________ Sheet 1 of _____________________

Licensee Name: __________________________________________________________

Address: ________________________________________________________________

Contact Person: _______________________________ Phone ________________

Title: _________________________________________________________

Utility Contact Person: _______________________________ Phone _______________

Title: ___________________________________________________

Narrative Description of proposed activity: _____________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

In accordance with the terms and conditions of the Pole Attachment Licensing Agreement
dated __________, application is hereby made for a Permit to attach to and/or vacate
Pole(s) in the locations detailed on the attached Route Map(s).

Name: ____________________________________________ Phone ________________
Permission is hereby granted to Licensee to attach and/or vacate poles, subject to payment of the necessary Make-Ready Work charges as set out by Utility and agreed to by the Licensee.

SUBMITTED:  
Licensee ___________________________  Utility ______________________________
By ________________________________  By ________________________________
Title _______________________________  Title _______________________________
Date _______________________________  Date _______________________________

APPROVED:

APPENDIX D—SPECIFICATIONS FOR LICENSEE’S ATTACHMENTS TO UTILITY POLES

Licensee, when making Attachments to Utility Poles, will adhere to the following engineering and construction practices.

A. All Attachments shall be made in accordance with the Applicable Standards as defined in Paragraph 1.2 of this Agreement.

B. Clearances

1. **Attachment and Cable Clearances:** Licensee’s Attachments on Utility Poles, including metal attachment clamps and bolts, metal cross-arm supports, bolts and other equipment, must be attached so as to maintain the minimum separations specified in the National Electrical Safety Code (“NESC”) and in drawings and specifications Utility may from time to time furnish Licensee. *(See Drawings A-01 to A-99.)*

2. **Service Drop Clearance:** The parallel minimum separation between Utility’s service drops and communications service drops shall be twelve (12) inches, and the crossover separation between the drops shall be twenty-four (24) inches. *(See Drawings A-06 and A-07.)*

3. **Sag and Mid-Span Clearances:** Licensee will be particularly careful to leave proper sag in its lines and cables and shall observe the established sag of power line conductors and other cables so that minimum clearances are (a) achieved at poles located on both ends of the span; and (b) retained throughout the span. At mid-span, a minimum of twelve (12) inches of separation must be maintained between any other cables. At the pole support, a twelve (12) inch separation must be maintained between Licensee and any other communications connection/attachment. *(See Drawing A-07.)*

4. **Vertical Risers:** All Risers, including those providing 120/240 volt power for Licensee’s equipment enclosure, shall be placed on the quarter faces of the Pole and must be installed in conduit with weatherhead attached to the Pole with stand-off brackets. A two (2) inch clearance in any direction from cable, bolts, clamps, metal supports and other equipment shall be maintained. *(See Drawings A-02 and A-05.)* [confirm]
5. **Climbing Space**: A clear Climbing Space must be maintained at all times on the face of the Pole. All Attachments must be placed so as to allow and maintain a clear and proper Climbing Space on the face of the Utility Pole. Licensee’s cable/wire Attachments shall be placed on the same side of the Pole as those of other Attaching Entities. In general, all other Attachments and Risers should be placed on Pole quarter faces. *(See Drawing A-08.)*

6. **Pedestals and Enclosures**: Every effort should be made to install Pedestals, vaults and/or Enclosures a minimum of four (4) feet from Poles or other Utility Facilities.

C. **Down Guys and Anchors**

1. Licensee shall be responsible for procuring and installing all anchors and guy wires to support the additional stress placed on the Utility’s Poles by Licensee’s Attachments. Anchors must be guyed adequately.

2. Anchors and guy wires must be installed on each Utility Pole where an angle or a dead-end occurs. Licensee shall make guy attachments to Poles at or below its cable Attachment. No proposed anchor can be within four (4) feet of an existing anchor without written consent of Utility.

3. Licensee may not attach guy wires to the anchors of Utility or third-party user without the anchor owner’s specific prior written consent.

4. No Attachment may be installed on a Utility Pole until all required guys and anchors are installed. No Attachment may be modified, added to or relocated in such a way as will materially increase the stress or loading on Utility Poles until all required guys and anchors are installed.

5. Licensee’s down guys, if needed, shall be bonded to ground wires of Utility’s Pole. The connections to the system neutral are to be made by the utility as an item of Make-Ready Work. Utility will determine if guys should be grounded or insulated.

D. **Signature of Licensee’s Design**

1. Licensee’s Attachment Permit application must be signed by a qualified and experienced senior employee of Licensee, certifying or stating that the Licensee’s aerial cable design fully complies with the NESC and Utility’s Construction Standards and any other applicable federal, state or local codes and/or requirements at the time of construction.
E. Miscellaneous Requirements

1. **Cable Bonding**: Licensee’s messenger cable shall be bonded to Utility’s Pole ground wire at each Pole that has a ground wire. If no ground exists on a Pole, Licensee shall install a Pole ground in accordance with the attached detail drawing. *(See Drawings A-03 to A-05.)*

2. **Customer Premises**: Licensee’s service drop into customer premises shall be protected as required by the most current edition of the NEC.

3. **Communication Cables**: All Communications cables/wires not owned by Utility shall be attached within the Communications space that is located 40 inches below the lowest Utility conductors. *(See Drawings A-01 through A-99.)*

4. **Riser Installations**: All Licensee’s Riser installations shall be in utility-approved conduit materials and placed on stand-off brackets. Ground wires may be attached directly to Pole. *(See Drawings A-02 to A-05.)*

5. **Tagging**: Licensee shall Tag all of its Communications Facilities on a going forward basis as specified herein. Licensee’s cables shall be identified with a band-type communications cable tag or other identification acceptable to Utility at each Attachment within twelve (12) inches of the Pole. The communications tag shall be consistent with communication industry standards and shall include at least the following: Licensee name, emergency contact number.

F. Utility Construction Drawings and Specifications

1. Refer to the attached Utility Construction Drawings, and obtain additional construction specifications from Utility in accordance with its requirements.

2. Apply the Utility’s construction drawings and specifications in accordance with the NESC, NEC and any other federal, state or local code requirements.
Agenda Item: Consider authorizing an agreement for professional engineering services for the Design and Preparation of Construction Plans and Specifications for the Gardner Lake Dam Spillway.

Strategic Priority: Infrastructure and Asset Management

Department: Public Works

Staff Recommendation:
Staff recommends the City Council authorize the City Administrator to execute an agreement with Olsson, Inc. for professional engineering services in the amount of $56,285.00 for the Design and Preparation of Construction Plans and Specifications for the Gardner Lake Dam Spillway.

Background/Description of Item:
The Public Works department, working with consulting engineers Olsson Associates, recently completed the required dam safety inspection and submitted to the Division of Water Resources. DWR has determined that the inspection and report satisfy the requirements in K.S.A. 82a-301 through 305a. DWR encouraged the city to implement the following recommendations found in the report, including construction of the service spillway and additional rip rap protection added to the upstream slope of the embankment.

As part of their scope of work, Olsson prepared a Gardner Lake Spillway Evaluation and cost estimate for the necessary improvements. Removing the current spillway and replacing it with a new concrete spillway of similar geometry is recommended by Olsson and city staff. This alternative is the most economical solution that does not affect the normal pool elevation and flood elevations. The project does not include any modifications to the pedestrian hazard concerning the water overtopping the spillway (no bridges, low flow channels, etc. as these would affect the normal pool and/or flood elevations). The opinion of probable project cost is $766,053, which would include design, permitting, and construction of the alternate.

A request for qualifications for this project was not solicited from other engineering firms. Staff recommends the exception to the purchasing policy requirement to solicit qualifications from multiple firms (for contracts over $50,000) and select Olsson based on their experience and familiarity with the Gardner Lake Dam.

Financial Impact:
The spillway project was included as a CIP project for the 2018 budget at an amount of $310,000. It is anticipated that the project will be funded through a debt issuance of General Obligation Bonds. The new estimated project cost is $766,053. Annual principal and interest payments will come from the Bond & Interest Fund.
Attachments:
- Agreement with Olsson, Inc.
- Spillway Exhibit

Staff Recommendation:
Authorize for the City Administrator to execute an agreement with Olsson, Inc. for professional engineering services in the amount of $56,285.00 for the Design and Preparation of Construction Plans and Specifications for the Gardner Lake Dam Spillway.
RIPRAP RESTORATION
SEE EXHIBIT 2

REPLACE APPROXIMATELY 190 LF OF CONCRETE SPILLWAY
SEE TYPICAL SECTION THIS SHEET

REINFORCED CONCRETE
SLOPE PROTECTION

EARTHEN SPILLWAY

10" REINFORCED CONCRETE PAVEMENT

REINFORCED CONCRETE
SLOPE PROTECTION

SAFETY BOLLARD

LAKE ELEVATION

SCALE: 1"=60'

SPILLWAY REPLACEMENT TYPICAL SECTION
NOT TO SCALE
AGREEMENT FOR PROFESSIONAL SERVICES

This agreement [“Agreement”], is made as of this 20th day of May, 2019 by and between the City of Gardner, Kansas, [hereinafter “City”], and Olsson, Inc., [hereinafter referred to as “Consultant”].

RECITALS

WHEREAS, Consultant represents that it is a duly qualified engineering and design firm, experienced in the preparation of plans and construction documents for the Gardner Lake Spillway 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 the Gardner Lake Spillway.

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 May 20, 2019 to May 29, 2020 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 13.1 (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 or Department Director, 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: Brent Johnson, P.E.
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 Brent Johnson, PE 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 Michael Kramer, Public Works Director 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 Department Director, and if applicable, 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, Attn. Public Works.

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.

5.5 City agrees to pay Consultant an amount not to exceed the sum of $56,285.00 for performing services detailed in Exhibit A. This not to exceed amount may be increased for additional services as requested by the City and upon execution of a mutually acceptable amendment or change order signed by authorized representatives of City and Consultant.

5.6 If a portion of Consultant's statement is disputed by City, the undisputed portion shall be paid by City by the due date. City shall advise Consultant in writing of the basis for any disputed portion of any statement.

5.7 See Exhibit B for Schedule of Hourly Billing Rates. These rates are effective for services rendered through December 31, 2018 and are subject to revision thereafter, with no increase in Agreement amount. These rates are applicable to any additional service beyond the scope of services specified in Exhibit A which have been agreed to by the parties through a properly written and executed change order.

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:

☐ Workers’ Compensation and Employer’s Liability - Demonstrate compliance with K.S.A. 44-532(b) including maintenance of insurance providing the statutory limits under the Kansas Workers Compensation Act; the Consultant shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a worker’s compensation law. This policy shall include an “all states” endorsement.

☐ 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.

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, director 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: City of Gardner
   Attention Public Works Director
   120 E. Main Street
   Gardner, KS 66030

   To Consultant:

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 and Consultant 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 City shall continue to pay Consultant for undisputed work; 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.**
Exhibit A – Scope of Services and Exhibit 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

______________________________  ________________________________
James Pruetting, City Administrator   Brent Johnson, PE
Vice President

ATTEST:

______________________________
Brian Ladd, PE.
Project Engineer

______________________________
City Clerk
EXHIBIT A: SCOPE OF SERVICES

PROJECT DESCRIPTION AND LOCATION
Project will be located at: Gardner Lake
Project Description: Design and preparation of construction plans and specifications for the dam spillway reconstruction and riprap replacement along the dam embankment. Design shall follow the recommendations provided in the Gardner Lake Spillway Evaluation Memo (Olsson, 2019)

SCOPE OF SERVICES
Olsson shall provide the following services (Scope of Services) to Client for the Project:

Phase 100 – Geotechnical Exploration

1. Coordination and General Notes
   a. Olsson to contact Kansas One Call to locate underground utilities. To ensure the safety of the crew on site, Owner must inform Olsson of the location of all private utilities and private utility service connections. The cost of locating private utility lines and private service connections is the Owner's responsibility. Olsson is not responsible or liable for damage to any private utilities or private service connections.
   b. Drilling and Cone Penetration Testing equipment may cause disturbance to natural surroundings including but not limited to soil indentations, concrete cracking, and damage to underground sprinkler systems. Olsson will not be liable or responsible for any site disturbance that may occur as a result of bringing equipment on site. The Owner accepts full responsibility for site disturbance.

2. Field Exploration
   a. We propose to use a truck-mounted drill rig to complete the following soil test borings for the geotechnical exploration:
      • Three (3) soil test borings to practical auger refusal on limestone bedrock
   b. Split spoon and thin-walled samples shall be collected from the soil test borings.
   c. We will obtain groundwater levels in the test borings at the time of drilling and upon completion of the drilling operations.
   d. After obtaining groundwater level readings, we will backfill the borings with soil cuttings and patch pavements as necessary.

3. Laboratory Services
   At our laboratory, unconfined compressive strength, moisture content, and in-place unit weight tests will be performed on representative portions of selected Shelby tube samples. Moisture content tests will be performed on all samples. Atterberg limits tests will also be performed upon representative samples of typical subsurface conditions encountered across this site.

4. Evaluation and Geotechnical Report
   A geotechnical engineering report will be prepared under the direction of a registered professional engineer based on the findings of the field and laboratory programs. The report will include a boring location plan, computer-generated boring logs, results of the laboratory testing program and a description of the surface and subsurface conditions encountered at the site. In addition, the report will present our opinions and recommendations regarding the following items:
a. Generalized geotechnical site preparation concerns addressing fill subgrade preparation, earthwork placement, fill compaction criteria, excavatability of any bedrock, and suitability of on-site materials for use as structural fill

b. Recommended foundation design parameters, including bearing pressures and depths

**Phase 200 – Surveying Services**

1. **Field Survey and Base Map.** Olsson will provide a topographical design survey for the project area. This survey shall depict all observed utilities, existing contours at one-foot intervals, location of existing features such as pavement, buildings, trees, tree mass lines, storm, and sanitary sewer structures, pipe sizes, flow lines, and materials. Utility companies will be contacted through the Kansas One Call system and any utilities marked will be shown on the topography survey. Any maps of private utilities which are typically not located thru the one call system that are provided will also be plotted in accordance with above ground structures. Olsson will provide four (4) horizontal control points tied to NAD Kansas Coordinate System 1983 South Zone, and One (1) benchmark tied to NAVD 1988 elevation datum.

Utility location and mapping is for horizontal location of above ground and underground utilities only. Utility depths will not be obtained or indicated on the topographic survey. Survey of utilities will be based on tracing and marking by One Call and / or a private utility locater. By signing this contract, the client understands and acknowledges that utility mapping is not exact, and it is possible that not all utility lines will be located. Olsson is not responsible for miss-marked or unmarked utilities.

**Phase 300 – Final Design Plans**

1. **Final Design Plans.** Olsson will prepare detailed drawings, technical specifications, and opinion of probable cost, and submit to Client for final review and comments. The Client will provide front-end documents in electronic format. After review by Client, Olsson will revise final plans and specifications and submit an electronic set of bid documents.

   Final design plans will include the following sheets and information:
   - Cover sheet and location map
   - General notes and summary of quantities
   - Typical sections
   - Plan and profiles
   - Cross sections
   - Erosion control plan
   - Details

**Phase 400 – Permitting/Approvals**

1. Olsson will prepare permit applications and documentation to obtain the necessary construction permits for the project. Client will pay all application and mitigation fees related to the project. The following agencies will be contacted:

   **USACE CWA Section 404 Permit.** Complete a Nationwide Permit (3-Maintenance) pre-construction notification under CWA Section 404.
KDA DWR. Submit design plans, specifications and hydraulic analysis for review and comment.

KDHE NOI and Stormwater Pollution Prevention Plan (SWPPP). Submit design plans, specifications and hydraulic analysis for review and comment.

**Phase 500 – Bidding Services and Contract Documents**

1. Bidding Services and Contract Documents. Olsson will prepare bid documents for an electronic plan room, respond to questions from contractors about bid documents and attend bid letting. Olsson consult with and advise the Client on the acceptability of substitute materials, subcontractors and make a recommendation for award of the construction contract. Any written addenda or clarification to the bidding documents will be prepared as required.

**PROJECT EXCLUSIONS**

1. Modifications to the dam not described in the evaluation memo, but requested by KDA DWR to bring the dam up to current regulations (ex. Drawdown valves, etc.)
2. Floodplain map revisions
3. Construction period services
4. Traffic control and phasing plans
5. Easement acquisition and meetings with the public
6. Sanitary sewer relocation design
7. Utility coordination and relocation plans

**SCHEDULE FOR OLSSON’S SERVICES**

Unless otherwise agreed, Olsson expects to perform its services under the Agreement as follows:

Anticipated Start Date: June 1, 2019
Anticipated Completion Date: September 1, 2019
**EXHIBIT B - FEES**

**Hourly Fee Table**
**Gardner Lake Dam Final Design**
**City of Gardner, Kansas**
**May 6, 2019**

<table>
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<tr>
<th>TASK DESCRIPTIONS</th>
<th>Personnel Classification:</th>
<th>Project Manager</th>
<th>Project Engineer</th>
<th>Assoc. Engineer</th>
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**TOTAL FEES & EXPENSES**: $53,785

**ASSUMPTIONS:**
1. Tasks and fees above are based on the Scope of Services for the Project.
## EXHIBIT B - FEES

### Hourly Fee Table
Gardner Lake Dam Final Design
City of Gardner, Kansas
May 6, 2019

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<td>Prepare and share bid documents</td>
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<td>Respond to bid questions and addenda</td>
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<td>12</td>
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<td>124</td>
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<td>471</td>
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**TOTAL FEES & EXPENSES**

### Assumptions:
1. Tasks and fees above are based on the Scope of Services for the Project.
Agenda Item: Consider Position Title Changes in the Utilities Department

Strategic Priority: Fiscal Stewardship & Asset Management

Department: Administration-Human Resources

Staff Recommendation:
Staff recommends promoting Utilities Department Maintenance Workers to Plant Operators.

Background/Description of Item:
Staff recommends promoting two Maintenance Workers to Plant Operators in the Water and Wastewater Divisions of the Utility Department. The FTEs in the department would not be increased, but it would increase the number of Plant Operators, by two, which is not in the budget.

At the March 18, 2019 City Council Meeting, the Council approved an expansion of the City's Career Ladder program for the Plant Operators. Plant Operators and Maintenance Workers working within the Water and Wastewater Plants have the opportunity to obtain four levels of Certification. The employee must attain competency through study, training, on-the-job experience and the passing of a written test. When an employee receives a higher level Water or Wastewater Certification they will receive a 5% pay increase while remaining within the same paygrade. Any part of the increase that would be above the top of the assigned paygrade would be received as a lump sum payment.

Financial Impact:
Salary and benefit increase of $4,564.53

Suggested Motion:
Reclassify and promote a Maintenance Worker-Water and a Maintenance Worker-Wastewater to Plant Operators in the Utility Department.
COUNCIL ACTION FORM

MEETING DATE:      MAY 20, 2019
STAFF CONTACT:    LARRY POWELL, DIRECTOR

Agenda Item: Consider extending the outgoing Planning Commission members’ terms of office for 60 days

Strategic Priority: Economic Development

Department: Business and Economic Development

Staff Recommendation:
Staff recommends extending the ending date of the three outgoing Planning Commission members from May 31, 2019 to July 30, 2019 or until their successors are approved.

Background/Description of Item:
The seven-member planning commission has three members whose terms of office will end on May 31, 2019. Those scheduled to end their terms include the current Chair and Vice Chair.

In order to keep a viable Planning Commission with enough members to enact business, the City Clerk will need to fill the positions as outlined in the Governing Bodies Rules and Procedures. The City Clerk has started the process of advertising the open Planning Commission positions.

Financial Impact:
None at this time

Suggested Motion:
Extend the outgoing 2019 Planning Commission members’ terms of office from May 31, 2019 to end on July 30, 2019, or until their successors are approved.
Agenda Item: Consider appointing Sharon Rose as Gardner Interim City Clerk and administer the Oath of Office

Strategic Priority: Infrastructure and Asset Management

Department: Mayor and Council

Staff Recommendation:
Appoint Sharon Rose effective May 20, 2019 as Gardner Interim City Clerk

Background/Description of Item:
Per Kansas statute, the City Clerk is appointed by the Mayor with consent of the City Council.

Sharon Rose is recommended for appointment as Gardner Interim City Clerk, effective immediately.

Attachments:
N/A

Suggested Motion:
Appoint Sharon Rose effective May 20, 2019 as Gardner Interim City Clerk and direct the Mayor to administer the Oath of Office
CITY OF GARDNER
LOYALTY OATH

I, _______Sharon Rose_______ do solemnly swear that I will support the Constitution of the United States of America and the Constitution of the State of Kansas, and faithfully discharge the duties as the City of Gardner Interim City Clerk, so help me God.

SIGNED: _____________________________

Subscribed in my presence and duly sworn before me this _______ day of

______________, ________.

SIGNED: _____________________________

TITLE: _______________________________

(SEAL)

K.S.A. 54-106
Agenda Item: Consider adopting a resolution authorizing the issuance and delivery of $[3,820,000] principal amount of General Obligation Temporary Notes, Series 2019A, of the City of Gardner, Kansas, for the purpose of temporarily financing the cost of certain internal improvements of the City.

Strategic Priority: Fiscal Stewardship

Department: Finance

Staff Recommendation:
Adopt a resolution authorizing the issuance and delivery of $[3,820,000] principal amount of General Obligation Temporary Notes, Series 2019A, of the City of Gardner, Kansas, for the purpose of temporarily financing the cost of certain internal improvements of the City.

Background/Description of Item:
At the April 15, 2019 meeting, the Governing Body approved Resolution No. 2018 authorizing the offer for sale of approximately $3,820,000 in Series 2019A General Obligation Temporary Notes.

The estimated $3,820,000 principal amount of the 2019A notes is to fund certain infrastructure improvements related to the Tuscan Farm Lift Station Special Benefit District and Tuscan Farm Phase 1 Infrastructure Special Benefit District.

The resolution provides the details of the temporary note issue including such items as the principal and interest payment dates and amounts, the rate of interest, identification of the paying agent and note registrar (the State Treasurer of Kansas), optional redemption rights, note registration and transfer provisions and similar information relating to the mechanics of how the note issue works. The resolution also provides for the creation of certain funds and accounts relating to note proceeds and money used to pay the debt service on the notes and includes provisions relating to the administration of such funds and accounts. The resolution further describes the rights and limitations of rights of the owners of the notes and provides an agreement by the City to disclose certain information to the marketplace about the events relating to the notes and the City’s financial and operating data as long as the notes remain outstanding.

Some information that will be included in the final version of the resolution is not available until after bids are received and the determination of the best bid is made. The information that is obtained from the best bid is bracketed or left blank in the resolution included in the agenda packet and will be completed after the temporary note sale. At the meeting, staff will notify the Governing Body of the amounts to include in the resolution before the Governing Body considers approval.

The attached resolution authorizes all preparations to facilitate sale and issuance of the temporary notes.
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 is 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.

**Attachments Included:**
- Resolution No. 2022

**Suggested Motion:**
Adopt Resolution No. 2022 authorizing the issuance and delivery the form and details of and authorizing the delivery of $3,820,000 principal amount of General Obligation Temporary Notes, Series 2019A, of the City of Gardner, Kansas, for the purpose of temporarily financing the cost of certain internal improvements of the City.
RESOLUTION NO. 2022


WHEREAS, pursuant to K.S.A. 12-6a01 et seq., as amended, and all other provisions of the laws of the State of Kansas (the “State”), by proceedings and other actions legally taken, the City of Gardner, Kansas (the “City”) is proceeding with constructing the following water, sewer, storm water, street and related improvements (the “Improvements”), at a total estimated cost of not to exceed $3,945,000;

(a) Tuscan Farm Phase I Infrastructure Special Benefit District improvements; and

(b) Tuscan Farm Sanitary Lift Station Special Benefit District;

WHEREAS, the cost of the Improvements is authorized to be paid in whole or in part by the issuance of general obligation bonds of the City in the manner provided by law; and

WHEREAS, it is necessary for the City to provide interim financing for the Improvements until the construction is completed and general obligation bonds can be issued to permanently finance the cost of the Improvements, and it is desirable and in the interest of the City that such funds be raised by the issuance of temporary notes of the City, the notes to be issued by the City pursuant to K.S.A. 10-123;

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

ARTICLE I
DEFINITIONS

Section 101. Definitions of Words and Terms.

“Act” means the Constitution and statutes of the State including, but not limited to, K.S.A. 10-123 and K.S.A. 12-6a01 et seq., all as amended or supplemented.

“Authorized Costs” means the amount of expenditures for an improvement, which may include capitalized interest and interest during construction, which has been authorized to be paid by the City by an ordinance or resolution of the City, including expenditures made to redeem outstanding general obligation bonds and outstanding notes issued to pay for such improvement and Costs of Issuance of the Notes, less (a) the amount of any notes or bonds of the City which are currently outstanding and available to pay such Authorized Costs and (b) any Authorized Costs which have been previously paid by the City or by any eligible source of funds unless such amounts are entitled to be reimbursed under State and federal law.
“Authorized Denominations” means the denomination of $5,000 or any integral multiple thereof.

“Authorized Investments” means those investments permitted by K.S.A. 10-131, as amended from time to time, or as otherwise permitted under the laws of the State.

“Beneficial Owner” means any Person who (a) has the power directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any book-entry note (including persons holding book-entry notes through nominees, depositaries or other intermediaries), or (b) is treated as owner of any book-entry note for federal income tax purposes.

“Bond and Interest Fund” means the Bond and Interest Fund of the City for its general obligation bonds.

“Bond Counsel” means the firm of Kutak Rock LLP, or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the City.

“Capitalized Interest Deposit” means the amount set forth on Exhibit B to be deposited into the Principal and Interest Account.


“City” means the City of Gardner, Kansas.

“City Clerk” means the appointed and acting City Clerk of the City or, in the City Clerk’s absence, the appointed acting City Clerk of the City.

“City Treasurer” means the appointed and acting City Treasurer of the City or, in the City Treasurer’s absence, the appointed acting City Treasurer of the City.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations proposed or promulgated thereunder of the United States Department of the Treasury.

“Costs of Issuance” means all costs of issuing the Notes, including, but not limited to, all publication, preparation, signing and mailing expenses, registration fees, all legal fees and expenses of Bond Counsel and other legal counsel, all fees and expenses of the municipal advisor, all fees of the Attorney General of the State, and any fees in connection with receiving municipal bond insurance or ratings on the Notes.

“Final Official Statement” means the final official statement prepared by the City or its representatives in connection with the sale of the Notes and delivered to the Original Purchaser within seven business days after the sale of the Notes in accordance with the SEC Rule. The Final Official Statement includes the information in the Preliminary Official Statement as supplemented or amended.

“Improvement Fund” means the fund by that name created in Section 401.
“Improvements” means the improvements referred to in the recitals to this Resolution or any Substitute Improvements as defined in this Resolution.

“Interest Payment Dates” means April 1 and October 1 in each year, commencing October 1, 2019, and ending on the maturity date of the Notes, or such other time as the Notes are paid or provision for the payment is made.

“Letter of Instructions” means the arbitrage letter of instructions (dated as of the date of issuance of the Notes) relating to certain matters within the scope of Section 148 of the Code, as the same may be amended or supplemented in accordance with its terms.

“Mayor” means the elected and acting Mayor of the City or, in the Mayor’s absence, the appointed acting Mayor of the City.

“Note Registrar” means the State Treasurer and its successors and assigns.

“Notes” means the General Obligation Temporary Notes, Series 2019A, authorized by this Resolution in the aggregate principal amount of $3,820,000, and dated June 12, 2019.

“Original Purchaser” means the original purchaser of the Notes described on Exhibit B to this Resolution.

“Outstanding” means all Notes issued, authenticated and delivered under the provisions of this Resolution, except:

(a) Notes canceled by the Paying Agent or delivered to the Paying Agent for cancellation pursuant to this Resolution;

(b) Notes for the payment or redemption of which monies or investments have been deposited in accordance with this Resolution; and

(c) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Resolution.

“Owner” when used with respect to any Note means the Person in whose name such Note is registered on the registration books of the City as maintained by the Note Registrar.

“Participants” means those financial institutions for whom the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

“Paying Agent” means the State Treasurer, Topeka, Kansas, and any successors and assigns

“Person” means any natural person, corporation, partnership, joint venture, association, firm, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision or other public body.
“Preliminary Official Statement” means the Preliminary Official Statement which was prepared by the City and its advisors in connection with the sale of the Notes and distributed to potential purchasers of the Notes before the Final Official Statement, as described in the SEC Rule, was made available.

“Principal and Interest Account” means the account by that name created in Section 401.

“Principal Payment Date” means October 1, 2021, or until such time as the aggregate principal amount of the Notes has been paid or provision is made for payment.

“Purchase Price” means the original purchase price of the Notes described on Exhibit B to this Resolution.

“Rebate Fund” means the fund by that name created in Section 401.

“Record Dates” means the fifteenth day of each month (whether or not a business day) preceding the Interest Payment Dates of each year the Notes are Outstanding.

“Replacement Notes” means Notes issued to the Beneficial Owners of the Notes in accordance with Section 204 of this Resolution.

“Resolution” means this Resolution authorizing the issuance of the Notes.


“State” means the State of Kansas.

“State Treasurer” means the elected Treasurer of the State or, in the Treasurer’s absence, the acting Treasurer of the State.

“Substitute Improvement” means any improvement or addition in the City which has been authorized by a resolution or ordinance of the City in accordance with Section 504 of this Resolution to be in place of or in addition to the Improvements set forth in the recitals to this Resolution.

ARTICLE II
AUTHORIZATION OF THE NOTES

Section 201. Authorization of and Security for the Notes. The Notes are authorized and directed to be issued pursuant to this Resolution for the purpose of providing funds to pay the Authorized Costs of the Improvements.

The Notes shall be general obligations of the City payable as to both principal and interest from general obligation bonds of the City, from special assessments levied upon the property
benefited by the construction of the Improvements and from current revenues of the City authorized for such purpose. If not so paid, the principal of and interest on the Notes shall be payable from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City. The full faith, credit and resources of the City are irrevocably pledged for the prompt payment of the principal of and interest on the Notes as the same become due.

Section 202. Description of the Notes. The Notes shall consist of fully registered notes in Authorized Denominations, and shall be numbered in such manner as the Note Registrar determines. The Notes will be dated June 12, 2019, bear interest from that date at the interest rate set forth on Exhibit B to this Resolution until paid and become due on the Principal Payment Date.

Interest on the Notes at the rate set forth on Exhibit B to this Resolution (computed on the basis of a 360-day year of twelve 30-day months) shall be payable on the Interest Payment Dates to the Owners of the Notes whose names appear on the books maintained by the Note Registrar at the close of business on the Record Dates.

Section 203. Designation of Paying Agent and Note Registrar. The State Treasurer is designated as the Paying Agent and Note Registrar for the Notes. The Mayor and City Clerk of the City are authorized and empowered to execute on behalf of the City an agreement with the Note Registrar and Paying Agent for the Notes. The City reserves the right to appoint a successor Paying Agent or Note Registrar. No resignation or removal of the Paying Agent or Note Registrar shall become effective until a successor has been appointed and has accepted the duties of paying agent or note registrar. Every Paying Agent or Note Registrar appointed by the City shall at all times meet the requirements of State law and the City will at all times maintain a Paying Agent and Note Registrar meeting the requirements of State law.

Section 204. Initial Registration with Securities Depository. The Notes shall be registered on note registration books maintained by the Note Registrar to Cede & Co., the nominee for the Securities Depository, and no Beneficial Owner will receive certificates representing their respective interests in the Notes, except in the event the City issues Replacement Notes as provided in this Section. It is anticipated that during the term of the Notes, the Securities Depository will make book-entry transfers among its Participants and receive and transmit payment of principal of, and interest on, the Notes until and unless the City authenticates and delivers Replacement Notes to the Beneficial Owners in the manner described in this Section.

If the City determines (a) that the Securities Depository is unable to properly discharge its responsibilities, (b) that the Securities Depository is no longer qualified to act as a securities depository and registered clearing agency under the Securities Exchange Act of 1934, as amended, (c) that the continuation of a book-entry only system to the exclusion of any Notes being issued to any Owner other than Cede & Co., is no longer in the best interest of the Beneficial Owners of the Notes, or if the City receives written notice from Participants having interests in not less than 50% of the Notes, as shown on the records of the Securities Depository, that the continuation of a book-entry only system to the exclusion of Notes being issued to any Owner other than Cede & Co., is no longer in the best interest of the Beneficial Owners of the Notes, or if the Securities Depository determines to discontinue providing book-entry services, then the City shall notify the Owners of the Notes of such determination or such notice and of the availability of certificates to Owners.
who request certificates, and the City shall authenticate and deliver Replacement Notes to the Beneficial Owners or their nominees in principal amounts representing the interest of each, making such adjustments as it may find necessary or appropriate as to accrued interest and previous calls for redemption. In such event, all references to the Securities Depository in this Resolution shall relate to the period of time when the Securities Depository has possession of at least one certificate. Upon the issuance of Replacement Notes, all references in this Resolution to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the City, to the extent such provisions are consistent with and applicable to Replacement Notes. If the Securities Depository resigns and the City or Owners are unable to locate a qualified successor of the Securities Depository, then the City shall authenticate and deliver Replacement Notes to the Participants for the benefit of the Owners.

Section 205. Method and Place of Payment of the Notes. The principal of, premium, if any, and interest on the Notes shall be payable in any coin or currency which, on the respective dates of payment, is legal tender for the payment of debts due the United States of America.

The principal of and any premium on the Notes shall be paid to the Owner of each Note upon presentation of the Note at the maturity or redemption date to the Paying Agent for cancellation. The interest payable on the Notes on any Interest Payment Date shall be paid by the Paying Agent to the Owner of each Note at the Owner’s address as it appears on the registration books of the City maintained by the Note Registrar at the close of business on the Record Date for such interest:

(a) by check or draft mailed by the Paying Agent to the address of such Owner shown on the Note Register;

(b) at such other address as is furnished to the Paying Agent in writing by such Owner; or

(c) in the case of an interest payment to any Owner that is a securities depository, by wire transfer to such Owner upon written notice given to the Note Registrar by such Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank (which shall be in the continental United States), address, ABA routing number and account number to which such Owner wishes to have such wire directed. The Paying Agent will keep in its offices a record of payment of principal of, premium, if any, and interest on all Notes.

Section 206. Method of Execution and Authentication of the Notes. The Notes shall be executed for and on behalf of the City by the manual or facsimile signature of the Mayor, attested by the manual or facsimile signature of the City Clerk and the seal of the City shall be affixed to or imprinted on the Notes. The Notes will be registered in the office of the City Clerk, which registration shall be evidenced by the manual or facsimile signature of the City Clerk with the seal of the City affixed thereto or imprinted thereon. The Notes shall also be registered in the office of the State Treasurer, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer with the seal of the State Treasurer affixed thereto or imprinted thereon. In the event that any of the previously mentioned officers shall cease to hold such offices before the Notes are issued and delivered, the Notes may be issued and transferred to other Owners
as though the officers had not ceased to hold office, and such signatures appearing on the Notes shall be valid and sufficient for all purposes as if they had remained in office until such issuance or transfer.

The Notes shall not be valid obligations under the provisions of this Resolution until authenticated by the Note Registrar or an authorized representative of the Note Registrar by execution of the Certificate of Authentication appearing on each Note. It shall not be necessary that the same representative of the Note Registrar execute the Certificate of Authentication on all of the Notes.

Section 207. Registration, Transfer and Exchange of Notes. As long as the Notes remain Outstanding, the City will instruct the Note Registrar to keep the books for the registration and transfer of the Notes as provided in this Resolution.

Upon presentation of the necessary documents as described below, the Note Registrar shall transfer or exchange any Note(s) for new Note(s) in an Authorized Denomination of the same maturity and for the same aggregate principal amount as the Note(s) which was presented for transfer or exchange.

All Notes presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Note Registrar, executed by the Owner of the Notes or by the Owner’s authorized agent. In addition, all Notes presented for transfer or exchange shall be surrendered to the Note Registrar for cancellation.

Prior to delivery of the new Note(s) to the transferee, the Note Registrar shall register the same in the registration books and shall authenticate each Note.

The City shall pay out of the proceeds of the Notes the fees of the Note Registrar for registration and transfer of the Notes and the cost of preparing a reasonable supply of registered note blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the Note Registrar, are the responsibility of the Owners. The City and the Securities Depository shall be paid directly by the Note Owner for any tax or other governmental charge required to be paid with respect to a transfer.

The City and the Note Registrar shall not be required to issue, register, transfer or exchange any Notes during a period beginning on the day following the Record Date preceding any Interest Payment Date and ending at the close of business on the Interest Payment Date, or within 30 days of a date on which Notes are redeemed after notice of such redemption has been given in accordance with Article III of this Resolution.

New Notes delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt as the Notes surrendered, shall be secured by this Resolution and shall be entitled to all of the security and benefits to the same extent as the Notes surrendered.

The City, Note Registrar and Paying Agent may deem and treat the person in whose name any Note is registered as the absolute Owner of the Note, whether the Note is overdue or not, for the purpose of receiving payment of, or on account of, the principal of, redemption premium, if
any, and interest on the Note and for all other purposes, and all such payment so made to any such Owner or upon the Owner’s order shall be valid and effectual to the extent of the sum or sums so paid, and neither the City, Note Registrar nor Paying Agent shall be affected by any notice to the contrary.

Section 208. Surrender and Cancellation of Notes. Whenever any Outstanding Notes are delivered to the Note Registrar for cancellation pursuant to this Resolution, upon payment of the principal amount of and interest on the Note or replacement pursuant to this Resolution, the Note shall be canceled by the Note Registrar and returned to the City Clerk.

Section 209. Mutilated, Lost, Stolen or Destroyed Notes. In the event any Note is mutilated, lost, stolen or destroyed, the City may execute and the Note Registrar may authenticate a new Note of like date, maturity, denomination and interest rate; provided, that in the case of any mutilated Note, the mutilated Note shall first be surrendered to the City or the Note Registrar, and, in the case of any lost, stolen or destroyed Note there will first be furnished to the Note Registrar’s and the City’s satisfaction evidence of such loss, theft or destruction together with an indemnity. In the event any such Note shall have matured, instead of issuing a duplicate Note, the City and Note Registrar may pay the same without surrender of the Note. The City and Note Registrar may charge to the Owner of such Note their reasonable fees and expenses in connection with replacing any Note or Notes mutilated, stolen, lost or destroyed.

Section 210. Execution and Delivery of the Notes. The Mayor and City Clerk are authorized and directed to prepare and execute the Notes in the manner specified above, and to cause the Notes to be registered in the offices of the City Clerk and the State Treasurer as provided by law, and, when executed and registered, to deliver the Notes to the Original Purchaser, upon receipt by the City of the Purchase Price.

Section 211. Form of the Notes. The Notes shall be printed in accordance with the format required by the Attorney General of the State and shall contain information substantially in the form set forth on Exhibit A to this Resolution or as may be required by the Attorney General pursuant to the Notice of Systems of Registration for Kansas Municipal Bonds, 2 Kan. Reg. 921 (1983), in accordance with the Kansas Bond Registration Law, K.S.A. 10-620 to 10-632, inclusive.

ARTICLE III
REDEMPTION OF THE NOTES

Section 301. Optional Redemption. At the option of the City, Notes may be called for redemption and payment prior to maturity on or after October 1, 2020, in whole or in part (selection of Notes to be designated by the City in such equitable manner as it may determine), at the redemption price of 100% (expressed as a percentage of the principal amount), plus interest accrued thereon to the date of redemption.

Section 302. Selection of Notes to be Redeemed. The Notes are to be redeemed only in Authorized Denominations. When less than all of the Notes are to be redeemed and paid prior to maturity, the Notes will be redeemed in the manner as the City determines.

In the case of a partial redemption of Notes by lot when Notes of denominations greater than an Authorized Denomination are Outstanding, each minimum Authorized Denomination of
face value will be treated as if it were a separate Note in such denomination. If it is determined that one or more, but not all, of the face value represented by any Note is selected for redemption, then upon notice of intention to redeem an Authorized Denomination, the Owner or the Owner’s authorized agent shall present and surrender the Note to the Note Registrar: (i) for payment of the redemption price (including the redemption premium, if any, and interest to the date fixed for redemption) of the Authorized Denomination of face value called for redemption; and (ii) for exchange, without charge to the Owner of the Note(s), for a new Note(s) of the aggregate principal amount of the unredeemed portion of the principal amount of such Note. If the Owner of any Note of a denomination greater than the minimum Authorized Denomination fails to present the Note as described above, the Note will, nevertheless, become due and payable on the redemption date to the extent of the amount called for redemption.

Notwithstanding the provisions of the preceding paragraph, in the event of a partial redemption of the Notes, the Securities Depository may, at its option, in lieu of surrendering such Note, make an appropriate notation on the Note certificate indicating the date and amounts of the reduction in the principal amount of such Note (except in the case of the final maturity of such Note, where the Note certificate shall be presented to the City prior to payment).

Section 303. Notice of Redemption. Unless waived by any Owner of Notes to be redeemed, if the City calls any Notes for redemption and payment prior to the maturity of the Notes, the City shall instruct the Note Registrar to give written notice of its intention to call and pay the Notes on a specified date, the same being described by maturity, the notice to be mailed by United States first class mail addressed to the Owners of the Notes, each of the notices to be mailed not less than 30 days prior to the date fixed for redemption. The City will also give any additional notice as may be required by State law or regulation of the Securities and Exchange Commission in effect as of the date of the notice.

All official notices of redemption will be dated and state: (1) the redemption date; (2) the redemption price; (3) if less than all of the Outstanding Notes are being redeemed, the identification (and, in the case of a partial redemption, the respective principal amounts) of the Notes being redeemed; (4) on the redemption date the redemption price will become due and payable on each Note or portion of the Note called for redemption, and interest on the Note shall cease to accrue from and after such date; and (5) the place where the Notes are to be surrendered for payment of the redemption price, which is the principal office of the Paying Agent.

During the time the Notes are registered in the name of Cede & Co., the notice described in the immediately preceding paragraphs shall be delivered to the Securities Depository. The Securities Depository shall, in turn, notify its Participants. It is expected that the Participants, in turn, will notify or cause to be notified the Beneficial Owners of the Notes. Any failure on the part of the Securities Depository, or failure on the part of a nominee of a Beneficial Owner of a Note (having received notice from the City, a Participant or otherwise) to notify the Beneficial Owner of the Notes so affected, shall not affect the validity of the redemption of such Notes.

On or prior to any redemption date, the City will deposit with the Paying Agent an amount of money sufficient to pay the redemption price of all the Notes or portions of Notes which are to be redeemed on that date. In accordance with the notice, once the Notes are surrendered to the Paying Agent, the redemption price will be paid to the Owner. Installments of any interest due on
or prior to the redemption date shall be payable as provided in this Resolution. Upon surrender of any partially redeemed Note, a new Note or Notes of the same maturity in the amount of the unpaid principal will be prepared for the Owner. All Notes which have been redeemed will not be reissued. They will be cancelled and destroyed by the Paying Agent.

**Section 304. Effect of Call for Redemption.** Whenever any Note is called for redemption and payment as provided in this Article, all interest on the Note shall cease from and after the date the call is made, provided funds are available for its payment at the price previously specified.

**ARTICLE IV**

**ESTABLISHMENT OF FUNDS AND ACCOUNTS**

**Section 401. Creation of Funds and Accounts.** Simultaneously with the issuance of the Notes, the following funds and accounts will be created within the Treasury of the City:

A. Improvement Fund for the City of Gardner, Kansas, General Obligation Temporary Notes, Series 2019A;

B. Principal and Interest Account for the City of Gardner, Kansas, General Obligation Temporary Notes, Series 2019A; and

C. Rebate Fund for the City of Gardner, Kansas, General Obligation Temporary Notes, Series 2019A.

**Section 402. Administration of Funds and Accounts.** The funds and accounts established in this Resolution shall be administered in accordance with the provisions of this Resolution as long as the Notes are Outstanding.

**ARTICLE V**

**APPLICATION OF NOTE PROCEEDS**

**Section 501. Disposition of Note Proceeds.** Upon issuance and delivery of the Notes, the proceeds shall be deposited as follows:

A. In the Principal and Interest Account, (i) a sum equal to the accrued interest, if any, (ii) any premium set forth on the attached Exhibit B and (iii) the Capitalized Interest Deposit set forth on the attached Exhibit B. Moneys in the Principal and Interest Account will be used exclusively for the payment of the principal of, premium, if any, and interest on the Notes, including capitalized interest, and for the payment of Paying Agent fees.

B. The City will deposit the balance of the proceeds of the Notes immediately upon receipt into the Improvement Fund, which will be used solely for the purpose of paying the Authorized Costs of the Improvements. The City covenants that in the construction of the Improvements, it has or will perform all duties and obligations relative to such Improvements as are now or may be imposed by the Act and the provisions of this Resolution.
Section 502. **Withdrawals from the Improvement Fund.** The City Treasurer shall make withdrawals from the Improvement Fund solely for the purpose of paying the Authorized Costs of the Improvements, including Costs of Issuance.

Section 503. **Surplus in the Improvement Fund.** All moneys remaining in the Improvement Fund after the completion of the Improvements shall be transferred immediately to the Principal and Interest Account and applied to the payment of principal and interest due on the Notes.

Section 504. **Substitution of Improvements.** If the City is prevented, hindered or delayed from proceeding with the construction of the Improvements described in Section 101 of this Resolution, the City may elect to substitute or add other improvements pursuant to this Section (the “Substitute Improvements”) provided the following conditions are met: (1) the Substitute Improvements and the issuance of general obligation bonds to pay the cost of the Substitute Improvements has been duly authorized by the Governing Body of the City in accordance with the laws of the State; (2) a resolution or ordinance authorizing the use of the Substitute Improvements has been duly adopted by the Governing Body of the City; (3) the Attorney General of the State has approved the amendment to the transcript of proceedings for the Notes to include the Substitute Improvements; and (4) the City has received an opinion of Bond Counsel to the effect that the use of the proceeds of the Notes to pay the Authorized Costs of the Substitute Improvement will not adversely affect the tax-exempt status of the Notes under State or federal law and the Substitute Improvements have been duly authorized pursuant to this Section and the laws of the State.

**ARTICLE VI**

**PAYMENT OF THE NOTES**

Section 601. **Application of Moneys in the Principal and Interest Account.** All amounts paid and credited to the Principal and Interest Account will be expended and used by the City for the sole purpose of paying the principal of, premium, if any, and interest on the Notes as and when the same become due, including the payment of capitalized interest, and paying the usual and customary fees and expenses of the Paying Agent.

Section 602. **Transfer of Funds to Paying Agent.** The City Treasurer is authorized and directed to withdraw from the Principal and Interest Account and forward to the Paying Agent sums sufficient to pay both principal of, premium, if any, and interest on the Notes when they become due, and also to pay the charges made by the Paying Agent for acting in such capacity. Charges over and above the amount of the principal of, premium, if any, and interest on the Notes shall be forwarded to the Paying Agent. If, through the lapse of time, or otherwise, the Owners of Notes are no longer entitled to enforce payment of their obligations, it will be the duty of the Paying Agent to return the funds to the City. All moneys deposited with the Paying Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

Section 603. **Surplus in Principal and Interest Account.** Any moneys or investments remaining in the Principal and Interest Account after the retirement of the indebtedness for which the Notes were issued and all other indebtedness of the City shall be transferred and paid into the Bond and Interest Fund of the City.
ARTICLE VII
DEPOSITS AND INVESTMENT OF FUNDS

Section 701. Deposits. Cash moneys in each of the funds and accounts created and established by this Resolution will be deposited in a bank or banks or federal or state chartered savings and loan association(s) and shall be secured in accordance with State law.

Section 702. Investments. Moneys held in the funds and accounts created or established by this Resolution in conjunction with the issuance of the Notes may be invested by the City in Authorized Investments, or in other investments allowed by State law, in the amounts and maturing at the times as shall reasonably provide for moneys to be available when required in the accounts or funds; provided, however, that no investment shall be made for a period extending longer than to the date when the moneys invested may be needed for the purpose the fund or account was created. All interest on any Authorized Investment held in any fund or account shall (except amounts required to be deposited into the Rebate Fund in accordance with the Letter of Instructions) accrue to and become a part of the fund or account. In determining the amount held in any fund or account under the provisions of this Resolution, Authorized Investments shall be valued at their principal par value or at their then redemption value, whichever is lower.

Section 703. Deposits into and Application of Moneys in the Rebate Fund.

A. Amounts will be deposited in the Rebate Fund as required by the Letter of Instructions. Subject to the transfer provisions provided in subsection D below, all money at any time deposited in the Rebate Fund shall be held in trust, to the extent required to pay rebatable arbitrage to the federal government of the United States of America, and neither the City nor the Owner of any Notes shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section, by the preceding Section and by the Letter of Instructions (which is incorporated herein by reference).

B. Pursuant to the Letter of Instructions, an amount shall be deposited to the Rebate Fund from moneys contributed by the City or from available investment earnings on amounts held in the Principal and Interest Account or the Improvement Fund, if and to the extent required, so the balance in the Rebate Fund will be sufficient to pay the rebatable arbitrage due on each Computation Date and the Final Computation Date (as the terms are defined in the Letter of Instructions). Computations of the rebatable arbitrage shall be performed by or on behalf of the City in accordance with the Letter of Instructions.

C. Pursuant to the Letter of Instructions, the City will remit rebate installments and the final rebate payments to the United States. Any moneys remaining in the Rebate Fund after the redemption and payment of all of the Notes and after the payment and satisfaction of, or the provision for, any rebatable arbitrage will be withdrawn and released to the City.

D. Notwithstanding any other provision of this Resolution, including in particular this Article, the obligation to remit rebatable arbitrage to the United States and to comply with all other requirements of this Section, the preceding Section and the Letter of Instructions shall survive the defeasance or payment in full of the Notes.
ARTICLE VIII
DEFAULT AND REMEDIES

Section 801. Remedies. The provisions of this Resolution, including the covenants and agreements herein, shall constitute a contract between the City and the Owners of the Notes. The Owner or Owners of any of the Notes at the time Outstanding have the right for the equal benefit and protection of all Owners of Notes similarly situated:

A. By mandamus or other suit, action or proceedings at law or in equity to enforce the rights of such Owner or Owners against the City and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of this Resolution or by the Constitution and laws of the State;

B. By suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

C. By suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Owners of the Notes.

Section 802. Limitation on Rights of Owners. The covenants and agreements of the City contained in this Resolution and in the Notes shall be for the equal benefit, protection, and security of the Owners of any or all of the Notes, all of the Notes shall be of equal rank and without preference or priority of one Note over any other Note in the application of the funds pledged by this Resolution to the payment of the principal of and interest on the Notes, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Resolution. No one or more Owners secured shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security granted and provided for in this Resolution, or to enforce any right described below, except in the manner provided by this Resolution, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of such Outstanding Notes.

Section 803. Remedies Cumulative. No remedy conferred upon the Owners is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred in this Resolution. No waiver of any default or breach of duty or contract by the Owner of any Note shall extend to or affect any subsequent default or breach of duty or contract or impair any rights or remedies on the Note. No delay or omission of any Note Owner to exercise any right or power accruing upon any default shall impair any right or power or be construed to be a waiver of any such default or acquiescence. Every substantive right and every remedy conferred upon the Owners of the Notes by this Resolution may be enforced and exercised from time to time and as often as may be deemed expedient. In case any suit, action or proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy is discontinued or abandoned for any reason, or is determined adversely to the Owner, then, and in every such case, the City and the Owners of the Notes will be restored to their former positions and rights under this Resolution, respectively, and all rights, remedies, powers and duties of the Owners shall continue as if no such suit, action or other proceedings had been brought or taken.
ARTICLE IX
AMENDMENTS

Section 901. Amendments. The City may from time to time, without the consent of or notice to any of the Owners, provide for amendment to the Notes or this Resolution, for any one or more of the following purposes:

(a) To cure any ambiguity or formal defect or omission in this Resolution or the Notes or to make any other change not prejudicial to the Owners;

(b) To grant to or confer upon the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners;

(c) To more precisely identify the Improvements;

(d) To provide for the issuance of bearer notes and the exchange of fully registered Notes for bearer notes upon the terms and conditions as the City determines provided, however, that no such amendments become effective unless and until the City has received an opinion of Bond Counsel in the form and substance satisfactory to the City, to the effect that the issuance of such bearer notes or the exchange of Notes for such bearer notes will not cause the interest on the Notes to be includable in the gross income of the recipients of the Notes under the provisions of applicable federal law; or

(e) To conform this Resolution or the Notes to the Code or future applicable federal law concerning tax-exempt obligations.

The following modifications or amendments to the Notes or this Resolution shall require the consent of 100% of the Owners of the Notes:

(a) The extension of the maturity of the principal of any of the Notes, or the extension of the maturity of any interest on any of the Notes;

(b) A reduction in the principal amount of any of the Notes or the rate of interest on the Notes; or

(c) A reduction in the aggregate principal amount of the Notes.

Amendments or modifications of the Notes and this Resolution not listed above may be made at any time by the City with the written consent of the Owners of not less than two-thirds (66.66%) in aggregate principal amount of the Notes at the time Outstanding.

Section 902. Written Evidence of Amendments. Every amendment or modification of a provision of the Notes or of this Resolution to which the written consent of the Owners is given as above provided shall be expressed in a resolution of the City amending or supplementing the provisions of this Resolution and shall be deemed to be a part of this Resolution. It shall not be necessary to note on any of the Outstanding Notes any reference to such amendment or modification, if any. A certified copy of every such amendatory or supplemental resolution, if any, and a certified copy of this Resolution will always be kept on file in the Office of the City.
Clerk and made available for inspection by the Owners of any Note or prospective purchaser or Owners of any Note authorized by this Resolution, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental resolution or of this Resolution will be sent by the City Clerk to any such Owner or prospective Owner.

ARTICLE X
CONTINUING DISCLOSURE

Section 1001. Preliminary Official Statement and Final Official Statement. The City ratifies and confirms its prior approval of the form and content of the Preliminary Official Statement. The Preliminary Official Statement is “deemed final” by the City except for the omission of certain terms or provisions to be specified in a competitive bid, ratings, other terms of the Notes depending on such matters, and the identity of the underwriters. The City approves the form and content of any addenda, supplement, or amendment thereto utilized to prepare the Final Official Statement. The use of the Final Official Statement in the reoffering of the Notes by the Original Purchaser is approved and authorized. The proper officials of the City are authorized to execute and deliver a certificate pertaining to the accuracy and adequacy of the information in the Preliminary Official Statement and the Final Official Statement.

Section 1002. Continuing Disclosure. The City covenants and agrees to provide continuing disclosure as required by the SEC Rule and as set forth in the Continuing Disclosure Letter of Instructions attached to the Preliminary Official Statement and made a part hereof.

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 1101. Designation of Notes as Qualified Tax-Exempt Obligations. The City designates the Notes as “qualified tax-exempt obligations” as the term is defined in Section 265(b)(3) of the Code. In addition, the City represents that:

A. the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds) which will be issued by the City during the calendar year that the Notes are issued does not exceed $10,000,000; and

B. the aggregate principal amount of obligations designated by the City as “qualified tax-exempt obligations” during the calendar year that the Notes are issued, including the Notes, does not exceed $10,000,000.

Section 1102. Succession of a Securities Depository. In the event the Securities Depository resigns or is no longer qualified to act as a securities depository and registered clearing agency under the Securities Exchange Act of 1934, as amended, the City may appoint a successor Securities Depository provided the City receives written evidence, satisfactory to the City, with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository which is a registered clearing agency under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation. The City, upon receipt of a book-entry Note for cancellation shall cause the authorization and delivery of a book-entry Note to the successor Securities Depository in
appropriate denominations and form as provided in this Resolution. If the City makes the determinations or receives the notice described in Section 204 of this Resolution, the City shall cause the notices described in Section 204 to be delivered and issue Notes as described in that Section.

**Section 1103. Tax Covenants.** The City covenants and agrees that it will not take any action or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Notes under Section 103 of the Code. The City covenants and agrees that it will use the proceeds of the Notes as soon as practicable and with all reasonable dispatch for the purpose for which the Notes are issued as set forth above, and that it will not directly or indirectly use or permit the use of any proceeds of the Notes or any other funds of the City, or take or omit to take any action that would cause the Notes to be “arbitrage bonds” within the meaning of Section 148(a) of the Code. To that end, the City will comply with all requirements of Section 148 of the Code to the extent applicable to the Notes. In the event that at any time the City is of the opinion that for purposes of this Section it is necessary to restrict or limit the yield on the investment of any moneys held by the City under this Resolution, the City shall take such action as may be necessary.

Without limiting the generality of the above, the City agrees that there will be paid from time to time all amounts required to be rebated to the United States pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the Notes. This covenant shall survive payment in full or defeasance of the Notes. The City specifically covenants to pay or cause to be paid to the United States, at the times and in the amounts determined under this Resolution, the Rebate Amounts as described in the Letter of Instructions.

**Section 1104. Severability.** In case any one or more of the provisions of this Resolution or of the Notes issued under this Resolution is for any reason found to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution, or of the Notes relating to this Resolution, but this Resolution and the Notes will be construed and enforced as if the illegal or invalid provision had not been contained in this Resolution. In case any covenant, stipulation, obligation or agreement contained in the Notes or in this Resolution is for any reason found to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

**Section 1105. Further Authority.** The Mayor, City Clerk and other officials are further authorized and directed to execute any and all documents and to take actions they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution. They may make and approve alterations, changes or additions in the above-mentioned agreements, statements, instruments and other documents approved, authorized and confirmed by this Resolution, and the execution or taking such action shall be conclusive evidence of the necessity or advisability thereof.

**Section 1106. Governing Law.** This Resolution and the Notes will be governed exclusively by and construed in accordance with the applicable laws of the State.
Section 1107. Effective Date. This Resolution is to take effect and be in full force from and after its adoption by the Governing Body of the City.

[remainder of page left blank intentionally]
ADOPTED by the Governing Body of the City on May 20, 2019.

Signed by the Mayor on May 20, 2019.

CITY OF GARDNER, KANSAS

By ________________________________
    Mayor

(Seal)

Attest:

______________________________
City Clerk
EXHIBIT A
FORM OF NOTE

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation, (“DTC”), to City or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the Registered Owner hereof, Cede & Co., has an interest herein.

EXHIBIT A
FORM OF NOTE

UNITED STATES OF AMERICA
STATE OF KANSAS
COUNTY OF JOHNSON
CITY OF GARDNER
GENERAL OBLIGATION TEMPORARY NOTE
SERIES 2019A

Interest Rate: _____% Date: October 1, 2021
Maturity Date: June 12, 2019

REGISTERED OWNER: Cede & Co. Tax Identification No. 132555119-0

PRINCIPAL AMOUNT:

KNOW ALL PERSONS BY THESE PRESENTS: That the City of Gardner, in the County of Johnson, State of Kansas (the “City”), for value received, acknowledges itself to be indebted and promises to pay to the Registered Owner identified above, or registered assigns (collectively, the “Owner”), as of the Record Dates as provided on the Maturity Date identified above, the Principal Amount identified above, and in like manner to pay interest on such Principal Amount from this date at the rate of interest per annum set forth above (computed on the basis of a 360-day year of twelve 30-day months), semiannually on April 1 and October 1 of each year, commencing October 1, 2019 (the “Interest Payment Dates”), until the Principal Amount is paid, unless this Note shall have been previously called for redemption and payment as hereinafter set forth.

The principal or redemption price of this Note shall be paid at maturity or upon earlier redemption to the person in whose name this Note is registered at the maturity or redemption date, upon presentation and surrender of this Note at the office of the Treasurer of the State of Kansas, Topeka, Kansas (the “Paying Agent” and “Note Registrar”). The interest payable on this Note on any Interest Payment Date shall be paid to the person in whose name this Note is registered on the registration books maintained by the Note Registrar at the close of business on the record date for
such interest, which shall be the 15th day (whether or not a business day) of the calendar month
next preceding the Interest Payment Date (the “Record Dates”). Such interest shall be payable (a)
by check or draft mailed by the Paying Agent to the address of the Owner shown on the Note
Register, (b) at such other address as is furnished to the Paying Agent in writing by the Owner or,
(c) in the case of an interest payment to any Owner that is a securities depository, by electronic
transfer to such Owner upon written notice given to the Paying Agent by such Owner, not less than
15 days prior to the Record Date for such interest, containing the electronic transfer instruction
including the bank (which shall be in the continental United States), address, ABA routing number
and account number to which such Owner wishes to have such wire directed. The principal,
premium, if any, and interest on the Notes shall be payable in any coin or currency which, on the
respective dates of payment, is legal tender for the payment of debts due the United States of
America. The Notes constitute general obligations of the City payable as to both principal and
interest from general obligation bonds of the City, from special assessments levied upon the
property benefited by the construction of certain Improvements as said term is defined in the
Resolution (as defined in this Note), or from current revenues of the City authorized for such
purpose. If not so paid, the principal of and interest on the Notes shall be payable from ad valorem
taxes which may be levied without limitation as to rate or amount upon all the taxable tangible
property, real and personal, within the territorial limits of the City. The full faith, credit and
resources of the City are pledged for the payment of the principal of and interest on this Note and
the issue of which it is a part as the same respectively become due.

This Note is one of an authorized series of Notes of the City designated “General
Obligation Temporary Notes, Series 2019A” in an aggregate principal amount of $[3,820,000]
(the “Notes”) issued for the purposes set forth in the resolution of the City authorizing the Notes
(the “Resolution”). The Notes are issued by the authority of and in full compliance with the
provisions, restrictions and limitations of the Constitution and laws of the State of Kansas,
including, but not limited to K.S.A. 10-123 and K.S.A. 12-6a01 et seq., all as amended or
supplemented, and all other applicable provisions of the laws of the State of Kansas.

At the option of the City, the Notes may be called for redemption and payment prior to
maturity in whole or in part (selection of notes to be designated by the City in such equitable
manner as it may determine) on October 1, 2020, or on any date thereafter, at the redemption price
of 100% (expressed as a percentage of the principal amount), plus accrued interest to the date of
redemption.

If any Notes are called for redemption and payment prior to maturity, the City shall instruct
the Note Registrar to give written notice of its intention to call and pay such Notes on a specified
date, the same being described by maturity, said notice to be mailed by United States first class
mail addressed to the Paying Agent, to the State Treasurer of Kansas and to the Owners of said
Notes, each of said notices to be mailed not less than 30 days prior to the date fixed for redemption.
All Notes so called for redemption and payment shall cease to bear interest from and after the date
for which such call is made, provided funds are available for the payment of such Notes at the
price specified.

The Notes are issued in fully registered form in the denomination of $5,000 or any integral
multiple thereof. The Notes may be exchanged at the office of the Note Registrar for a like
aggregate principal amount of Notes of the same maturity of other authorized denominations upon
the terms provided in the Resolution.

The City and the Note Registrar may deem and treat the Registered Owner as the absolute
owner for purposes of receiving payment of or on account of principal and interest due and for all
other purposes and neither the City nor the Note Registrar shall be affected by any notice to the
contrary.

This Note is transferable by the Registered Owner in person or by the Registered Owner’s
agent duly authorized in writing, at the office of the Note Registrar, but only in the manner, subject
to the limitations and upon payment of the charges provided in the Resolution and upon surrender
and cancellation of this Note. The City shall pay out of the proceeds of the Notes all costs incurred
in connection with the issuance, payment and initial registration of the Notes and the cost of a
reasonable supply of note blanks. Neither the City nor the Note Registrar shall be required to
transfer or exchange any Notes during a period beginning on the day following the Record Date
preceding any Interest Payment Date and ending on the Interest Payment Date or to transfer or
exchange any Notes called for redemption.

IT IS DECLARED AND CERTIFIED that all acts, conditions, and things required to be
done and to exist precedent to and in the issuance of this Note have been properly done and
performed and do exist in due and regular form and manner as required by the Constitution and
laws of the State of Kansas, and that the total indebtedness of the City, including this series of
Notes, does not exceed any constitutional or statutory limitation.

This Note shall not be valid or become obligatory for any purpose until the Certificate of
Authentication and Registration shall have been lawfully executed by the Note Registrar.
IN WITNESS WHEREOF, the City has caused this Note to be executed by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk, and its corporate seal to be affixed to or imprinted on, and this Note to be dated the Dated Date shown herein.

(Seal)                    CITY OF GARDNER, KANSAS

Mayor

ATTEST:

By ____________________________
City Clerk

This Note shall not be negotiable unless and until countersigned below by the City Clerk following registration by the Treasurer of the State of Kansas.

(Seal)                    City Clerk

===================================================================
CERTIFICATE OF CITY CLERK

STATE OF KANSAS )
COUNTY OF JOHNSON ) SS.

I, the City Clerk of the City of Gardner, Kansas, certify that the within Note has been registered in my office according to law as of May 20, 2019.

WITNESS my hand and official seal.

(Seal)                    City Clerk

===================================================================
CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Note is one of a series of General Obligation Temporary Notes, Series 2019A, of the City of Gardner, Kansas, described in the within-mentioned Resolution.

Registration Date ________________________________

Office of the State Treasurer
Topeka, Kansas
as Note Registrar and Paying Agent

By______________________________________

Registration Number __________________________

CERTIFICATE OF STATE TREASURER

I, JAKE LATURNER, Treasurer of the State of Kansas, do certify that a transcript of the proceedings leading up to the issuance of this Note has been filed in my office, and that this Note was registered in my office according to law on _______________________.

WITNESS my hand and official seal.

(Seal) JAKE LATURNER
Treasurer of the State of Kansas
NOTE ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

___________________________
Print or Type Name, Address and Social Security Number
or other Taxpayer Identification Number of Transferee

the within Note to which this assignment is affixed in the outstanding principal amount of $____________ standing in the name of the undersigned on the books of the Note Registrar. The undersigned do(es) irrevocably constitute and appoint _____________________________ as agent to transfer said Note on the books of said Note Registrar with full power of substitution in the premises.

Dated __________________________.

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Temporary Note in every particular.

Signature Guaranteed By:

___________________________
(Name of Eligible Guarantor Institution)

By _____________________________
Title ___________________________
EXHIBIT B
ADDITIONAL TERMS OF THE NOTES

Definitions.  The following terms defined in this Resolution shall have the meanings ascribed below:

“Capitalized Interest Deposit” means the amount of $____________ to be deposited in the Principal and Interest Account.

“Original Purchaser” means ______________, __________, __________.

“Purchase Price” for the Notes means the par value of the Notes plus accrued interest, if any, to the date of delivery, [plus a premium of $________, less an underwriting discount of $________].

Interest Rate.  The Notes shall bear interest at the rate of ____% per annum.

Premium.  The amount of premium on the Notes to be deposited in the Principal and Interest Account is $0.
Consider adopting an ordinance authorizing the issuance and delivery of $[2,020,000] principal amount of General Obligation Bonds, Series 2019B, of the City of Gardner, Kansas; and providing for the levy and collection of an annual tax for the purpose of paying the principal of and interest on the bonds as they become due.

Fiscal Stewardship

Finance

Adopt an ordinance authorizing the issuance and delivery of $[2,020,000] principal amount of General Obligation Bonds, Series 2019B, of the City of Gardner, Kansas; and providing for the levy and collection of an annual tax for the purpose of paying the principal of and interest on the bonds as they become due.

At the April 15, 2019 meeting, the Governing Body approved Resolution No. 2018 authorizing the offer for sale of approximately $2,020,000 in Series 2019B General Obligation Bonds.

The estimated $2,020,000 principal amount of the 2019B bonds is to fund the certain sewerage improvements including a new crane at the Kill Creek Lift Station and the construction of a south lift station storage tank. The bonds will have a term of 10-years.

Under Kansas law, general obligation bonds are required to be authorized by an ordinance of the City. The attached ordinance authorizes the issuance of the bonds, describes the security for the bonds (general obligations of the City backed by the City’s full faith and credit), includes a covenant by the City to comply with applicable federal tax requirements to maintain the tax-exempt status of the bonds, and authorizes the further details of the bonds to be included in a resolution of the City. (Approval of the referenced resolution is the next council action after approving this ordinance.)

Some information that will be included in the final version of this ordinance (and the following resolution) is not available until after bids are received and the determination of the best bid is made. The information that is obtained from the best bid is bracketed or left blank. At the meeting, staff will notify the Governing Body of the amounts to include in the ordinance and resolution before the Governing Body considers approval of either.

At the meeting, staff will present the credit rating the City received from Standard & Poor’s Ratings Services and the bids from the sale. Financial Advisor Bruce Kimmel of Ehlers and Bond Counsel Tyler Ellsworth of Kutak Rock will be at the meeting to answer any questions.
Financial Impact:
- Annual estimated debt service for the sewerage improvements is approximately $255,300 and will be paid from the Wastewater Fund.

Attachments Included:
- Ordinance No. 2615

Suggested Motion:
Adopt Ordinance No. 2615 authorizing the issuance and delivery of $[2,020,000] principal amount of General Obligation Bonds, Series 2019B, of the City of Gardner, Kansas; and providing for the levy and collection of an annual tax for the purpose of paying the principal of and interest on the bonds as they become due.
ORDINANCE NO. 2615


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

WHEREAS, pursuant to K.S.A. 12-617 and 12-618, as amended and supplemented, and other provisions of the laws of the State applicable thereto, by proceedings had, the Governing Body of the City has authorized certain sewer system improvements (the “Improvements”) to be made in the City;

WHEREAS, all legal requirements pertaining to the Improvements have been complied with, and the Governing Body of the City now finds and determines that the total cost of the Improvements and related expenses are at least $[2,020,000];

WHEREAS, pursuant to K.S.A. 10-101 et seq., K.S.A. 12-617 and 12-618, all as amended and supplemented, the Governing Body of the City is authorized by law to issue general obligation bonds of the City to pay a portion of the costs of the Improvements;

WHEREAS, the Governing Body of the City has advertised the sale of its general obligation bonds in accordance with the law and at a meeting held in the City on this date, has or will award the sale of such bonds to the lowest bidder; and

WHEREAS, the Governing Body of the City finds and determines that it is necessary for the City to authorize the issuance and delivery of its general obligation bonds in the principal amount of $[2,020,000] to pay a portion of the costs of the Improvements, including the costs of issuance of the Bonds;

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

Section 1. Definitions of Words and Terms.

“Bond and Interest Fund” means the Bond and Interest Fund of the City for its general obligation bonds.


“City” means the City of Gardner, Kansas.
“City Clerk” means the appointed and acting City Clerk or, in the City Clerk’s absence, the appointed acting City Clerk of the City.

“City Treasurer” means the appointed and acting City Treasurer or, in the City Treasurer’s absence, the appointed acting City Treasurer of the City.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations proposed or promulgated thereunder of the United States Department of the Treasury.

“Improvements” means the improvements referred to in the recitals to this Ordinance or any Substitute Improvements, as defined in the Resolution.

“Mayor” means the elected and acting Mayor of the City or, in the Mayor’s absence, the appointed acting Mayor of the City.

“Ordinance” means this Ordinance of the City authorizing the issuance of the Bonds.

“Resolution” means the Resolution of the City containing the terms and details of the Bonds.

“State” means the State of Kansas.

Section 2. Authorization of and Security for the Bonds. There shall be issued and are authorized and directed to be issued the Bonds of the City, in the principal amount of $2,020,000, for the purpose of providing funds to pay a portion of the cost of the Improvements, including payment of the costs of issuance of the Bonds.

The Bonds shall be general obligations of the City payable as to both principal and interest from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City. The full faith, credit and resources of the City are irrevocably pledged for the prompt payment of the principal of and interest on the Bonds as the same become due.

Section 3. Terms, Details and Conditions of the Bonds. The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such form, shall be subject to redemption and payment prior to maturity and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Resolution adopted by the Governing Body of the City.

Section 4. Levy and Collection of Annual Tax. The Governing Body of the City shall annually make provision for the payment of principal of, premium, if any, and interest on the Bonds as the same become due by levying and collecting the necessary taxes and/or assessments upon all of the taxable tangible property within the City in the manner provided by law.

The taxes and/or assessments above referred to shall be extended upon the tax rolls in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as the general ad valorem taxes of the City are levied and collected, and the
proceeds derived from the taxes and/or assessments shall be deposited in the Bond and Interest Fund.

If at any time the taxes and/or assessments are not collected in time to pay the principal of or interest on the Bonds when due, the City Treasurer is authorized and directed to pay the principal or interest out of the general funds of the City and to reimburse the general funds for money so expended when the taxes and/or assessments are collected.

Section 5. Tax Covenants. The City covenants and agrees that: (1) it will comply with all applicable provisions of the Code, including Sections 103 and 141 through 150, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Bonds; (2) it will comply with all requirements of Section 148 of the Code to the extent applicable to the Bonds; (3) it will use the proceeds of the Bonds as soon as practicable and with all reasonable dispatch for the purposes for which the Bonds are issued; (4) it will not invest or directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the City in any manner, or take or omit to take any action, that would cause the Bonds to be “interstate bonds” within the meaning of Section 148(a) of the Code; and (5) it will not use or permit the use of any proceeds of the Bonds or any other funds of the City nor take or permit any other action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

The City covenants and agrees that it will not use any portion of the proceeds of the Bonds, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any Bond to be a “private activity bond” as described in the Code.

Section 6. Further Authority. The Mayor, Finance Director, City Clerk and other City officials are further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and to make alterations, changes or additions in the agreements, statements, instruments and other documents approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 7. Governing Law. This Ordinance and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 8. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the Governing Body of the City and publication in the official City newspaper.

(remainder of page intentionally left blank)
PASSED by the Governing Body of the City on May 20, 2019.

APPROVED by the Mayor on May 20, 2019.

CITY OF GARDNER, KANSAS

By _________________________________
Mayor

(Seal)

Attest:

______________________________
City Clerk
Agenda Item: Consider adopting a resolution prescribing the form and details of and authorizing the delivery of $[2,020,000] principal amount of General Obligation Bonds, Series 2019B, of the City of Gardner, Kansas, previously authorized by an ordinance of the City.

Strategic Priority: Fiscal Stewardship

Department: Finance

Staff Recommendation:
Adopt a resolution prescribing the form and details of and authorizing the delivery of $[2,020,000] principal amount of General Obligation Bonds, Series 2019B, of the City of Gardner, Kansas, previously authorized by an ordinance of the City.

Background/Description of Item:
Following passing the ordinance authorizing the issuance and delivery of the bonds, this resolution is the second step to complete the transactions for the sale of the bonds.

The resolution provides the details of the bond issue including such items as the principal and interest payment dates and amounts, the rate of interest, identification of the paying agent and bond registrar (the State Treasurer of Kansas), optional redemption rights, bond registration and transfer provisions and similar information relating to the mechanics of how the bond issue works. The resolution also provides for the creation of certain funds and accounts relating to bond proceeds and money used to pay the debt service on the bonds and includes provisions relating to the administration of such funds and accounts. The resolution further describes the rights and limitations of rights of the owners of the bonds and provides an agreement by the City to disclose certain information to the marketplace about the events relating to the bonds and the City’s financial and operating data as long as the bonds remain outstanding.

As noted previously, some information that will be included in the final version of the resolution is not available until after bids are received and the determination of the best bid is made. The information that is obtained from the best bid is bracketed or left blank in the resolution included in the agenda packet and will be completed after the bond sale. At the meeting, staff will notify the Governing Body of the amounts to include in the resolution before the Governing Body considers approval.

The attached resolution authorizes all preparations to facilitate sale and issuance of the bonds.

Bond Counsel Ellsworth and Municipal Advisor Kimmel will be present at the meeting to answer any questions.

Financial Impact:
- Annual estimated debt service for the sewerage improvements is approximately $255,300 and will be paid from the Wastewater Fund.
Attachments Included:
- Resolution No. 2023

Suggested Motion:
Adopt Resolution No. 2023 prescribing the form and details of and authorizing the delivery of $[2,020,000] principal amount of General Obligation Bonds, Series 2019B, of the City of Gardner, Kansas, previously authorized by an ordinance of the City.
RESOLUTION NO. 2023


WHEREAS, the City of Gardner, Kansas (the “City”), has passed the Ordinance (as herein defined) authorizing the issuance of the Bonds (as herein defined);

WHEREAS, the Ordinance authorized the Governing Body of the City to adopt a resolution prescribing certain details and conditions of, and to make certain covenants with respect to, the issuance of the Bonds; and

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

ARTICLE I
DEFINITIONS

Section 1.01. Definitions of Words and Terms.

“Act” shall mean the Constitution and Statutes of the State including, but not limited to, to K.S.A. 10-101 et seq., K.S.A. 12-617 and 12-618, all as amended or supplemented.

“Authorized Costs” means the amount of expenditures for an improvement, including interest during construction, which has been authorized to be paid by the City by an ordinance or resolution of the City, including expenditures made to redeem outstanding general obligation bonds and outstanding notes issued to pay for such improvement and Costs of Issuance of the Bonds, less (a) the amount of any notes or bonds of the City which are currently outstanding and available to pay such Authorized Costs and (b) any Authorized Costs which have been previously paid by the City or by any eligible source of funds unless such amounts are entitled to be reimbursed under State and federal law.

“Authorized Denominations” means $5,000 and any integral multiple thereof.

“Authorized Investments” means those investments authorized by K.S.A. 10-131, as amended and supplemented, and by other provisions of State law applicable to the City.

“Beneficial Owner” means any Person who (a) has the power directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any book-entry bond (including persons holding book-entry bonds through nominees, depositaries or other intermediaries), or (b) is treated as owner of any book-entry bond for federal income tax purposes.

“Bond and Interest Fund” means the Bond and Interest Fund of the City for its general obligation bonds.
“Bond Counsel” means the firm of Kutak Rock LLP, or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the City.

“Bond Insurer” means any issuer of a Municipal Bond Insurance Policy, if such an issuer is described on Exhibit B to this Resolution.

“Bond Register” means the books for the registration, transfer and exchange of Bonds kept at the office of the Bond Registrar.

“Bond Registrar” means the State Treasurer, Topeka, Kansas, and any successors and assigns.


“Business Day” means a day other than a Saturday, Sunday or holiday on which the Paying Agent is scheduled in the normal course of its operations to be open to the public for conduct of its banking operation.


“City” means the City of Gardner, Kansas.

“City Clerk” means the appointed and acting City Clerk of the City or, in the City Clerk’s absence, the appointed acting City Clerk of the City.

“City Treasurer” means the appointed and acting City Treasurer of the City or, in the City Treasurer’s absence, the appointed acting City Treasurer of the City.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations proposed or promulgated thereunder of the United States Department of the Treasury.

“Costs of Issuance” shall mean all costs of issuing the Bonds, including all publication, preparation, signing and mailing expenses, registration fees, all legal fees and expenses of Bond Counsel and other legal counsel, all fees and expenses of the municipal advisor, all expenses incurred in connection with receiving a rating on the Bonds, and all fees of the Attorney General of the State.

“Defaulted Interest” means interest on any Bond which is payable but not paid on any Interest Payment Date.

“Final Official Statement” means the final official statement prepared by the City or its representatives in connection with the sale of the Bonds and delivered to the Original Purchaser within seven Business Days after the sale of the Bonds in accordance with the SEC Rule. The Final Official Statement includes the information in the Preliminary Official Statement as supplemented or amended.
“Improvement Fund” means the fund by that name created in Section 5.01.

“Improvements” means the improvements referred to in the recitals to the Ordinance or any Substitute Improvements, as defined in this Resolution.

“Interest Payment Dates” means April 1 and October 1 of each year, commencing October 1, 2019.

“Letter of Instructions” means the Arbitrage Letter of Instructions (dated as of the date of issuance of the Bonds) attached to the City’s Closing Certificate to be delivered at the time of issuance and delivery of the Bonds relating to certain matters within the scope of Section 148 of the Code, as the same may be amended or supplemented in accordance with its terms.

“Maturity” when used with respect to any Bond means the date on which the principal of such Bond becomes due and payable as provided therein, whether at the Stated Maturity or call for redemption or otherwise.

“Mayor” means the elected and acting Mayor of the City or, in the Mayor’s absence, the appointed or acting Mayor of the City.

“Municipal Bond Insurance Policy” shall mean, if applicable, the municipal bond insurance policy issued by the Bond Insurer insuring the payment when due of the principal of and interest on the Bonds.

“Ordinance” means the ordinance of the City authorizing the issuance of the Bonds as further described on Exhibit B to this Resolution.

“Original Purchaser” means the original purchaser of the Bonds described on Exhibit B to this Resolution.

“Outstanding” means as of a particular date of determination, all Bonds authenticated and delivered under the provisions of this Resolution, except:

(a) Bonds canceled by the Paying Agent or delivered to the Paying Agent for cancellation pursuant to this Resolution;

(b) Bonds for the payment or redemption of which moneys or investments have been deposited in accordance with Article XI of this Resolution; and

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Resolution.

“Owner” when used with respect to any Bond means the Person in whose name such Bond is registered on the registration books of the Bond Registrar.

“Participants” shall mean those financial institutions for whom the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.
“Paying Agent” means the State Treasurer, Topeka, Kansas, and any successors and assigns.

“Person” means any natural person, corporation, partnership, joint venture, association, firm, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision or other public body.

“Preliminary Official Statement” means the Preliminary Official Statement which was prepared by the City and its advisors in connection with the sale of the Bonds and distributed to potential purchasers of the Bonds before the Final Official Statement, as described in the SEC Rule, was made available.

“Principal and Interest Account” means the account by that name created in Section 5.01.

“Purchase Price” means the original purchase price of the Bonds described on Exhibit B to this Resolution.

“Rebate Fund” means the fund by that name created in Section 5.01.

“Record Dates” for the interest payable on any Interest Payment Date means the fifteenth day (whether or not a Business Day) of each month preceding such Interest Payment Date.

“Redemption Date” when used with respect to any Bond to be redeemed means the date fixed for such redemption pursuant to the terms of this Resolution.

“Redemption Price” when used with respect to any Bond to be redeemed means the price at which such Bond is to be redeemed pursuant to the terms of this Resolution, including the applicable redemption premium, if any, but excluding installments of interest whose Stated Maturity is on or before the Redemption Date.

“Replacement Bonds” shall mean Bonds issued to the Beneficial Owners of the Bonds in accordance with Section 2.04 of this Resolution.

“Resolution” means this Resolution relating to the Bonds.


“Special Record Date” means the date fixed by the Paying Agent pursuant to Section 2.04 for the payment of Defaulted Interest.

“State” means the State of Kansas.
“State Treasurer” means the elected Treasurer of the State or, in the Treasurer’s absence, the appointed acting Treasurer of the State.

“Stated Maturity” when used with respect to any Bond means the date specified in such Bond and this Resolution as the fixed date on which the principal of such Bond is due and payable.

“Substitute Improvements” means the substitute or additional improvements authorized pursuant to Section 6.04 of this Resolution.

“Term Bonds” means the Term Bonds, if any, described on Exhibit B to this Resolution.

“United States Government Obligations” means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States of America, including evidence of a direct ownership interest in future interest or principal payment on obligations issued by the United States of America (including the interest component of obligations of the Resolution Funding Corporation), or securities which represent an undivided interest in such obligations, which obligations are rated in the highest rating category by a nationally recognized rating service and such obligations are held in a custodial account for the benefit of the City.

ARTICLE II
DETAILS OF THE BONDS

Section 2.01. Authorization of the Bonds. The Bonds have been authorized pursuant to the Ordinance and the Act for the purpose of providing funds to pay the Authorized Costs of the Improvements, including payment of the Costs of Issuance of the Bonds.

Section 2.02. Description of the Bonds. The Bonds shall consist of fully registered bonds in Authorized Denominations, and shall be numbered in such manner as the Bond Registrar shall determine. All of the Bonds shall be dated June 12, 2019, shall become due on the Stated Maturities, and shall bear interest at the rates per annum set forth on Exhibit B to this Resolution.

The Bonds shall bear interest at the rates described on Exhibit B to this Resolution (computed on the basis of a 360-day year of twelve 30-day months) from that date or from the most recent Interest Payment Date to which interest has been paid or provided for, which interest shall be payable on the Interest Payment Dates.

Section 2.03. Designation of Paying Agent and Bond Registrar. The State Treasurer is designated as the Paying Agent and Bond Registrar for the Bonds. The Mayor and City Clerk of the City are authorized and empowered to execute on behalf of the City an agreement with the Bond Registrar and Paying Agent for the Bonds. The City reserves the right to appoint a successor Paying Agent or Bond Registrar. No resignation or removal of the Paying Agent or Bond Registrar shall become effective until a successor has been appointed and has accepted the duties of paying agent or bond registrar. Every Paying Agent or Bond Registrar appointed by the City shall at all times meet the requirements of State law and the City will at all times maintain a Paying Agent and Bond Registrar meeting the requirements of State law.
Section 2.04. Initial Registration with Securities Depository, Method and Place of Payment of the Bonds. The Bonds shall be registered on bond registration books maintained by the Bond Registrar to Cede & Co., the nominee for the Securities Depository, and no Beneficial Owners will receive certificates representing their respective interests in the Bonds, except in the event the City issues Replacement Bonds as provided in this Section. It is anticipated that during the term of the Bonds, the Securities Depository will make book-entry transfers among its Participants and receive and transmit payment of principal of, and interest on, the Bonds until and unless the City authenticates and delivers Replacement Bonds to the Beneficial Owners in the manner described in this Section.

If the City determines: (a) that the Securities Depository is unable to properly discharge its responsibilities; (b) that the Securities Depository is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended; (c) that the continuation of a book-entry only system to the exclusion of any Bonds being issued to any Owner other than Cede & Co., is no longer in the best interest of the Beneficial Owners of the Bonds, or if the City receives written notice from Participants having interests in not less than 50% of the Bonds, as shown on the records of the Securities Depository, that the continuation of a book-entry only system to the exclusion of Bonds being issued to any Owner other than Cede & Co., is no longer in the best interest of the Beneficial Owners of the Bonds, or if the Securities Depository determines to discontinue providing book-entry services, then the City shall notify the Owners of the Bonds of such determination or such notice and of the availability of certificates to Owners who request certificates, and the City shall authenticate and deliver Replacement Bonds to the Beneficial Owners or their nominees in principal amounts representing the interest of each, making such adjustments as it may find necessary or appropriate as to accrued interest and previous calls for redemption. In such event, all references to the Securities Depository in this Resolution shall relate to the period of time when the Securities Depository has possession of at least one certificate. Upon the issuance of Replacement Bonds, all references in this Resolution to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the City, to the extent such provisions are consistent with and applicable to Replacement Bonds. If the Securities Depository resigns and the City or Bond Owners are unable to locate a qualified successor of the Securities Depository, then the City shall authenticate and deliver Replacement Bonds to the Participants for the benefit of the Bond Owners.

The principal of, redemption premium, if any, and interest on the Bonds shall be payable in any coin or currency which, on the respective dates of payment, is legal tender for the payment of public and private debts.

The principal or Redemption Price of each Bond shall be paid at Maturity to the Person in whose name such Bond is registered on the Bond Register at Maturity, upon presentation and surrender of such Bond at the principal office of the Paying Agent.

The interest payable on each Bond on any Interest Payment Date shall be paid to the Owner of such Bond as shown on the Bond Register at the close of business on the Record Date for such interest:
(a) by check or draft mailed by the Paying Agent to the address of such Owner shown on the Bond Register;

(b) at such other address as is furnished to the Paying Agent in writing by such Owner; or

(c) in the case of an interest payment to any Owner that is a securities depository, by wire transfer to such Owner upon written notice given to the Bond Registrar by such Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank (which shall be in the continental United States), address, ABA routing number and account number to which such Owner wishes to have such wire directed.

Notwithstanding the provisions of this Section, any Defaulted Interest with respect to any Bond shall cease to be payable to the Owner of such Bond on the relevant Record Date and shall be payable to the Owner in whose name such Bond is registered at the close of business on the Special Record Date for the payment of such Defaulted Interest, which Special Record Date shall be fixed as specified in this paragraph. The City shall notify the Paying Agent in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment (which date shall be at least 30 days after receipt of such notice by the Paying Agent) and shall deposit with the Paying Agent at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Paying Agent for such deposit prior to the date of the proposed payment. Following receipt of such funds the Paying Agent shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment. The Paying Agent shall promptly notify the City of such Special Record Date and, in the name and at the expense of the City, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, by first class mail, postage prepaid, to each Owner of a Bond entitled to such notice at the address of such Owner as it appears on the Bond Register not less than 10 days prior to such Special Record Date.

The Paying Agent shall keep a record of payment of principal, redemption premium, if any, and interest on all Bonds and at least annually shall forward a copy or summary of such records to the City.

Section 2.05. Method of Execution and Authentication of the Bonds. The Bonds shall be executed for and on behalf of the City by the manual or facsimile signature of the Mayor, attested by the manual or facsimile signature of the City Clerk and the seal of the City shall be affixed to or imprinted on the Bonds. The Bonds shall be registered in the office of the City Clerk, which registration shall be evidenced by the manual or facsimile signature of the City Clerk with the seal of the City affixed thereto or imprinted thereon. The Bonds shall also be registered in the office of the State Treasurer, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer with the seal of the State Treasurer affixed thereto or imprinted thereon. In the event that any of the previously mentioned officers shall cease to hold such offices before the Bonds are issued and delivered, the Bonds may be issued and transferred to other Owners as though the officers had not ceased to hold office, and such signatures appearing on the
Bonds shall be valid and sufficient for all purposes as if they had remained in office until such issuance or transfer.

The Bonds shall not be valid obligations under the provisions of this Resolution until authenticated by the Bond Registrar or an authorized representative of the Bond Registrar by execution of the Certificate of Authentication appearing on each Bond. It shall not be necessary that the same representative of the Bond Registrar execute the Certificate of Authentication on all of the Bonds.

Section 2.06. Registration, Transfer and Exchange of Bonds. The City covenants that, as long as any of the Bonds remain Outstanding, it will cause the Bond Register to be kept at the office of the Bond Registrar as provided herein. Each Bond when issued shall be registered in the name of the Owner on the Bond Register.

Bonds may be transferred and exchanged only on the Bond Register as provided in this Section. Upon surrender of any Bond at the principal office of the Bond Registrar, the Bond Registrar shall transfer or exchange such Bond for a new Bond or Bonds in any Authorized Denomination of the same Stated Maturity and in the same aggregate principal amount as the Bond that was presented for transfer or exchange.

Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Bond Registrar, executed by the Owner or by the Owner’s authorized agent. In all cases in which the privilege of transferring or exchanging Bonds is exercised, the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of this Resolution. The City shall pay the fees and expenses of the Bond Registrar for the registration, transfer and exchange of Bonds provided for by this Resolution and the cost of preparation of a reasonable supply of registered bond blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the Bond Registrar, are the responsibility of the Owners of the Bonds.

The City and the Bond Registrar shall not be required: (a) to register the transfer or exchange of any Bond that has been called for redemption after notice of such redemption has been mailed by the Paying Agent pursuant to Section 3.04 and during the period of 15 days next preceding the date of mailing of such notice of redemption; or (b) to register the transfer or exchange of any Bond during a period beginning at the opening of business on the day after receiving written notice from the City of its intent to pay Defaulted Interest and ending at the close of business on the date fixed for the payment of Defaulted Interest pursuant to Section 2.04.

The City and the Paying Agent may deem and treat the Person in whose name any Bond is registered on the Bond Register as the absolute Owner of such Bond, whether such Bond is overdue or not, for the purpose of receiving payment of, or on account of, the principal, redemption premium, if any, and interest on the Bond and for all other purposes. All payments so made to any such Owner or upon the Owner’s order shall be valid and effective to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the City nor the Paying Agent shall be affected by any notice to the contrary.
Section 2.07. Cancellation and Destruction of Bonds Upon Payment. All Bonds that have been paid or redeemed or that otherwise have been surrendered to the Paying Agent, either at or before Stated Maturity, shall be canceled by the Paying Agent immediately upon the payment, redemption and surrender to the Paying Agent and subsequently destroyed in accordance with the customary practices of the Paying Agent. The Paying Agent shall execute a certificate in duplicate describing the Bonds so canceled and destroyed and shall file an executed counterpart of such certificate with the City.

Section 2.08. Mutilated, Lost, Stolen or Destroyed Bonds. If: (a) any mutilated Bond is surrendered to the Paying Agent or the Paying Agent receives evidence to its satisfaction of the destruction, loss or theft of any Bond; and (b) there is delivered to the City and the Paying Agent such security or indemnity as may be required by each of them, then, in the absence of notice to the City or the Paying Agent that such Bond has been acquired by a bona fide purchaser, the City shall execute and, upon the City’s request, the Paying Agent shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Bond, a new Bond of the same Stated Maturity and of like tenor and principal amount.

If any such mutilated, destroyed, lost or stolen Bond has become or is about to become due and payable, the City, in its discretion, may pay such Bond instead of issuing a new Bond.

Upon the issuance of any new Bond under this Section, the City may require the payment by the Owner of a sum sufficient to cover any tax or other governmental charge that may be imposed and any other expenses (including the fees and expenses of the Paying Agent).

Every new Bond issued pursuant to this Section shall constitute a replacement of the prior obligation of the City, and shall be entitled to all the benefits of this Resolution equally and ratably with all other Outstanding Bonds.

Section 2.09. Delivery of the Bonds. The sale of the Bonds is awarded to the Original Purchaser. The Mayor and City Clerk are authorized and directed to cause the Bonds to be registered in the offices of the City Clerk and the State Treasurer as provided by law, and, when executed and registered, to deliver the Bonds to the Original Purchaser upon receipt by the City of the Purchase Price.

ARTICLE III
REDEMPTION OF THE BONDS

Section 3.01. Optional Redemption. At the option of the City, Bonds maturing October 1, 2026, and thereafter may be called for redemption and payment prior to Stated Maturity on October 1, 2025, or thereafter at any time in whole or in part (selection of Bonds to be designated by the City in such equitable manner as it may determine) at the Redemption Price of 100% (expressed as a percentage of the principal amount), plus accrued interest to the date of redemption.

Section 3.02. Sinking Fund Redemption. Any Term Bonds shall also be subject to mandatory redemption and payment as described on Exhibit B to this Resolution. The mandatory redemption amount for any Term Bond may be reduced by the principal amount of such Term Bond redeemed prior to its Stated Maturity pursuant to optional redemption as set forth in
Section 3.01 of this Resolution. To effect such reduction, the City shall notify the Bond Registrar on or before the 45th day preceding the applicable mandatory redemption date, setting forth the extent of the reduction to be applied with respect to the mandatory sinking fund requirement.

Section 3.03. Selection of Bonds to be Redeemed. The Bonds shall be redeemed only in the principal amount of $5,000 or any integral multiple thereof. When less than all of the Bonds are to be redeemed and paid prior to their Stated Maturity, the Bonds shall be redeemed in such manner as the City shall determine, Bonds of less than a full Stated Maturity to be selected by lot in units of $5,000.

In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than $5,000 are then outstanding, then for all purposes in connection with such redemption each $5,000 of face value shall be treated as though it were a separate Bond in the denomination of $5,000. If it is determined that one or more, but not all, of the $5,000 units of face value represented by any Bond is selected for redemption, then upon notice of intention to redeem such $5,000 unit or units, the Owner or the Owner’s authorized agent shall present and surrender such Bond to the Bond Registrar:

(a) for payment of the Redemption Price (including the redemption premium, if any, and interest to the date fixed for redemption) of the $5,000 unit or units of face value called for redemption; and

(b) for exchange, without charge to the Owner, for a new Bond(s) of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond.

If the Owner of any Bond of a denomination greater than $5,000 shall fail to present such Bond as described above, such Bond shall, nevertheless, become due and payable on the Redemption Date to the extent of the amount called for redemption (and to that extent only).

Notwithstanding the provisions of the preceding paragraph, in the event of a partial redemption of the Bonds, the Securities Depository may, at its option, in lieu of surrendering such Bond, make an appropriate notation on the Bond certificate indicating the date and amounts of the reduction in the principal amount of such Bond (except in the case of the final Stated Maturity of such Bond, where the Bond certificate shall be presented to the City prior to payment).

Section 3.04. Notice of Redemption. In the event the City desires to call the Bonds for redemption prior to their Stated Maturity, unless waived by the Bond Registrar, written notice of such intent shall be provided to the Bond Registrar in accordance with K.S.A. 10-129, as amended, not less than 45 days prior to the date fixed for redemption or such lesser time period permitted by the Bond Registrar that enables the Bond Registrar to provide the Owners of the Bonds with the notice described in this Section. Unless waived by any Owner of Bonds to be redeemed, if the City shall call any Bonds for redemption and payment prior to the Stated Maturity, the City shall instruct the Bond Registrar to give written notice of its intention to call and pay the Bonds on a specified date, the same being described by Stated Maturity, such notice to be mailed by United States first class mail addressed to the Owners of the Bonds and to the Bond Insurer, if any, each of the notices to be mailed not less than 30 days prior to the date fixed for redemption. The
City and Bond Registrar shall also give such additional notice as may be required by State law or regulations of the Securities and Exchange Commission in effect as of the date of such notice.

All official notices of redemption shall be dated and shall state:

(a) the Redemption Date;

(b) the Redemption Price;

(c) if less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed;

(d) that on the Redemption Date the Redemption Price will become due and payable upon each such Bond or portion called for redemption, and that interest shall cease to accrue from and after the Redemption Date (unless the City defaults in the payment of the Redemption Price); and

(e) the place where such Bonds are to be surrendered for payment of the Redemption Price, which place of payment shall be the principal office of the Paying Agent.

The notice of redemption may be conditioned on the issuance by the City of a refunding obligation or the receipt of other funds necessary to redeem the Bonds.

During the time the Bonds are registered in the name of Cede & Co., the notice described in the immediately preceding paragraphs shall be delivered to the Securities Depository. The Securities Depository shall, in turn, notify its Participants. It is expected that the Participants, in turn, will notify or cause to be notified the Beneficial Owners of the Bonds. Any failure on the part of the Securities Depository, or failure on the part of a nominee of a Beneficial Owner of a Bond (having received notice from the City, a Participant or otherwise) to notify the Beneficial Owner of the Bonds so affected, shall not affect the validity of the redemption of such Bonds.

Prior to or simultaneously with any Redemption Date, the City shall deposit with the Paying Agent an amount of money sufficient to pay the Redemption Price of all the Bonds or portions of Bonds which are to be redeemed on that date. Upon surrender of such Bonds for redemption in accordance with the notice, such Bonds shall be paid by the Paying Agent at the Redemption Price. Installments of interest due on or prior to the Redemption Date shall be payable as provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Owner a new Bond or Bonds of the same Stated Maturity in the amount of the unpaid principal. All Bonds which have been redeemed shall be canceled and destroyed by the Paying Agent and shall not be reissued.

Section 3.05. Effect of Call for Redemption. Whenever any Bond is called for redemption and payment as provided in this Article, all interest on such Bond shall cease from and after the date for which such call is made, provided funds are available for its payment at the Redemption Price specified.
ARTICLE IV
FORM OF THE BONDS

Section 4.01. Form of the Bonds. The Bonds shall be printed in accordance with the format required by the Attorney General of the State and shall contain information substantially in the form set forth on Exhibit A to this Resolution or as may be required by the Attorney General pursuant to the Notice of Systems of Registration for Kansas Municipal Bonds, 2 Kan. Reg. 921 (1983), in accordance with the Kansas Bond Registration Law, K.S.A. 10-620 to 10-632, inclusive, as amended and supplemented.

ARTICLE V
ESTABLISHMENT OF FUNDS AND ACCOUNTS

Section 5.01. Creation of Funds and Accounts. Simultaneously with the issuance of the Bonds, there shall be created within the treasury of the City the following funds and accounts:

(a) Improvement Fund for the City of Gardner, Kansas, General Obligation Bonds, Series 2019B;

(b) Principal and Interest Account for the City of Gardner, Kansas, General Obligation Bonds, Series 2019B; and

(c) Rebate Fund for the City of Gardner, Kansas, General Obligation Bonds, Series 2019B.

Section 5.02. Administration of Funds and Accounts. The funds and accounts established herein shall be administered in accordance with the provisions of this Resolution so long as the Bonds are Outstanding.

ARTICLE VI
APPLICATION OF BOND PROCEEDS

Section 6.01. Disposition of Bond Proceeds. The proceeds of the Bonds, upon issuance and delivery, shall be deposited as follows:

(a) In the Principal and Interest Account, a sum equal to the accrued interest, if any, on the Bonds and any premium identified on Exhibit B; and

(b) The balance of the proceeds of the Bonds shall be deposited in the Improvement Fund.

Section 6.02. Withdrawals from the Improvement Fund. The City Treasurer shall make withdrawals from the Improvement Fund solely for the purpose of paying the Authorized Costs of the Improvements, including the Costs of Issuance.

Section 6.03. Surplus in the Improvement Fund. All moneys remaining in the Improvement Fund after the completion of the Improvements and payment of all Authorized Costs of the Improvements shall be transferred immediately to the Principal and Interest Account.
Section 6.04. Substitution of Improvements. The City may elect to substitute or add other improvements pursuant to this Section provided the following conditions are met: (a) the Substitute Improvement and the issuance of general obligation bonds to pay the cost of the Substitute Improvement has been authorized by the Governing Body of the City in accordance with the laws of the State; (b) a resolution or ordinance authorizing the use of the proceeds of the Bonds to pay the Authorized Costs of the Substitute Improvement has been adopted by the Governing Body of the City; (c) the Attorney General of the State has approved the amendment to the transcript of proceedings for the Bonds to include the Substitute Improvement; and (d) the City has received an opinion of Bond Counsel to the effect that the Substitute Improvement will not adversely affect the tax-exempt status of the Bonds under State or federal law and the Substitute Improvement has been authorized pursuant to this Section and the laws of the State.

ARTICLE VII
PAYMENT OF THE BONDS

Section 7.01. Application of Moneys in the Principal and Interest Account. All amounts paid and credited to the Principal and Interest Account shall be expended and used by the City for the sole purpose of paying the principal of, premium, if any, and interest on the Bonds as and when they become due and paying the usual and customary fees and expenses of the Paying Agent.

Section 7.02. Transfer of Funds to Paying Agent. The City Treasurer is authorized and directed to withdraw from the Principal and Interest Account and forward to the Paying Agent sums sufficient to pay both principal of, premium, if any, and interest on the Bonds as and when the same become due, and also to pay the charges made by the Paying Agent for acting in such capacity in the payment of principal and interest on the Bonds, and the charges shall be forwarded to the Paying Agent over and above the amount of the principal of, premium, if any, and interest on the Bonds. If, through the lapse of time, or otherwise, the Owners of Bonds shall no longer be entitled to enforce payment of their obligations, it shall be the duty of the Paying Agent to return the funds to the City. All moneys deposited with the Paying Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

Section 7.03. Surplus in Principal and Interest Account. Any moneys or investments remaining in the Principal and Interest Account after the retirement of the indebtedness for which the Bonds were issued shall be transferred and paid into the Bond and Interest Fund of the City.

ARTICLE VIII
DEPOSITS AND INVESTMENT OF FUNDS

Section 8.01. Deposits. Cash moneys in each of the funds and accounts created and established by this Resolution shall be deposited and secured in accordance with State law.

Section 8.02. Investments. Moneys held in the funds and accounts created or established in conjunction with the issuance of the Bonds may be invested by the City in Authorized Investments, or in other investments allowed by State law, in such amounts and maturing at such times as shall reasonably provide for moneys to be available when required in the accounts or funds; provided, however, that no such investment shall be made for a period extending longer...
than to the date when the moneys invested may be needed for the purpose for which such fund or account was created. All interest on any Authorized Investment held in any fund or account shall (except amounts required to be deposited into the Rebate Fund in accordance with the Letter of Instructions) accrue to and become a part of such fund or account. In determining the amount held in any fund or account under the provisions of this Resolution, Authorized Investments shall be valued at their principal par value or at their then redemption value, whichever is lower.

Section 8.03. Deposits Into and Application of Moneys in the Rebate Fund.

(a) There shall be deposited in the Rebate Fund such amounts as are required to be deposited pursuant to the Letter of Instructions. Subject to the transfer provisions provided in subsection (b) below, all money at any time deposited in the Rebate Fund shall be held in trust, to the extent required to pay rebatable arbitrage to the federal government of the United States of America, and no Owner of any Bonds shall have any right in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section, by the preceding Section and by the Letter of Instructions (which is incorporated herein by reference).

(b) Computations of the rebatable arbitrage shall be performed by or on behalf of the City in accordance with the Letter of Instructions. Pursuant to the Letter of Instructions, the City shall remit rebate installments and the final rebate payments to the United States. Any moneys remaining in the Rebate Fund after redemption and payment of all of the Bonds and payment and satisfaction of any rebatable arbitrage, or provision made therefor, shall be withdrawn and released to the City.

(c) Notwithstanding any other provision of this Resolution, including in particular this Article, the obligation to remit rebatable arbitrage to the United States and to comply with all other requirements of this Section, the preceding Section and the Letter of Instructions shall survive the defeasance or payment in full of the Bonds.

ARTICLE IX
DEFAULT AND REMEDIES

Section 9.01. Remedies. The provisions of this Resolution, including the covenants and agreements contained herein, shall constitute a contract between the City and the Owners of the Bonds. The Owner or Owners of not less than 10% in principal amount of the Bonds at the time Outstanding shall have the right for the equal benefit and protection of all Owners of Bonds similarly situated:

(a) by mandamus or other suit, action or proceedings at law or in equity to enforce the rights of such Owner or Owners against the City and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of this Resolution or by the Constitution and laws of the State;

(b) by suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and
(c) by suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Owners of the Bonds.

Section 9.02. Limitation on Rights of Owners. The covenants and agreements of the City contained in this Resolution and in the Bonds shall be for the equal benefit, protection, and security of the Owners of any or all of the Bonds, all of which Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds pledged to the payment of the principal of and the interest on the Bonds, or otherwise, except as to rate of interest, date of Stated Maturity and right of prior redemption as provided in this Resolution. No one or more Owners secured shall have any right in any manner whatever by such Owner’s or Owners’ action to affect, disturb or prejudice the security granted and provided for in this Resolution, or to enforce any right hereunder, except in the manner provided herein, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of such Outstanding Bonds.

Section 9.03. Remedies Cumulative. No remedy conferred upon the Owners is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred. No waiver of any default or breach of duty or contract by the Owner of any Bond shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence. Every substantive right and every remedy conferred upon the Owners of the Bonds by this Resolution may be enforced and exercised from time to time and as often as may be deemed expedient. In case any suit, action or proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy shall have been discontinued or abandoned for any reason, or shall have been determined adversely to such Owner, then, and in every such case, the City and the Owners of the Bonds shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as if no such suit, action or other proceedings had been brought or taken.

ARTICLE X
AMENDMENTS

Section 10.01. Amendments. The City may from time to time, without the consent of or notice to any of the Owners, provide for amendment to the Bonds or this Resolution, for any one or more of the following purposes:

(a) To cure any ambiguity or formal defect or omission in this Resolution or Bonds or to make any other change not prejudicial to the Owners;

(b) To grant to or confer upon the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners;

(c) To conform this Resolution or the Bonds to the Code or future applicable federal law concerning tax-exempt obligations; or

(d) To more precisely identify the Improvements.
The following modifications or amendments to the Bonds or this Resolution shall require the consent of 100% of the Owners of the Bonds:

(a) The extension of the Stated Maturity of the principal of any of the Bonds, or the extension of any Interest Payment Date;

(b) A reduction in the principal amount of any of the Bonds or the rate of interest on the Bonds; or

(c) A reduction in the aggregate principal amount of the Bonds.

Amendments or modifications of the Bonds and this Resolution not listed above may be made at any time by the City with the written consent of the Owners of not less than 66.66% in aggregate principal amount of the Bonds at the time Outstanding.

Section 10.02. Written Evidence of Amendments. Every amendment or modification of a provision of the Bonds or of this Resolution to which the written consent of the Owners is given as above provided shall be expressed in a resolution of the City amending or supplementing the provisions of this Resolution and shall be deemed to be a part of this Resolution. It shall not be necessary to note on any of the Outstanding Bonds any reference to such amendment or modification, if any. A certified copy of every such amendatory or supplemental resolution, if any, and a certified copy of this Resolution shall always be kept on file in the office of the City Clerk and shall be made available for inspection by the Owners of any Bond or prospective purchaser or Owners of any Bond authorized by this Resolution, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental resolution or of this Resolution will be sent by the City Clerk to any such Owner or prospective Owner.

ARTICLE XI
DEFEASANCE

Section 11.01. Defeasance. When all or any part of the Bonds or scheduled interest payments shall have been paid and discharged, then the requirements contained and the pledge of the City’s faith and credit and all other rights granted herein shall cease and determine. Bonds or scheduled interest payments shall be deemed to have been paid and discharged within the meaning of this Resolution if there shall have been deposited with the Paying Agent or a bank located in the State and having full trust powers, at or prior to the Stated Maturity or Redemption Date of the Bonds, in trust for and irrevocably appropriated, moneys and/or United States Government Obligations, or other investments allowed by State law which, together with the interest to be earned on such United States Government Obligations, will be sufficient for the payment of the principal of the Bonds, the redemption premium thereon, if any there be, and/or interest accrued to the Stated Maturity or Redemption Date, as the case may be, or if default in such payment shall have occurred on such date, then to the date of the tender of such payments; provided, however, that if any such Bonds shall be redeemed prior to their Stated Maturity (a) the City has elected to redeem such Bonds and (b) either notice of such redemption has been given or the City has given irrevocable instructions, or shall have provided an escrow agent to give irrevocable instructions to the Paying Agent to give such notice of redemption in compliance with Article III of this
Resolution. Any moneys and United States Government Obligations which at any time shall be deposited with the Paying Agent or such bank by or on behalf of the City, for the purpose of paying and discharging any of the Bonds shall be and are assigned, transferred and set over to the Paying Agent or such bank in trust for the respective Owners of the Bonds, and such moneys shall be and are irrevocably appropriated to the payment and discharge thereof. All moneys and United States Government Obligations deposited with the Paying Agent or such bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

ARTICLE XII
TAX COVENANTS

Section 12.01. General Covenants.

(a) The City covenants and agrees that:

(i) it will comply with all applicable provisions of the Code, including Sections 103 and 141 through 150, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Bonds; and

(ii) it will not use or permit the use of any proceeds of the Bonds or any other funds of the City, nor take or permit any other action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

(b) The City covenants and agrees that:

(i) it will comply with all requirements of Section 148 of the Code to the extent applicable to the Bonds;

(ii) it will use the proceeds of the Bonds as soon as practicable and with all reasonable dispatch for the purposes for which the Bonds are issued; and

(iii) it will not invest or directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the City in any manner, or take or omit to take any action, that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.

(c) The City covenants and agrees that it will not use any portion of the proceeds of the Bonds, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any Bond to be a “private activity bond” within the meaning of Section 141(a) of the Code.
Section 12.02. Rebate Covenants. The City covenants and agrees that it will pay or provide for the payment of from time to time all amounts required to be rebated to the United States pursuant to Section 148(f) of the Code and any Treasury Regulations applicable to the Bonds from time to time. The City specifically covenants to pay or cause to be paid to the United States, the required amounts of rebatable arbitrage at the times and in the amounts as determined by the Letter of Instructions. Notwithstanding anything to the contrary contained in this Resolution, the Letter of Instructions may be amended or replaced if, in the opinion of Bond Counsel, such amendment or replacement will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds. This covenant shall survive payment in full or defeasance of the Bonds.

Section 12.03. Designation of Bonds as Qualified Tax-Exempt Obligations. The City designates the Bonds to be “qualified tax-exempt obligations” as such term is defined in Section 265(b)(3) of the Code. In addition, the City represents that:

(a) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds which are not “qualified 501(c)(3) bonds”) which will be issued by the City (and all subordinate entities) during the calendar year that the Bonds are issued is not reasonably expected to exceed $10,000,000; and

(b) the City (including all subordinate entities) will not issue an aggregate principal amount of obligations designated by the City to be “qualified tax-exempt obligations” during the calendar year that the Bonds are issued, including the Bonds, in excess of $10,000,000, without first obtaining an opinion of Bond Counsel that the designation of the Bonds as “qualified tax-exempt obligations” will not be adversely affected.

The Mayor is authorized to take such other action as may be necessary to make effective the designation contained in this subsection.

Section 12.04. Survival of Covenants. The covenants contained in this Article shall remain in full force and effect notwithstanding the defeasance of the Bonds pursuant to Article XI or any other provision of this Resolution until the final Stated Maturity date of all Bonds Outstanding.

ARTICLE XIII
DISCLOSURE

Section 13.01. Preliminary Official Statement and Final Official Statement. The City ratifies and confirms its prior approval of the form and content of the Preliminary Official Statement. The Preliminary Official Statement is “deemed final” by the City except for the omission of certain information as provided in the SEC Rule. The City approves the form and content of any addenda, supplement, or amendment thereto utilized to prepare the Final Official Statement. The use of the Final Official Statement in the reoffering of the Bonds by the Original Purchaser is approved and authorized. The proper officials of the City are authorized to execute and deliver a certificate pertaining to the accuracy and adequacy of the information in the Preliminary Official Statement and the Final Official Statement.
Section 13.02. Continuing Disclosure. The City covenants and agrees to provide continuing disclosure as required by the SEC Rule and as set forth in the Continuing Disclosure Letter of Instructions attached to the Preliminary Official Statement and the Final Official Statement and made a part hereof by reference.

ARTICLE XIV
MISCELLANEOUS PROVISIONS

Section 14.01. Succession of a Securities Depository. In the event the Securities Depository resigns or is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, the City may appoint a successor Securities Depository provided the City receives written evidence, satisfactory to the City, with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository which is a registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable statute or regulation. The City, upon receipt of a book-entry Bond for cancellation shall cause the authorization and delivery of a book-entry Bond to the successor Securities Depository in appropriate denominations and form as provided in this Resolution. If the City makes the determinations or receives the notice described in Section 2.04 of this Resolution, the City shall cause the notices described in Section 2.04 to be delivered and issue Bonds as described in that Section.

Section 14.02. Severability. In case any one or more of the provisions of this Resolution or of the Bonds issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution, or of the Bonds appertaining thereto, but this Resolution and the Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in the Bonds or in this Resolution shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

Section 14.03. Further Authority. The Mayor, City Clerk and other officials of the City are further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution to make alterations, changes or additions in the agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 14.04. Governing Law. This Resolution and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 14.05. Effective Date. This Resolution shall take effect and be in full force from and after its adoption by the Governing Body of the City.

(Remainder of Page Intentionally Left Blank)
ADOPTED by the Governing Body of the City on May 20, 2019.

Signed by the Mayor on May 20, 2019.

CITY OF GARDNER, KANSAS

By ________________________________
Mayor

(Seal)

Attest:

______________________________
City Clerk
EXHIBIT A

(FORM OF BOND)

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation, ("DTC"), to City or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

REGISTERED
NUMBER R-__

UNITED STATES OF AMERICA
STATE OF KANSAS
COUNTY OF JOHNSON
CITY OF GARDNER

GENERAL OBLIGATION BOND
SERIES 2019B

Interest Rate: %
Maturity Date: October 1, ____
Dated Date: June 12, 2019
CUSIP: 365591 __ _

REGISTERED OWNER: Cede & Co. Tax Identification No. 132555119-0

PRINCIPAL AMOUNT:

KNOW ALL PERSONS BY THESE PRESENTS: That the City of Gardner, in the County of Johnson, State of Kansas (the “City”), for value received, acknowledges itself to be indebted and promises to pay to the owner identified above or registered assigns (the “Owner”), as of the Record Dates as provided herein on the Maturity Date identified above, the Principal Amount identified above, and in like manner to pay interest on such Principal Amount at the rate of interest per annum set forth above (computed on the basis of a 360-day year of twelve 30-day months), semiannually on April 1 and October 1 of each year, commencing October 1, 2019 (the “Interest Payment Dates”), until the Principal Amount is paid from the Dated Date hereof or the most recent Interest Payment Date to which interest has been paid.

The principal or redemption price of this Bond shall be paid at maturity or upon earlier redemption to the person in whose name this Bond is registered at the maturity or redemption date, upon presentation and surrender of this Bond at the office of the Treasurer of the State of Kansas, Topeka, Kansas (the “Paying Agent” and “Bond Registrar”). The interest payable on this Bond
on any Interest Payment Date shall be paid to the person in whose name this Bond is registered on the registration books maintained by the Bond Registrar at the close of business on the record date for such interest, which shall be the fifteenth day (whether or not a business day) of the calendar month next preceding the Interest Payment Date (the “Record Dates”). Such interest shall be payable: (a) by check or draft mailed by the Paying Agent to the address of the Owner shown on the Bond Register; (b) at such other address as is furnished to the Paying Agent in writing by the Owner; or (c) in the case of an interest payment to any Owner that is a securities depository, by wire transfer to such Owner upon written notice given to the Paying Agent by such Owner, not less than 15 days prior to the Record Date for such interest, containing the wire transfer address (which shall be in the continental United States) to which such Owner wishes to have such wire directed. The principal or redemption price of and interest on the Bonds shall be payable in any coin or currency that, on the respective dates of payment, is legal tender for the payment of public and private debts.

This Bond is one of an authorized series of Bonds of the City designated “General Obligation Bonds, Series 2019B,” in an aggregate principal amount of $[2,020,000] (the “Bonds”) issued for the purposes set forth in the Ordinance of the City authorizing the issuance of the Bonds and the Resolution of the City prescribing the form and details of the Bonds (jointly, the “Resolution”). The Bonds are issued by the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution and laws of the State of Kansas, including, but not limited to, K.S.A. 10-101 et seq., K.S.A. 12-617 and 12-618, all as amended or supplemented, and all other applicable provisions of the laws of the State of Kansas. The Bonds constitute general obligations of the City payable as to both principal and interest from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City. The full faith, credit and resources of the City are pledged for the payment of the principal of and interest on this Bond and the issue of which it is a part as the same respectively become due.

**Optional Redemption.** At the option of the City, Bonds maturing on October 1, 2026, and thereafter, may be called for redemption and payment prior to maturity on October 1, 2025, or thereafter at any time, in whole or in part (selection of Bonds to be designated by the City in such equitable manner as it may determine), at the redemption price of 100% (expressed as a percentage of the principal amount), plus accrued interest to the date of redemption.

**[Sinking Fund Redemption.** The Bonds maturing on October 1, ____ (the “Term Bonds”), shall also be subject to mandatory redemption and payment pursuant to the redemption schedule in the Resolution, at the principal amount, plus accrued interest to date fixed for redemption and payment, without premium. The City agrees to redeem the Term Bonds in the principal amounts and at the times set forth in the Resolution.]

Whenever the City is to select Bonds for the purpose of redemption, it shall, in the case of Bonds in denominations greater than $5,000, if less than all of the Bonds then outstanding are to be called for redemption, treat each $5,000 of face value of each such fully registered Bond as though it were a separate Bond in the denomination of $5,000.

If any Bonds are called for redemption and payment prior to maturity, the City shall instruct the Bond Registrar to give written notice of its intention to call and pay such Bonds on a specified
date, the same being described by maturity, this notice to be mailed by United States first class mail addressed to the Owners of the Bonds, each of these notices to be mailed not less than 30 days prior to the date fixed for redemption. All Bonds so called for redemption and payment as described above shall cease to bear interest from and after the date for which such call is made, provided funds are available for the payment of such Bonds at the price specified.

The Bonds are issued in fully registered form in the denomination of $5,000 or any integral multiple thereof. This Bond may be transferred or exchanged, as provided in the Resolution, only on the Bond Register kept for that purpose at the principal office of the Bond Registrar, upon surrender of this Bond together with a written instrument of transfer or authorization for exchange satisfactory to the Bond Registrar executed by the Owner, or the Owner’s authorized agent, and thereupon a new Bond or Bonds in any authorized denomination of the same maturity and in the same aggregate principal amount shall be issued to the transferee in exchange therefor as provided in the Resolution and upon payment of the charges prescribed therein. The City, the Paying Agent and the Bond Registrar may deem and treat the person in whose name this Bond is registered on the Bond Register as the absolute owner for the purpose of receiving payment of, or on account of, the principal, redemption premium, if any, and interest due and for all other purposes, and the City, the Paying Agent and the Bond Registrar shall not be affected by any notice to the contrary. The City shall pay all costs incurred in connection with the issuance, payment and initial registration of the Bonds and the cost of a reasonable supply of bond blanks.

The City and the Bond Registrar shall not be required: (a) to register the transfer or exchange of any Bond that has been called for redemption after notice of such redemption has been mailed by the Paying Agent and during the period of 15 days next preceding the date of mailing of such notice of redemption; or (b) to register the transfer or exchange of any Bond during a period beginning at the opening of business on the day after receiving written notice from the City of its intent to pay Defaulted Interest (as defined in the Resolution) and ending at the close of business on the date fixed for the payment of Defaulted Interest.

This Bond shall not be valid or become obligatory for any purpose until the Certificate of Authentication and Registration hereon shall have been lawfully executed by the Bond Registrar.

IT IS DECLARED AND CERTIFIED that all acts, conditions, and things required to be done and to exist precedent to and in the issuance of this Bond have been properly done and performed and do exist in due and regular form and manner as required by the Constitution and laws of the State of Kansas, and that the total indebtedness of the City, including this series of bonds, does not exceed any constitutional or statutory limitation.
IN WITNESS WHEREOF, the City has caused this Bond to be executed by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk, and its seal to be affixed to or imprinted on, and this Bond to be dated the Dated Date shown herein.

CITY OF GARDNER, KANSAS

By ______________________________
(Seal) Mayor

Attest:

______________________________
City Clerk

CERTIFICATE OF CITY CLERK

STATE OF KANSAS )
COUNTY OF JOHNSON ) SS.

I, the City Clerk of the City of Gardner, Kansas, certify that this Bond has been registered in my office according to law as of May 20, 2019.

WITNESS my hand and official seal.

By ______________________________
(Seal) City Clerk
CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of a series of General Obligation Bonds, Series 2019B, of the City of Gardner, Kansas, described in the within-mentioned Resolution.

Registration Date ____________________________

OFFICE OF THE STATE TREASURER
TOPEKA, KANSAS,
as Bond Registrar and Paying Agent

By ____________________________

Registration Number ____________________________

______________________________________________________________________________

CERTIFICATE OF STATE TREASURER
OFFICE OF THE TREASURER, STATE OF KANSAS

I, JAKE LATURNER, Treasurer of the State of Kansas, do certify that a transcript of the proceedings leading up to the issuance of this Bond has been filed in my office, and that this Bond was registered in my office according to law on ____________________________.

WITNESS my hand and official seal.

By ____________________________

Treasurer of the State of Kansas

(Seal)

______________________________________________________________________________
BOND ASSIGNMENT

For value received, the undersigned sells, assigns and transfers unto

__________________________________________
(Print or Type Name, Address and Social Security Number or other Taxpayer Identification Number of Transferee)

the within Bond and all rights thereunder, and irrevocably constitutes and appoints
________________________ agent to transfer the within Bond on the books kept by the Paying Agent for the registration, with full power of substitution in the premises.

Dated: __________________________

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular.

Signature Guaranteed By:

__________________________________________
(Name of Eligible Guarantor Institution)

By __________________________
Name __________________________
Title __________________________
EXHIBIT B
ADDITIONAL TERMS OF THE BONDS

Definitions. The following terms defined in the Resolution shall have the meanings ascribed below.

[“Bond Insurer” means _______________________.]

“Ordinance” means Ordinance No. ____ of the City authorizing the issuance of the Bonds.

“Original Purchaser” means ___________________________, __________________, the original purchaser of the Bonds.

“Purchase Price” for the Bonds shall be the par value of the Bonds plus accrued interest, if any, to the date of delivery, [plus a premium of $_____________] [less a discount of $__________________].

[“Term Bonds” shall mean the Bonds maturing in the year _____.]

Maturity Schedule. All of the Bonds shall become due on the Stated Maturities, and shall bear interest at the rates per annum as follows:

**SERIAL BONDS**

<table>
<thead>
<tr>
<th>Stated Maturity October 1</th>
<th>Principal Amount</th>
<th>Interest Rate</th>
<th>Stated Maturity October 1</th>
<th>Principal Amount</th>
<th>Interest Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>$</td>
<td>%</td>
<td>2025</td>
<td>$</td>
<td>%</td>
</tr>
<tr>
<td>2021</td>
<td></td>
<td></td>
<td>2026</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2022</td>
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<td>2027</td>
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<td>2023</td>
<td></td>
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<td>2028</td>
<td></td>
<td></td>
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<tr>
<td>2024</td>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

[TERM BONDS]

<table>
<thead>
<tr>
<th>Stated Maturity October 1</th>
<th>Principal Amount</th>
<th>Interest Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>%</td>
</tr>
</tbody>
</table>
The Term Bonds shall also be subject to mandatory redemption and payment on October 1, ____, or on any Stated Maturity thereafter, pursuant to the redemption schedule set out below, at the principal amount, plus accrued interest to the date fixed for redemption and payment, without premium. The City agrees to redeem the following principal amounts of the Term Bonds in each of the following years:

<table>
<thead>
<tr>
<th>Principal Amount</th>
<th>Payable October 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>*</td>
</tr>
</tbody>
</table>

*Final Maturity.*

**Premium.** The amount of premium on the Bonds, if any, to be deposited in the Principal and Interest Account is $0.
Agenda Item: Consider adopting a resolution revising a section of the Personnel Policy Manual, 2018 Edition

Strategic Priority: Quality of Life

Department: Administration – Human Resources

Staff Recommendation: Adopt a resolution revising a section of the Personnel Policy Manual, 2018 Edition.

Background/Description of Item:

**Political Activity**
Currently, Section 2-104.8 of the City of Gardner’s Personnel Policy Manual prohibits City employees from wearing or displaying political badges, buttons or signs on their person or on city property during on-duty hours. Recently, an employee has asked if they can place a yard sign in their yard in support of a political candidate.

Our employee relations attorney, Karen Glickstein, informed staff that the US Supreme Court has repeatedly held that “[t]he First Amendment generally prohibits government officials from dismissing or demoting an employee because of the employee’s engagement in constitutionally protected political activity.” *Heffernan v. City of Paterson*, 136 S.Ct. 1412, 1416 (2016). This prohibition includes prohibitions by government entities on “discharging or demoting an employee because the employee supports a particular political candidate.” *Id.* at 1417.

It is therefore recommended by our employee relations attorney that we amend our personnel policy as follows: “Nothing in this policy is meant to prohibit an employee from wearing or displaying political badges, buttons, or signs on their person or personal property while off-duty, nor is it meant to prohibit an employee from displaying signs on their personal real property.”

**Financial Impact**
None.

**Attachments included:**
- Revised Personnel Policy.
- Resolution

**Suggested Motion:**
RESOLUTION NO. 2024

A RESOLUTION PROVIDING FOR THE ADOPTION OF A REVISION TO THE PERSONNEL POLICIES AND PROCEDURES, 2018 EDITION, FOR THE CITY OF GARDNER, KANSAS.

WHEREAS, the City of Gardner now deems it advisable to update uniform personnel policies and procedures for employees of the City of Gardner; and

WHEREAS, it is the intent of the City Council of the City of Gardner to revise Section 2-104.8

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

SECTION ONE: Section 2-104.8 is revised as provided for in the attached Personnel Policies.

SECTION TWO: These updated Personnel Policies and Procedures, 2018 Edition, supersede any rules, regulations or policies in conflict herewith, and

SECTION THREE: The Resolution shall take effect and be in full force from and after its adoption by the Governing Body of the City of Gardner on May 21, 2019

ADOPTED BY THE Governing Body of the City of Gardner, Kansas, this 20th day of May, 2019

SIGNED by the Mayor on this 6th day of May, 2019.

CITY OF GARDNER, KANSAS

(SEAL)

Steve Shute, Mayor

Attest:

_________________________
Sharon Rose, Deputy City Clerk

Approved as to form: ______________________________

Ryan B. Denk, City Attorney
2-104.8  POLITICAL ACTIVITY

It is the right of every employee to register and vote on all political issues. Employees are permitted to join political organizations, civic associations or groups and to become involved in political activities subject to the restrictions in this section.

a) As private citizens, employees may participate in all political activities, including holding public office, except for activities involving the election of candidates for any city office and where holding an appointive or elective public office is incompatible with the employee’s city employment.

b) City employees are not prohibited from supporting candidates for office, nor from contributing labor to candidates and organizations that endorse candidates. Employees are not permitted to be candidates for city elective office or to make public endorsements of a candidate for city elective office.

c) Any employee desiring to become a candidate for city elective office shall first take a leave of absence without pay or resign. Should an employee on a leave of absence without pay be unsuccessful in seeking such elective office, they shall be returned to employment on the same terms and conditions as any other employee who has taken a leave of absence without pay. An employee is considered a candidate for elective office once all statutory requirements have been met to qualify as a candidate.

d) Political activity must not interfere with job attendance or performance. Employees are not permitted to solicit or handle political contributions in city elections. They are not permitted to wear or display political badges, buttons or signs on their person or on city property during on-duty hours.

e) No supervisor or other person in authority shall solicit any city employee for contributions of money or labor for any candidate for elective office, or otherwise compel, or attempt to compel, any employee to support a candidate for elective office or to engage in any political activity.

f) The purpose of this policy is to prevent and avoid the appearance of impropriety on the part of any City employee. City employees are neither appointed to, nor retained in, the City’s service on the basis of their political affiliations or activities.

g) Nothing in this policy is meant to prohibit an employee from wearing or displaying political badges, buttons, or signs on their person or personal property while off-duty, nor is it meant to prohibit an employee from displaying signs on their personal real property.
Agenda Item: Consider adopting a resolution revising Municipal Water Conservation Plan for the City of Gardner

Strategic Priority: Infrastructure and Asset Management

Department: Utilities – Water Division

Background/Description of Item:
Section 13.10.140 of the Gardner Municipal Code empowers the Governing Body to implement and enforce conservation measures in the event of a water supply emergency and requires the City to adopt a water conservation plan by approval of a resolution.

The attached “Municipal Water Conservation Plan for the City of Gardner” dated April 26, 2019, satisfies both the Municipal Code and the requirements of the Kansas Water Office. Approval of the attached resolution would adopt this updated plan.

This plan will supersede the plan that was adopted on September 8, 2009. Highlights from the plan include the following:

- The plan sets a target per capita water use of 100 gallons per day. This figure is based on the City's 2018 per capita-day water use of 81 gallons as derived from Kansas Water Office data. This figure includes water sold to residential and commercial customers, water used by the City, and loss from leaks, but does not include water sold to large water usage customers.

- The plan establishes water conservation practices which include an educational component, a management component, and a regulatory component.
  - The educational component includes outreach through the City Newsletter, City website, and/or social media. These actions are already in progress.
  - The management component includes the new residential water rates that go into effect January 1, 2020, implementation of a smart meter system to measure real time water usage, and evaluation of drought tolerant landscapes in future development projects.
• The plan establishes a Drought/Emergency Contingency which would address short term water shortage problems through a series of more restrictive stages based on conditions. The triggers, management actions, and regulation for each stage are similar to those established by the previous plan adopted in 2009, except for the following changes or additions:
  o Lawn water restrictions are based on two zones (North and South of Main Street).
  o Violations may be prosecuted in Municipal Court.

Staff Recommendation:
Adopt Resolution revising Municipal Water Conservation Plan.

Financial Impact:
None.

Attachments:
  • Municipal Water Conservation Plan dated 4-26-19
  • Resolution

Suggested Motion:
Adopt Resolution No. 2025 adopting an updated Municipal Water Conservation Plan for the City of Gardner.
MUNICIPAL WATER CONSERVATION PLAN FOR THE CITY OF GARDNER
# Municipal Water Conservation Plan
For the City of Gardner

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<tr>
<td><strong>PLAN REVISION, MONITORING AND EVALUATION</strong></td>
<td>10</td>
</tr>
</tbody>
</table>
INTRODUCTION

The primary objectives of the Water Conservation Plan for the City of Gardner are to develop long-term water conservation plans (Long-Term Water Use Efficiency Section) and short-term water emergency plans (Drought Response Section) to assure the City customers of an adequate water supply to meet their needs. The efficient use of water also has the beneficial effect of limiting or postponing water distribution system expansion, thus limiting or postponing the resultant increases in costs in addition to conserving the limited water resources of the State of Kansas.

The City of Gardner has undertaken a number of steps to ensure a dependable water supply for its customers since starting to supply water in 1955. The water supply for the City is Hillsdale Lake, obtained with a contract with the Kansas Water Office. Water rights owned by the City to store and use water from Gardner Lake for irrigation use are still active. The intake structure for the City water supply from Hillsdale Lake was built in 1998, and upgraded in 2005. Treated water storage facilities consist of one 500,000 gallon underground reservoir, one 500,000 gallon above ground tank, one elevated tank with 500,000 gallons capacity and one elevated tank with 1,000,000 gallons capacity. The water treatment plant is rated at 4,000 million gallons per day. The City water supply and distribution system have ample capacity to meet current customer demands and future projected demands for several years, with the possible exception of drought periods. Expansion of the water treatment plant is under development. The City of Gardner believes that its Municipal Water Conservation Plan represents continued management in ensuring that the customers have a dependable water supply in future years.

LONG-TERM WATER USE EFFICIENCY

Water Use Conservation Goals

The City of Gardner used 81 gallons per person per day (GPCD) in 2018. This GPCD figure included:

- Water sold to residential/commercial customers;
- Water distributed for free public services (parks, cemeteries, swimming pools etc.); and
- Water lost by leaks in the water distribution system.

However, the GPCD figure does not include municipally supplied water for industries that use over 200,000 gallons per year. According to the publication Public-Supply Water Use in Kansas, 2015, Gardner is located in Region 8L. From this publication, it was determined that the City GPCD water use was 73 GPCD, which was 34 percent below the regional average of 110 GPCD among all public water suppliers in Region 8L during 2015. The City desires to set a water use conservation goal for usage not to exceed 100 GPCD based on Gardner’s 76 GPCD average of the last five years (2014-2018). The City of Gardner anticipates not exceeding this goal by carrying out the specific actions that are outlined in the plan.
Water Conservation Practices

This subsection of the plan summarizes the current education, management and regulation efforts that relate to the long-term conservation of water in the City. Specific practices that will be undertaken to conserve water are listed and a target date to begin each practice is also shown.

Education

The City water bills show the total number of gallons of water used during the billing period and the amount of the bills. Water conservation tips are periodically provided with the water bills. Historically, the City has not provided information on water conservation to the local news media on a regular basis and has not encouraged the Board of Education and teachers to become involved in water conservation presentations in schools. Water conservation tips have been included in the City newsletter at least twice per year and displays have been provided at City Hall and on the City web site.

The City has chosen the following conservation practices and target dates for the Education Component of the Long-Term Water Use Efficiency Section of the Water Conservation Plan.

<table>
<thead>
<tr>
<th>Education Conservation Practices to be Taken</th>
<th>Target Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Water bills will show the amount of water used in gallons and the cost of the water.</td>
<td>Implemented</td>
</tr>
<tr>
<td>2. Information will be made available on water conserving landscape practices through the City newsletter, the City utility news, the City web site, and with displays in City Hall.</td>
<td>Implemented</td>
</tr>
<tr>
<td>3. A program to encourage installation of water conserving landscape practices in new developments and on existing properties will be developed and implemented.</td>
<td>2021</td>
</tr>
</tbody>
</table>

Management

The City of Gardner has a water meter on the Hillsdale diversion works and a meter on the water pumped to the distribution system. Any new supplies added will also have an individual meter on each connection. These meters are read daily.

Water meters were installed for all residential/commercial customers by 1965. Customer meters are scheduled for an accuracy check and possible repair or replacement upon receiving a request to do so from the customer. There is also a schedule for recalibration and replacement. (See below.)

The City of Gardner reads each customer’s water meter and mails a monthly water bill to each customer. A three cycle per month meter reading schedule is in place, however, the meter readers deviate from the scheduled time period on occasion due to inclement weather or emergency situations.

Water leaks from the City public water distribution system are repaired when customers report significant leaks from the water mains or leaks are located by City personnel. Leaks are repaired
as soon as possible after detection and confirmation – generally within 3 business days. Water pressure is not checked unless customers complain that their water pressure is too low.

The water rate structure for the City was passed on January 22, 2019, effective January 1, 2020. The minimum monthly water bill will be $13.95 for residential customers, and usage is billed at $6.21 per thousand gallons for the first 6,000 gallons, $6.84 per thousand gallons for 6,001 to 10,000 gallons, $7.14 per thousand gallons for 10,001 to 14,000 gallons, $7.47 per thousand gallons for 14,001 to 18,000 gallons and $7.81 per thousand gallons for 18,001 or more gallons. The minimum monthly wastewater bill will be $13.73 with a rate for all customers of $8.78 per thousand gallons.

The City of Gardner understands that much emphasis must be placed on obtaining accurate measurement of water use at the source, the treatment plant connection to the distribution system, and at customer meters. The water use records system must be maintained and managed so that public water distribution can be operated as effectively and efficiently as possible. For that reason, the City of Gardner has chosen the following conservation practices and target dates for the Management component of the Long-Term Water Use Efficiency Section of our Water Conservation Plan.

<table>
<thead>
<tr>
<th>Management Conservation Practices to be Taken</th>
<th>Target Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. All source water diversions will have meters installed and the meters will be repaired or replaced within two weeks when malfunctions occur.</td>
<td>Implemented</td>
</tr>
<tr>
<td>2. Meters for source water will be tested for accuracy at least once every three years. Each meter will be repaired or replaced if its test measurements are not within industry standards (such as AWWA standards).</td>
<td>Implemented</td>
</tr>
<tr>
<td>3. Meters will be installed at all service connections.</td>
<td>Implemented</td>
</tr>
<tr>
<td>4. Meters at individual service connections are scheduled for accuracy checks with appropriate repairs or replacements based on the schedule below or upon request by the customer, the utility billing clerk, or meter readers.</td>
<td>Implemented</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Schedule</th>
<th>Calibration</th>
<th>Replacement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meter Size</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less than 1 inch</td>
<td>On Request</td>
<td>10 Years</td>
</tr>
<tr>
<td>1 inch to 1.5 inches</td>
<td>5 Years</td>
<td>10 Years</td>
</tr>
<tr>
<td>2 inches &amp; larger</td>
<td>2 Years</td>
<td>See Below</td>
</tr>
</tbody>
</table>

Meters 2 inches in size and larger will be replaced when calibration is no longer feasible or possible.

| 5. All meters for source water will be read at least on a monthly basis and meters at individual service connections will be read at least monthly. | Implemented |
| 6. The water utility will implement a water management review, which will result in a specified change in water management practices or implementation of a leak detection and repair program or plan, whenever the amount of unsold water (amount of water provided free for public service, used for treatment purposes, water loss, etc.) exceeds 20 percent of the total source water for a four month time period. | Implemented |
| 7. | Install smart water meters to measure real time water usage. | 2021 |
| 8. | Water sales will be based on the amount of water used. | Implemented |
| 9. | A water rate structure designed to curb excessive use of water will be evaluated. | Implemented |
| 10. | The development of an ordinance requiring drought tolerant landscaping principles in future landscape development projects, including renovation of existing landscapes, will be evaluated. | 2021 |
| 11. | The recycling and reuse of wastewater will be continue to be promoted to industrial and irrigation users. | Implemented |
| 12. | The City will enter into new emergency water supply agreements with nearby water systems and will review existing agreements. | Existing agreement under review. Evaluating future connection with De Soto by 2022 |

**Regulation**

The City of Gardner does not have any water conservation regulations in effect at the present time. Because of the ability to supply water during normal periods, regulatory controls on water use are included only in the Drought Response section of this plan and water drought/emergency ordinance (13.10.140 Conservation policy – Fees – Policies), where they constitute the primary means for conserving water during a supply shortage.

The City of Gardner has adopted by reference the International Plumbing Code, 2012 Edition, including Appendix Chapters C, E, and F, and relies on the federal water fixture manufacturing standard passed in 1992. The enforcement of any regulations to require use of any water conservation plumbing measures would be very difficult. It is believed that most new homes and remodeling projects include the use of water efficient toilets and faucets.

<table>
<thead>
<tr>
<th>Regulation Actions to be Taken</th>
<th>Target Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Code No. 13.10.410 will be reviewed and updated as necessary.</td>
<td>2019</td>
</tr>
<tr>
<td>2. The City will adopt a regulation regarding drought tolerant landscaping if a regulation is proposed by the City Utilities Advisory Commission.</td>
<td>2021</td>
</tr>
</tbody>
</table>
DROUGHT RESPONSE

The City of Gardner addresses its short-term water shortage problems through a series of stages based on conditions of supply and demand with accompanying triggers, goals and actions. Each stage is more stringent in water use restrictions than the previous stage, since water supply conditions are more deteriorated. Because the City of Gardner takes raw water from Hillsdale Lake through the Kansas Water Office Water Marketing Plan, the water level of Hillsdale Lake can be one of the triggers to declare the following stages. The Governing Body is authorized by Section 13.10.140 of the Gardner Municipal Code to implement the appropriate conservation measures, and may do so in full or in part at their discretion.

Stage 1: Water Watch

Goals

The goals of this stage are to heighten awareness of the public of water conditions and to maintain the integrity of the water supply system.

Triggers

This stage is triggered by any one of the following conditions:

1. The City’s treated water storage has fallen below 75 percent capacity, and will not recover within 24 hours;
2. The water treatment plant has operated at eighty-three percent (83%) capacity for more than 5 days;
3. The Hillsdale Lake water level is four (4) feet below conservation pool;
4. The Kansas Water Office has issued a Stage 1 Water Watch based on the remaining water marketing storage in Hillsdale Lake;
5. The United States Drought Monitor shows Severe, Extreme or Exceptional drought conditions in Johnson, Miami, Douglas or Franklin County.

Education Actions

1. The City will make occasional news releases to the local media describing present conditions and indicating the water supply outlook for the upcoming season.
2. Previous days/weeks/months summaries of precipitation, temperature, water levels and storage will be made public on the City web site, etc., for the duration of the Water Watch.
3. Water saving tips will be included on the City web site, and/or social media.

Management Actions

1. The City will closely monitor its water use and will curtail activities such as vehicle washing, street cleaning and hydrant flushing, except when necessary to ensure public health and welfare.
2. Leaks will be repaired within 48 hours of detection.
Regulation Actions

The public will be asked to curtail outdoor water use and to make efficient use of indoor water, i.e., wash full loads, take shorter showers less often, don’t let faucets run, etc.

Stage 2: Water Warning

Goals

The goals of this stage are to reduce peak demands by 20 percent and to reduce overall weekly consumption by 10 percent.

Triggers

This stage is triggered by any one of the following conditions:

1. The City’s treated water storage has fallen below sixty percent (60%) capacity and will not recover within 24 hours;
2. The water treatment plant has operated at ninety percent (90%) capacity or more for five consecutive days;
3. The Hillsdale Lake water level is seven (7) feet below conservation pool;
4. The Kansas Water Office has issued a Stage 2 Water Warning based on the remaining water marketing storage in Hillsdale Lake.

Education Actions

1. The City will make weekly news releases to the local media describing present conditions and indicating the water supply outlook for the upcoming week.
2. Previous week summaries of precipitation, temperature, water levels and storage will be made public each week.
3. Water-saving and fire prevention tips will be on the City web site and/or social media.
4. Social media will be utilized to inform and educate customers.
5. Signs announcing a Water Warning will be posted at the City limits.

Management Actions

1. The City water supplies and critical infrastructure will be monitored daily.
2. Leaks will be repaired within 24 hours of detection.
3. The City will curtail its own water usage, including the irrigation of City owned turf (except reclaimed wastewater) and washing of vehicles.
4. Intakes will be adapted to operate with low flows.
5. Reserve supplies, including emergency connections, will be prepared for use.
**Regulation Actions**

1. A lawn watering system of two (2) zones will be imposed on City residents. Customers north of Main Street will be allowed to irrigate on Tuesday, Thursday and Sunday; customers south of Main Street will be allowed to irrigate on Monday, Wednesday and Saturday.
2. Outdoor water use, including lawn watering and car washing will be restricted to before 10:00 am and after 9:00 pm.
3. Golf courses will restrict watering to tees and greens after sunset.
4. Replenishing of swimming pools will be allowed one day a week after sunset. Privately owned swimming pools that are empty prior to the declaration of a Water Warning may not be filled with water until after the Water Warning is rescinded.
5. Bulk water sales by customers will be allowed between 6:00 a.m. to 3:00 p.m., Monday through Friday, not to exceed 10,000 gallons per day per customer.
6. Wholesale water customers will also have minimum instantaneous delivery of water reduced as specified in the water supply contracts.
7. Waste of water will be prohibited.
8. Violations shall be a municipal offense and may be prosecuted in Municipal Court.

**Stage 3: Water Emergency**

**Goals**

The goals of this stage are to reduce peak demands by fifty percent (50%) and to reduce overall weekly consumption by twenty-five percent (25%).

**Triggers:**

This stage is triggered by any one of the following conditions:

1. The City’s treated water storage has fallen below forty-five percent (45%) capacity;
2. The water treatment plant has operated at one hundred percent (100%) capacity for five consecutive days;
3. The Hillsdale Lake water level is nine (9) feet below conservation pool;
4. The Kansas Water Office has issued a Stage 3 Water Emergency based on the remaining water marketing storage in Hillsdale Lake;
5. Emergency conditions related to repairs or water quality.

**Education Actions**

1. The City will make daily news releases to the local media describing present conditions and indicating the water supply outlook for the next day.
2. Previous days’ summaries of precipitation, temperature, water levels and storage will be made public each day.
3. The City will hold public meetings to discuss the emergency, the status of the water supply, and further actions which need to be taken.
Management Actions

1. City representatives will visit large water users and discuss the water emergency, the status of water supply, and the actions needed to be taken to conserve water. Actions to conserve water could range from curtailing some manufacturing activities that use significant water, to the elimination of irrigation and vehicle washing. These actions and any other actions identified in the discussion will be considered.
2. The City water supplies and critical infrastructure will be monitored daily.
3. Leaks will be repaired within 24 hours of detection.
4. The City will seek additional emergency supplies from other users, the state or the federal government.
5. Wholesale water customers will also have minimum instantaneous delivery of water reduced as specified in the water supply contracts.
6. The Gardner Golf Course will reduce irrigation to only the greens to preserve water in Gardner Lake for possible emergency use.

Regulation Actions

1. Outdoor water use will be banned.
2. Waste of water will be prohibited.
3. Violations shall be a municipal offense and may be prosecuted in Municipal Court.

PLAN REVISION, MONITORING & EVALUATION

The City of Gardner will review monthly totals for Hillsdale Lake water levels, water production, residential and commercial sales, water provided free-of-charge, and “unaccounted for water”. Problems noted during the monthly review will be solved as soon as possible.

The City of Gardner Municipal Water Conservation Plan will be reviewed during the month of April each year and on a more frequent basis during drought or other water shortage conditions. If the water conservation GPCD goals for the previous year are not met, then the City will review the data collected from the previous year in relationship to the status and effectiveness of the conservation practices that are outlined in the plan and will provide a status report to the Kansas Department of Agriculture, Division of Water Resources, which will also include any additional water conservation practices that may need to be taken in order for the City to achieve and maintain its water use conservation GPCD goals.
RESOLUTION NO. 2025

A RESOLUTION INSTITUTING A MUNICIPAL WATER CONSERVATION PLAN FOR THE CITY OF GARDNER, KANSAS.

WHEREAS, the Governing Body of the City of Gardner, Kansas believes that water is a valuable natural resource to be protected and used wisely; and

WHEREAS, the Governing Body of the City of Gardner, Kansas wish to assure that the City and its residents use water conservatively.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS that the attached Municipal Water Conservation Plan, dated April 26, 2019, is hereby adopted as of this date and all previously adopted Municipal Water Conservation Plans are hereby superseded.

ADOPTED by the Governing Body of the City of Gardner, Kansas on May 20, 2019.

CITY OF GARDNER, KANSAS

(Seal)

_______________________________
Steve Shute, Mayor

Attest:

_______________________________
Sharon Rose, Interim City Clerk
Agenda Item: Consider adopting an ordinance revising the Water Conservation Policy for the City of Gardner

Strategic Priority: Infrastructure and Asset Management

Department: Utilities – Water Division

Background/Description of Item:
On April 1, 1996, the City adopted Ordinance No. 1832 declaring and establishing policies, procedures, and rates for the electric, water, and wastewater divisions, including a Water Conservation Policy. The Water Conservation Policy establishes and enforces conservation measures in the event of a water supply emergency throughout the City.

Following the water restrictions last year, staff was directed to review Municipal Code Section 10.140 Water Conservation Policy. After reviewing the policy, staff recommends the following changes:

Section 10.140 G - Voluntary Conservation Measures
"Upon the declaration of a water watch as provided in subsection (D) of this section, the City Administrator or Utilities Director is authorized to call on all water consumers to employ voluntary water conservation measures to limit or eliminate nonessential water uses…".

Section 10.140 H - Mandatory Conservation Measures
"Upon the declaration of a water supply warning or emergency as provided in subsections (E) and (F) of this section, the City Administrator or Utilities Director is also authorized to implement certain mandatory water conservation measures...".

Section 10.140 K - Violations, Disconnections and Penalties.
"1. If the City Administrator, Utilities Director, or other City official or officials charged with implementation and enforcement of this section or a water supply emergency resolution learn of any violation of any water use restrictions imposed..."

The Water Conservation Plan was also revised and updated

Staff Recommendation:
Financial Impact:
None.

Attachments:
- Ordinance

Suggested Motion:
Adopt Ordinance No. 2616 adopting an updated Municipal Water Conservation Policy for the City of Gardner.
ORDINANCE NO. 2616

AN ORDINANCE REVISING TITLE 13 UTILITIES, CHAPTER 10.140 CONSERVATION POLICY – FEES – PENALITES OF THE GARDNER MUNICIPAL CODE.

WHEREAS, the City has previously adopted Municipal Code provisions regulating water;

WHEREAS, the City wishes to amend its Municipal Code relating to its water conservation policy.

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

SECTION ONE: The Governing Body of the City of Gardner, Kansas now deems it advisable to revise Chapter 10.140 “Conservation policy – Fees – Penalties” as follows:

10.140 Conservation policy – Fees – Penalties.
The City of Gardner shall provide for the declaration of a water supply watch, warning or emergency and the implementation of voluntary and mandatory water conservation measures throughout the City in the event such a watch, warning or emergency is declared.

A. Definitions.
1. “Water” shall mean water available to the City of Gardner for treatment by virtue of its water rights or any treated water introduced by the City into its water distribution system, including water offered for sale at any coin-operated site.
2. “Customer” shall mean the customer of record using water for any purpose from the City’s water distribution system and for which either a regular charge is made or, in the case of coin sales, a cash charge is made at the site of delivery.
3. “Waste of water” shall include but not be limited to: (a) permitting water to escape down a gutter, ditch, or other surface drain; or (b) failure to repair a controllable leak of water due to defective plumbing.

B. Classes of uses of water shall be established as follows:
1. Class 1: water used for outdoor watering, either public or private, for gardens, lawns, trees, shrubs, plants, parks, golf courses, playing fields, swimming pools or other recreational areas; or the washing of motor vehicles, boats, trailers, or the exterior of any building or structure.
2. Class 2: water used for any commercial or industrial, including agricultural, purposes; except water actually necessary to maintain the health and personal hygiene of bona fide employees while such employees are engaged in the performance of their duties at their place of employment.
3. Class 3: domestic usage, other than that which would be included in either classes 1 or 2.
4. Class 4: water necessary only to sustain human life and the lives of domestic pets and maintain standards of hygiene and sanitation.

C. Water Conservation Plan. The City Council shall adopt by resolution a water conservation plan establishing the conditions triggering water conservation and the
education, management and regulation actions to be taken at various stages of water shortage.

D. Declaration of Water Watch. Whenever the Governing Body of the City finds that conditions indicate that the probability of a drought or some other condition causing a major water supply shortage is rising, it shall be empowered to declare, by resolution, that a water watch exists and it shall take steps to inform the public and ask for voluntary reductions in water use. Such a watch shall be deemed to continue until it is declared by resolution of the Governing Body to have ended. The resolutions declaring the existence and end of a water watch shall be effective upon their passage and submission to the official City newspaper.

E. Declaration of Water Warning. Whenever the Governing Body of the City finds that drought conditions or some other condition causing a major water supply shortage are present and supplies are starting to decline, it shall be empowered to declare by resolution that a water warning exists and that it will recommend restrictions on nonessential uses during the period of the warning. Such a warning shall be deemed to continue until it is declared by resolution of the Governing Body to have ended. The resolutions declaring the beginning and ending of the water warning shall be effective upon their passage and submission to the official City newspaper.

F. Declaration of Water Emergency. Whenever the Governing Body of the City finds that an emergency exists by reason of a shortage of water supply needed for essential uses, it shall be empowered to declare by resolution that a water supply emergency exists and that it will impose mandatory restrictions on water use during the period of the emergency. Such an emergency shall be deemed to continue until it is declared by resolution of the Governing Body to have ended. The resolutions declaring the existence and end of a water supply emergency shall be effective upon their passage and submission to the official City newspaper.

G. Voluntary Conservation Measures. Upon the declaration of a water watch as provided in subsection (D) of this section, the City Administrator or Utilities Director is authorized to call on all water consumers to employ voluntary water conservation measures to limit or eliminate nonessential water uses including, but not limited to, limitations on the following uses:

1. Sprinkling of water on lawns, shrubs or trees (including golf courses).
2. Washing of automobiles.
3. Use of water in swimming pools, fountains and evaporative air conditioning systems.

H. Mandatory Conservation Measures. Upon the declaration of a water supply warning or emergency as provided in subsections (E) and (F) of this section, the City Administrator or Utilities Director is also authorized to implement certain mandatory water conservation measures, including, but not limited to, the following:

1. Suspension of new connections to the City's water distribution system, except connections of fire hydrants and those made pursuant to agreements entered into by the City prior to the effective date of the declaration of the emergency;
2. Restrictions on the uses of water in one or more classes of water use, wholly or in part;
3. Restrictions on the sales of water at coin-operated facilities or sites;
4. The imposition of water rationing based on any reasonable formula including, but not limited to, the percentage of normal use and per capita or per consumer restrictions;
5. Complete or partial bans on the waste of water; and
6. Any combination of the foregoing measures.

I. Emergency Water Rates. Upon the declaration of a water supply emergency as provided in subsection (F) of this section, the Governing Body of the City shall have the power to adopt emergency water rates by ordinance designed to conserve water supplies. Such emergency rates may provide for, but are not limited to:
   1. Higher charges for increasing usage per unit of use (increasing block rates);
   2. Uniform charges for water usage per unit of use (uniform unit rate); or
   3. Extra charges in excess of a specified level of water use (excess demand surcharge).

J. Regulations. During the effective period of any water supply warning or emergency as provided for in subsections (E) and (F) of this section, the City Administrator or Utilities Director is empowered to promulgate such regulations as may be necessary to carry out the provisions of this section, any water supply emergency resolution, or emergency water rate ordinance.

K. Violations, Disconnections and Penalties.
   1. If the City Administrator, Utilities Director, or other City official or officials charged with implementation and enforcement of this section or a water supply emergency resolution learn of any violation of any water use restrictions imposed pursuant to subsection (H) or (J) of this section, a written notice of the violation shall be affixed to the property where the violation occurred and the customer of record and any other person known to the City who is responsible for the violation or its correction shall be provided with either actual or mailed notice. Said notice shall describe the violation and order that it be corrected, cured or abated immediately or within such specified time as the City determines is reasonable under the circumstances. If the order is not complied with, the City may terminate water service to the customer subject to the following procedures:
      a. The City shall give the customer notice by mail or actual notice that water service will be discontinued within a specified time due to the violation and that the customer will have the opportunity to appeal the termination by requesting a hearing scheduled before the City Governing Body or a City official designated as a Hearing Officer by the Governing Body;
      b. If such a hearing is requested by the customer charged with the violation, he or she shall be given a full opportunity to be heard before termination is ordered; and
      c. The Governing Body or Hearing Officer shall make findings of fact and order whether service should continue or be terminated.
   2. A fee shall be paid for the reconnection of any water service terminated pursuant to subsection (K)(1)(a) of this section, in the event of subsequent violation, an additional reconnection fee shall be paid. Said reconnection fees shall be set by the Governing Body by resolution.
   3. Violations of this section shall be a municipal offense and may be prosecuted in Municipal Court. Any person so charged and found guilty in Municipal Court of violating the provisions of this section shall be guilty of a municipal offense. Each day's violation shall constitute a separate offense. The penalty for an initial
violation shall be a mandatory fine of $100.00. In addition, such customer may be required by the Court to serve a definite term of confinement in the City or County Jail which shall be fixed by the Court and which shall not exceed 30 days. The penalty for a second or subsequent conviction shall be a mandatory fine of $200.00. In addition, such customer may serve a definite term of confinement in the City or County Jail which shall be fixed by the Court and which shall not exceed 30 days.

L. Emergency Termination. Nothing in this section shall limit the ability of any properly authorized City official from terminating the supply of water to any or all customers upon the determination of such City official that emergency termination of water service is required to protect the health and safety of the public.

M. Severability. If any provision of this section is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the section and its applicability to other persons and circumstances shall not be affected thereby. (Ord. 2531 § 19; Ord. 2267 § 25; Ord. 1832 § 1. Code 1990 § 15-214)

SECTION THREE: All other ordinances not in conformity herewith are hereby repealed or amended to conform hereto.

SECTION FOUR: This Ordinance shall take effect and be in force after its passage, approval and publication as provided by law.

PASSED by the City Council this _______ day of May, 2019.

SIGNED by the Mayor this _______ day of May, 2019.

(SEAL)

CITY OF GARDNER, KANSAS

__________________________

Steve Shute
Mayor

ATTEST:

__________________________

Sharon Rose
Interim City Clerk