



# AGENDA

## GARDNER CITY COUNCIL

City Hall – 120 East Main Street -- Gardner, Kansas  
Monday, February 17, 2020  
7:00 p.m.

### CALL TO ORDER

### PLEDGE OF ALLEGIANCE

### PRESENTATIONS

1. AAA Community Traffic Safety Award Presentation

### 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 February 3, 2020.
2. Standing approval of City expenditures prepared January 27, 2020 in the amount of \$1,663.09; and January 31, 2020 in the amount of \$441,980.76; and February 7, 2020 in the amount of \$146,912.81.
3. Consider authorizing the execution of a Change Order with Amino Brothers to construct the Santa Fe Improvements project.
4. Consider authorizing the execution of an agreement with Kansas Department of Transportation (KDOT) for construction improvements for the Center Street Sidewalk project
5. Consider authorizing the purchase of a tractor for the Parks & Recreation Department
6. Consider authorizing the execution of an agreement with Schlager & Associates for the design of the East Sewer Main Interceptor at Prairie Trace
7. Consider authorizing the execution of a contract with William Morris Endeavor Entertainment for headlining entertainment during the 2020 Independence Day event

### PLANNING AND ZONING CONSENT AGENDA

### COMMITTEE RECOMMENDATIONS

1. Consider adopting an ordinance rezoning 71.4 acres located just west of the Kill Creek Road and W 167th Street from County RUR (Rural, Agriculture) District to City R-1 (Single-Family Residential) District
2. Consider adopting an ordinance approving amendment TA-20-01 to GMC Title 17 *Land Development Code* of the *Gardner Municipal Code*

### OLD BUSINESS

### NEW BUSINESS

1. Consider adopting a resolution authorizing the City of Gardner, Kansas, execute a special warranty deed, a release of real estate and other release documents and to take certain other actions to effect the option to purchase the project pursuant to the lease agreement in connection with the City's not to exceed \$52,000,000 industrial revenue bonds (taxable under federal law), Series 2009 (US Industrial REIT II)
2. Consider accepting a voluntary annexation with landowner consent

**COUNCIL UPDATE** – Oral presentation unless otherwise noted

### EXECUTIVE SESSION

1. Consider recessing into executive session to discuss matters of attorney-client privilege

### 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.

**COUNCIL ACTION FORM****PRESENTATION ITEM NO. 1****MEETING DATE: FEBRUARY 17, 2020****STAFF CONTACT: JAMES BELCHER, CHIEF OF POLICE**

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**Agenda Item:** AAA Community Traffic Safety Award Presentation**Strategic Priority:** Quality of Life**Department:** Police

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**Background/Description of Item:**

The AAA Community Traffic Safety Awards are presented to communities for their efforts to improve local traffic safety. There are three levels, Bronze, Silver, and Gold. Gardner is being awarded the Silver Award for the past year's efforts. Presenting the award is Retired Master Deputy Bob Hamilton. Mr. Hamilton is retired from the Johnson County Sheriff's Office and now works for Kansas Department of Transportation. Receiving the award are Chief James Belcher and Sgt. David Rolf.

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February 3, 2020

The City Council of the City of Gardner, Kansas met in regular session on February 3, 2020, at 7:00 p.m. in the Council Chambers at Gardner City Hall, 120 East Main Street, Gardner, Kansas, with the Mayor Steve Shute presiding. Present were Councilmembers Todd Winters, Rich Melton, Mark Baldwin, Randy Gregorcyk and Tory Roberts. City staff present were City Administrator James Pruetting; Business & Economic Development Director Larry Powell; Utilities Director Gonzalo Garcia; Public Works Director Michael Kramer; Parks and Recreation Director Jason Bruce; Police Chief James Belcher; Finance Director Matthew Wolff; City Attorney Ryan Denk; and City Clerk Sharon Rose. Others present included those listed on the attached sign-in sheet and others who did not sign in.

**CALL TO ORDER**

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

**PLEDGE OF ALLEGIANCE**

Mayor Shute led those present in the Pledge of Allegiance.

**PRESENTATIONS**

**1. Gardner Edgerton Chamber of Commerce**

Jason Camis with the Gardner Edgerton Chamber of Commerce said in the interest of time, he will start with general comments. The Chamber is doing well, and continuing to grow. When he started 5 years ago, they had 110-120 dues-paying members, but have since doubled that. It continues to allow for new and innovative things. This past year was the busiest they've been, thanks to a dozen ribbon cuttings for new businesses, addition of new events. Information requests continue to grow. He estimates 900 various information requests from general directors to business oriented ones. They met with almost 400 in-person meetings with businesses. Last year, 155 new permits were issued, and the Chamber gave out 750 new resident bags. The Chamber had a great response to GE Magazine. The GE Map will be coming soon. The map project has taken longer than anticipated because it hasn't been done in several years. They are excited about 2020 and moving forward. Some activity is spelled out in the contract, but one thing not spelled out is, in May 2019 there was a state law change that allows the chamber to do association health insurance. They are in the process of exploring an association health insurance plan that would allow the local business community, if they are a member of the Chamber, to bid as a complete employer in a group. Sole proprietors to larger businesses will have the opportunity to bid health insurance this way and bring down costs. The Chamber contract this year is similar to years' past, but there are a few changes that have been clarified. Economic development is not spelled out. What does a Chamber do and how does that vary versus what the Economic Development Corporation (EDC) does? The Chamber handles smaller events, sends bigger employers and larger companies to EDC. They try to work hand in hand. Growth and exposure is similar to what's been offered. Website, grand openings, ribbon cuttings, working hand in hand with the city for coordination. The marketing support, business directory, GE magazine are similar to what the Chamber has been offering in the past. The Chamber put in 6 BRE (Business Retention and Expansion) visits with small businesses and have the EDC work with larger companies. They will compile information and look for opportunities for small businesses to grow. Mr. Camis has pushed that this is an Inclusive chamber, not exclusive. They host events for the whole business community can attend, and that's different than most Chambers. All businesses can be seen. There's a value for their members and their investments, but they see 10-20% of non-members at events. Find ways to build up the whole community. They have talked about a Community profile. It will have an economic development marketing piece and will provide demographic information online. Several years ago there was a southwest Johnson County elected officials group, there has been talk of reviving that. Since Gardner You! Didn't take off this year, there's been discussion of Community Leadership program. Their type of business community leadership program is different, finding ways to encourage businesses to invest in their employees, who invest back into the community with time and service. They have been in a holding patter

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with the tourism CVB. The fund doesn't have a lot of money yet, but the plan is to provide the same services that would have been offered last year, but scaled back according to budget. Director Wolff said they will be behind what had been planned this year, so the Chamber will start later until the fund is sufficient to move forward. The organizational structure has to remain; they must be transparent, manageable. The first two steps are a visitor profile study (who is coming here and what are they spending their money on) and a marketing plan. They currently don't know where to focus. There's no money or plan in place, like if they market for sports tournaments and the market is flooded and they should have been focusing on leisure travelers on I-35. They need data to back up. In the past, they've contracted at a low level, last year was \$2,500, which is general. They have opportunity to bring in a travel writer, and there will be expense to that. It's low cost but high value. They aren't ready for ads in AAA magazine yet

Councilmember Melton asked what was the city's commitment last year? Mr. Camis said it was \$35,000 for business services, \$100,000 for tourism and CVB, and \$15,000 for a joint recreation promotion. There wasn't money to spend, and it was money already being spent on recreation promotion, so that never figured in, so \$35,000 and it's listed the same this year. Councilmember Melton asked what the city's neighbors to the south are paying this year? Mr. Camis said \$2,000. Melton asked what their commitment was last year? Mr. Camis said it would look like \$5,000. They have \$2,000 for the contract, \$2,000 for GE magazine, and \$1,000.

Councilmember Melton is concerned that there are dues-paying members who pay more than that. A title sponsor only gives \$2,000. Mr. Camis said when he came in, Edgerton was only a dues-paying member. They began a contract in 2017. Melton asked if Camis is going to ask them for more funds. Councilmember Winters said at this point, both cities are growing rapidly. He wondered if it was time to split them, so we can focus on Gardner and they can focus on Edgerton. Councilmember Roberts asked if that's something council can decide, or does the Chamber board have to do that? Councilmember Melton said he's willing to match what Edgerton is giving. Mr. Camis said the decision to split would have to go to the board. It's been several titles over the years, and now it's the Gardner-Edgerton Chamber of Commerce. Mayor Shute asked about the proportional contributions. What are the requirements for the Chamber versus what the city will get for the Chamber? Mr. Camis said the contracts look similar if they take the \$100,000 tourism piece out of the picture. They spend most of their time on Gardner businesses, about 90% of their time is Gardner oriented, working on the city's behalf. In Edgerton, there are a handful of businesses around the LPKC. Councilmember Melton said he loves the magazine, but the cost to print and ship isn't covered and Gardner shouldn't be picking up the balance.

Councilmember Baldwin asked if there has ever been talk of joining the EDC and Chamber, pool them together? Mr. Camis said that's not come up since he and Mr. Martinette (EDC) have been on board. Predating both of their times, the EDC was an outgrowth of the Chamber. The idea was good, but not executed well. Other communities do have them merged, and could be something to explore. With an EDC, they are recruiting and it's mostly confidential. If the Chamber and EDC go recruiting for a certain business, the existing business may take that as an affront. They've looked at a joint staff option, and that wasn't executed well.

Councilmember Melton asked if they pull this from the agenda tonight, can Mr. Camis provide more information regarding Edgerton's contribution? Mr. Camis said he would need time, as their board meeting is February 25. Melton said he would like to see Edgerton's contribution to the chamber be closer to 50/50. Mayor Shute doesn't believe it should be 50/50. Edgerton won't appreciate being told by Gardner how much to contribute. Melton said they have a large money-generating business park. Councilmember Winters isn't sure if they should be increased or split up. Edgerton could be a member in Gardner, but not on contract. Mayor Shute suggested making it more regional in scope. That's better than pressuring Edgerton for more money. Melton said he will recommend pulling the item from the agenda Councilmember Roberts would favor Winters' idea to split rather than make Edgerton pay more money. Councilmember Baldwin said the investigation of whether or not this is what they want to do, would that be a consideration for this year or next? Councilmember Gregorcyk asked if the visitor profile study would be before the contribution or after? Mr. Camis said after, that's what part of this contribution will fund. It's \$50,000 for a visitor profile study, then marketing and branding, and they would save a little back for opportunities like a travel writer or sponsorship in the Air Show. He's going to air show meetings trying to figure out how to

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connect the small businesses with the 25,000 new people coming to town. He can provide metrics, like attendance numbers, with an event like the air show. That's where the money will be spent. Gregorcyk said there's an average spend of \$300-\$500 per family for an event like the air show. He asked if the CVB and Chamber will function as two separate entities or one? Mr. Camis said the CVB is a long-term driver. He was the CVB director in Ottawa several years ago. Hampton Inn was slow to start, but is picking up. He got a call from someone in Louisiana asking about visitor information. They don't have that. They have the magazine, but that's more lifestyle. The CVB is proactive and reactive. It could help attract ball tournaments. It could use neighboring attractions like Hillsdale Lake. If they know when there is a fishing tournament, they can promote to that. Or Geringers Farm, people come through to that and ask where there's a good place for lunch while they are in the area. Overnight travelers spend twice as much as daytime travelers. They can offer services for meeting groups. Until they build up some of this, they can't go out and attract. Councilmember Gregorcyk asked if the \$50,000 is in line with the transient guest tax. Finance Director Wolff said yes, it should be. Councilmember Gregorcyk asked if the service is flexible. Mr. Camis confirmed. They budgeted for \$100,000 last year and only got \$2,500 of that. Gregorcyk noted this isn't funded by the citizens of Gardner, it's funded by travelers in a guest tax. Mr. Camis said this money can't just be used for anything, it is to be for tourism and promotion. There are guests flying into the airport, but they don't know how many or what they could be missing out on. There has been talk of a courtesy car or a restaurant at the airport, and those could be good opportunities

Mayor Shute said we are moving in the right direction.

**PUBLIC HEARING**

**PUBLIC COMMENTS**

Tanner Leitheiser – 516 E. Acorn, stated he is attending the meeting for a merit badge for Citizenship in the Community.

**CONSENT AGENDA**

1. **Standing approval of the minutes as written for the regular meeting on January 21, 2020.**
2. **Standing approval of City expenditures prepared January 17, 2020 in the amount of \$1,048,537.25; and January 24, 2020 in the amount of \$161,684.25.**
3. **Consider authorizing the purchase of four (4) 2020 Ford Police Interceptor Sport Utility Vehicles from Shawnee Mission Ford**
4. **Consider authorizing an agreement with the Gardner Edgerton Chamber of Commerce**
5. **Consider the appointment of Cleverson Souza to the Citizens Police Advisory Committee**
6. **Consider the appointment of Al Sanchez to the Citizens Police Advisory Committee**
7. **Consider the appointment of Rebecca Streeter to the Citizens Police Advisory Committee**
8. **Consider the appointment of Bryce Augustine to the Utility Advisory Commission**
9. **Consider approving a supplemental agreement with Kansas Department of Transportation for the Moonlight Safe Routes to Schools project**
10. **Consider authorizing the approval of an agreement with Johnson County for the construction of a Stormwater Management Project known as Santa Fe Street and Waverly Road Stormwater Improvements**
11. **Consider approving the issuance of a Cereal Malt Beverage (CMB) license for calendar year 2020**

Councilmember Melton asked to remove Item 4 from the Consent Agenda.

Councilmember Melton made a motion to approve items 1-3 and items 5-11 on the Consent Agenda.

Councilmember Baldwin Seconded.

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

***Discussion of Consent Agenda Item 4***

Councilmember Melton asked to remove this from consideration. Mayor Shute said they can pull and defer until a later date. Mr. Camis said he can come back the first meeting in March. Councilmember Gregorcyk asked if Mr. Camis understands what they want. Mr. Camis said he will discuss with his board. Mayor Shute asked to find out what benefits the chamber more? Gregorcyk is asking for compensatory costs.

Councilmember Melton made a motion to continue Consent Agenda Item 4 to the first meeting in March.

Councilmember Baldwin Seconded.

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

**PLANNING & ZONING CONSENT AGENDA**

**COMMITTEE RECOMMENDATIONS**

**OLD BUSINESS**

**NEW BUSINESS**

**COUNCIL UPDATES**

Director Kramer reported that the traffic control that was put out on Waverly Road today was not supposed to be put out today. The subcontractor mistakenly put it out a day early, and it's been removed. They also closed a part of Waverly that wasn't supposed to be closed. Staff has corrected this, and the road will be closed as planned tomorrow. Kramer reported the airport sewer installation encountered many obstacles along the way. They've worked through those and the project is moving forward. In the next week or so, they will hook up the restroom. Last summer, Kramer discussed with airport board about what they think the city should study. Director Kramer suggested the fuel system, building usage, events, mechanic, competition, flight school, future hangars. Staff packaged that together to the Kansas Department of Transportation's Kansas Airport Improvement Program. Their objective is to review the airport customer market segment, competition, industry overview, aviation fuel services and products, and fixed base operator. It's been over 20 years since they've had a FBO. They look at flight school usage, the existing VAA and club usage, events they hold, hangar utilization not only at that airport but throughout the region, and hangar rates. Staff included privatization, because that comes up at times, budgetary considerations, organization, marketing new opportunities and terminal building replacement concept cost estimates and benefits. It gave them a comprehensive plan for the economic future success of the airport because the FAA requires the airport to be self-sustaining. Staff received the request for a planning grant for \$80,000 and another \$108,000 for design. Mayor Shute said he is glad to have a way forward and a way to pay for the way forward. This is a long time coming. Shute offered his thanks to Director Kramer and his staff and the airport board on putting this together. This is a turning point for the airport.

Chief Belcher reported that he got an email from Andy Pitts, Principal with Treanor. Treanor is submitting the Justice Center project for an American Institute of Architects award this spring.

City Administrator Pruetting reported that KCMO reached out to the City of Gardner police department for assistance with the parade on Wednesday.

Councilmember Roberts said she lives in St. Johns Trace, and January 26 there was a power outage. It was back on quickly, but when people called to report it, they couldn't get through or they got through and were told by the

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answering service that someone was dispatched but they didn't know how long the outage would be. Is there a way to put out a blast or post when things like this happen? Roberts was diligent and eventually got through, and posted updates so people would know, but it was a Sunday and a lot of people were home during that time, and she didn't know if there was some way they could have more real-time feedback to people so they know what's going on. Director Garcia said Communications Manager Marshall-Oquendo approached him and wanted to discuss some ways to communicate with residents about outages. Garcia reported they will work on a way to resolve the issue. He will also contact the answering service so they can better provide that information. Councilmember Baldwin said with regard to the answering service, they often don't know the answers, and staff is working to get the work done. Councilmember Roberts is asking for ways to get the word out, not necessarily if there's an ETA, but just so people are informed. Mayor Shute said this may become moot when they implement the smart meter program. Director Garcia confirmed, there is a website they can see where the outage is and an estimated time of repair.

Councilmember Baldwin thanked Director Kramer for resolving and answering his questions regarding Waverly Rd.

Councilmember Gregorcyk congratulated the KC Chiefs on their win; it's great for community and the metro. He also thanked Chief Belcher for providing answers to his questions regarding Consent Item #3.

Councilmember Melton asked City Administrator Pruetting if the city is shutting down on Wednesday? Pruetting said the schools are out, but he never considered shutting down the office. Employees can take vacation time. Melton asked if Chief Belcher will have a CPAC meeting soon, now that the committee is full? Chief Belcher said yes, he'll reach out to the new members and will get an agenda out soon. He believes the next meeting will be February 24. Melton said if residents want to see exciting things happen, they should go to a CPAC meeting.

Mayor Shute was in Westport when the Chiefs won, it was very interesting and pretty awesome experience. They have new appointees to the committees; he recognized Cleverson Souza, Al Sanchez, Rebecca Streeter for their appointments to the Citizens Police Advisory Committee and Bryce Augustine for his appointment to the Utility Advisory Commission. He recognized them for their commitment. Shute believed they committees are full. City Clerk Rose said there are openings on the Parks and Recreation Committee and the Public Works And Accessibility Committee. Mayor Shute asked how many openings are on each one? City Clerk Rose said there are 3 on the Parks and Recreation Advisory Committee and 4 on Public Works and Accessibility Advisory Committee. Mayor Shute urged residents who are interested to apply. If anyone is interested in serving the community and giving input on vital issues, please apply. These committees are important. They help guide the decision-making of the council. Contact City Clerk Rose or check the website.

**EXECUTIVE SESSION**

**ADJOURNMENT**

There being no further business to come before the Council, on a motion duly made by Councilmember Melton and seconded by Councilmember Baldwin the meeting adjourned at 8:04 p.m.

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City Clerk

VEND NO	SEQ#	VENDOR NAME	BANK	CHECK/DUE DATE	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0004947	00	THE BRISTOL GROUPE	00	01/27/2020	001-1130-411.31-15	UNUSED PORTION OF DEVELOP	1,663.09	
01272020		000146						
GRAND TOTAL							1,663.09	
VENDOR TOTAL *							1,663.09	
TOTAL EXPENDITURES *****							1,663.09	

1,663.09

VEND NO	SEQ#	VENDOR NAME	BNK	CHECK/DUE DATE	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0004116	00	AEROTEK, INC	00	01/31/2020	001-6105-461.31-15	PROFESSIONAL SERVICES	EFT:	880.00
OP09269684		0000152						
0004197	00	AID ANIMAL HOSPITAL, INC	00	01/31/2020	001-2120-421.52-20	VENDOR TOTAL *	.00	880.00
402151		0000153				VET VISIT	410.58	
0004340	00	ALL CITY MANAGEMENT SERVICES INC	00	01/31/2020	001-2110-421.31-15	VENDOR TOTAL *	410.58	
66183		0000154				CROSSING GUARD CONTRACT	EFT:	2,087.44
0002636	00	ALTEC CAPITAL SERVICES, LLC	00	01/31/2020	501-4130-441.44-02	VENDOR TOTAL *	.00	2,087.44
996480		0000155				LEASE RENTAL	EFT:	5,821.88
0004287	00	AMERICAN FIDELITY - SUPPLEMENTAL	00	01/31/2020	721-0000-202.03-07	VENDOR TOTAL *	.00	5,821.88
D118197		0000173				CONTRIBUTIONS	EFT:	7,571.08
0000566	00	AMERICAN TOPSOIL, INC.	00	01/31/2020	521-4230-442.52-12	VENDOR TOTAL *	.00	7,571.08
135467		0000156				DIRT	EFT:	192.00
0001986	00	ANIXTER, INC.	00	01/31/2020	501-4130-441.52-31	VENDOR TOTAL *	.00	192.00
4485711-00		000157				CONDUIT & CONNECTORS	EFT:	2,830.25
4489221-00		000158				STREETLIGHTS	EFT:	2,623.32
4489221-00		000159				CABLE TERMINATORS	EFT:	2,424.97
4487103-00		000160				CABLE	EFT:	1,806.34
4495525-00		000161				CONNECTORS	EFT:	3,003.05
4478711-00		000162				CABLE	EFT:	2,151.18
4489221-02		000163				CONDUIT	EFT:	38.54
4474863-00		000174				LOCKS FOR LINE MAINT.	EFT:	191.80
0003515	00	AUGUSTINE EXTERMINATORS INC	00	01/31/2020	603-3150-431.31-15	VENDOR TOTAL *	.00	13,069.45
2236207		000164				MONTHLY BILLING	EFT:	49.44
2236216		000165				MONTHLY BILLING	EFT:	29.87
2236216		000165				MONTHLY BILLING	EFT:	29.87
2236220		000165				MONTHLY BILLING	EFT:	39.14
2236215		000165				MONTHLY BILLING	EFT:	28.84
2236218		000165				MONTHLY BILLING	EFT:	39.14
2236219		000165				MONTHLY BILLING	EFT:	39.14
2236217		000165				MONTHLY BILLING	EFT:	49.44
2236211		000165				MONTHLY BILLING	EFT:	49.44
2236210		000165				MONTHLY BILLING	EFT:	28.84
2236214		000165				MONTHLY BILLING	EFT:	28.84
2236213		000165				MONTHLY BILLING	EFT:	25.74
2236212		000165				MONTHLY BILLING	EFT:	39.14
2236212		000165				MONTHLY BILLING	EFT:	58.71
							EFT:	49.44

INVOICE NO	SEQ#	VENDOR NAME VOUCHER P.O. NO	BANK CHECK/DUE DATE	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0003515	00	AUGUSTINE EXTERMINATORS INC					
2236209		000165	00 01/31/2020	603-3150-431.31-15	MONTHLY BILLING	EFT:	96.00
2236208		000166	00 01/31/2020	603-3150-431.31-15	MONTHLY BILLING	EFT:	28.84
0004465	00	AXON ENTERPRISE, INC			VENDOR TOTAL *	.00	670.73
SI-1635433		000166	00 01/31/2020	001-2120-421.52-20	TASER CARTRIDGES	EFT:	152.00
0002420	00	BRENNTAG MID-SOUTH, INC			VENDOR TOTAL *	.00	152.00
BMS476409		P10036	00 01/02/2020	521-4220-442.52-13	WATER SYSTEM SUPPLIES	EFT:	2,486.25
BMS492232		P10037	00 01/17/2020	521-4220-442.52-13	WATER SYSTEM SUPPLIES	EFT:	2,486.25
BMS492233		P10038	00 01/22/2020	521-4220-442.52-13	WATER SYSTEM SUPPLIES	EFT:	2,486.25
0000001	00	CENTURYLINK			VENDOR TOTAL *	.00	7,458.75
313607125	1/20	000167	00 01/31/2020	001-6110-461.40-03	WESTSIDE PHONES	67.93	
313229630	1/20	000167	00 01/31/2020	501-4110-441.40-03	PHONE-ENERGY CENTER	60.76	
314105759	1/20	000166	00 01/31/2020	521-4220-442.40-03	MONTHLY BILLING	51.45	
313239127	1/20	000166	00 01/31/2020	531-4320-443.40-03	MONTHLY BILLING	264.58	
314117591	1/20	000166	00 01/31/2020	602-1340-413.40-03	MONTHLY BILLING	1,552.83	
0000429	00	CINTAS FIRE PROTECTION			VENDOR TOTAL *	1,997.55	
5015753856		000167	00 01/31/2020	521-4220-442.31-15	MONTHLY BILLING	EFT:	91.08
0000513	00	CITY ATTORNEYS ASSOC OF KANSAS			VENDOR TOTAL *	.00	91.08
2173		000167	00 01/31/2020	001-1120-411.46-02	MEMBERSHIP DUES	EFT:	35.00
0001557	00	DATCO, INC			VENDOR TOTAL *	.00	35.00
198422		000167	00 01/31/2020	001-2130-421.53-02	SHIRT EMBROIDERY-MILLER	126.00	
0003960	00	ELLIOTT EQUIPMENT COMPANY			VENDOR TOTAL *	126.00	
154397		000167	00 01/31/2020	531-4330-443.52-20	SEWER CAMERA TRAILER	EFT:	318.28
0003286	00	ENDUSTRAL FILTER MFRS			VENDOR TOTAL *	.00	318.28
G200181-3		000167	00 01/31/2020	531-4320-443.52-05	FILTERS FOR BLOWERS	EFT:	2,628.89
0003751	00	EVOQUA WATER TECH, LLC			VENDOR TOTAL *	.00	2,628.89
904301255		000167	00 01/31/2020	531-4320-443.31-15	D.I. WATER	EFT:	286.96
0002956	00	FASTENAL CO.			VENDOR TOTAL *	.00	286.96
KSKA350851		000167	00 01/31/2020	501-4130-441.52-12	CABLE TIES	EFT:	10.74
KSKA350704		000167	00 01/31/2020	521-4230-442.52-12	WATER	EFT:	105.97

VEND NO	SEQ#	VENDOR NAME	VOUCHER P.O. NO	BNK	CHECK/DUE DATE	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0002956	00	FASTENAL CO.							
0000668	00	FBI-LEEDA	0000167	00	01/31/2020	001-2110-421.46-02	VENDOR TOTAL *	.00	116.71
300033911							2020 DUES - BELCHER	50.00	
0000086	00	GALLS, LLC					VENDOR TOTAL *	50.00	
014760987			0000167	00	01/31/2020	001-2120-421.53-02	PATROL BOOTS - O'LUCCI	EFT:	125.00
014760986			0000167	00	01/31/2020	001-2120-421.53-02	PATROL BOOTS - B. HAYS	EFT:	125.00
014738315			0000167	00	01/31/2020	001-2120-421.53-02	PATROL BOOTS - ROLLF	EFT:	99.99
014833067			0000167	00	01/31/2020	001-2120-421.53-02	STEEL PLATE/ARMOR - JOLLY	EFT:	161.99
014833066			0000167	00	01/31/2020	001-2120-421.53-02	STEEL PLATE/ARMOR - WHITE	EFT:	161.99
0000181	00	GRAINGER					VENDOR TOTAL *	.00	673.97
9406107699			0000167	00	01/31/2020	521-4220-442.52-12	FAN MOTOR	EFT:	321.70
9402122916			0000167	00	01/31/2020	521-4220-442.52-20	TRASH BAGS & SAFETY GLASS	EFT:	257.68
0003739	00	HAWKINS, INC.					VENDOR TOTAL *	.00	579.38
4646120			0000167	00	01/31/2020	531-4320-443.52-13	55LB BAGS	EFT:	1,904.09
0002095	00	HDR ENGINEERING, INC					VENDOR TOTAL *	.00	1,904.09
1200241196			PI0040 007203	00	01/10/2020	001-3130-431.31-10	ENGINEERING	EFT:	13,748.50
0000297	00	HERITAGE-CRYSTAL CLEAN					VENDOR TOTAL *	.00	13,748.50
16076943			0000167	00	01/31/2020	501-4130-441.44-02	PARTS CLEANER	EFT:	430.34
0000759	00	HICKMAN HEATING & AIR CONDITIONING					VENDOR TOTAL *	.00	430.34
01242020			0000167	00	01/31/2020	521-4220-442.43-02	HVAC REPAIR	EFT:	482.00
0000102	00	ICMA RETIREMENT TRUST - 457					VENDOR TOTAL *	.00	482.00
273826			000210	00	01/31/2020	721-0000-202.03-04	CONTRIBUTIONS	CHECK #:	7,763.99
0000274	00	INDUSTRIAL SALES COMPANY, INC.					VENDOR TOTAL *	.00	7,763.99
1057413-000			000168	00	01/31/2020	501-4120-441.52-12	TOOLS - ELEC. GEN	EFT:	19.16
1057801-000			000168	00	01/31/2020	501-4120-441.52-12	CORD FOR SUMP PUMP	EFT:	316.14
0002919	00	JOHNSON COUNTY MOTOR VEHICLE					VENDOR TOTAL *	.00	335.30
01242020			000168	00	01/31/2020	501-4130-441.31-15	TAG RENEWALS	199.50	
0000107	00	JOHNSON COUNTY RECORDS & TAX ADMIN					VENDOR TOTAL *	199.50	



VEND NO	SEQ#	VENDOR NAME	ACCOUNT NO	ITEM DESCRIPTION	CHECK #	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0003568	00	KPERS RETIREMENT	721-0000-202.03-03	01302020 PAY PERIOD	118	601.93	601.93
1523472	000212	00 01/31/2020		VENDOR TOTAL *	.00	601.93	601.93
0002490	00	KPF	721-0000-202.03-02	01302020 PAY PERIOD	113	30,732.06	30,732.06
1523474	000213	00 01/31/2020		VENDOR TOTAL *	.00	30,732.06	30,732.06
0001103	00	KUTAK ROCK LLP	001-1130-411.31-15	PROFESSIONAL SERVICES	EFT:	1,900.27	1,900.27
2662213	000970	00 01/31/2020		DUMP TRUCK LEASE	EFT:	1,080.00	1,080.00
2662240	000169	00 01/31/2020		VENDOR TOTAL *	.00	2,980.27	2,980.27
0004413	00	LASER EQUIPMENT	001-2110-421.52-20	PRINTER CARTRIDGES	EFT:	130.00	130.00
680382	000169	00 01/31/2020		VENDOR TOTAL *	.00	130.00	130.00
0004949	00	LEGAL RECORD, THE	531-4310-443.47-01	LEGAL NOTICE OF RFQ	19.35	19.35	19.35
L84318	000169	00 01/31/2020		VENDOR TOTAL *	19.35	19.35	19.35
0004775	00	MARSHALL-OQUEENDO, DANEEKA	001-1140-411.46-01	EMPLOYEE MEETING TREATS	24.94	24.94	24.94
01302020	000172	00 01/31/2020		VENDOR TOTAL *	24.94	24.94	24.94
0003700	00	MCANANY VAN CLEAVE & PHILLIPS PA	001-1120-411.31-02	LEGAL SERVICES	EFT:	11,000.00	11,000.00
822683	PI0034	00 01/20/2020		LEGAL SERVICES	EFT:	3,809.00	3,809.00
822785	000966	00 01/31/2020		LEGAL SERVICES	EFT:	61.50	61.50
822784	000967	00 01/31/2020		LEGAL SERVICES	EFT:	92.00	92.00
822786	000968	00 01/31/2020		VENDOR TOTAL *	.00	14,962.50	14,962.50
0004464	00	MID-STATE RENTAL	501-4130-441.52-12	CLOSED SIGN &SAFETY CONES	EFT:	148.89	148.89
107889-2	000175	00 01/31/2020		VENDOR TOTAL *	.00	148.89	148.89
0000125	00	MIDWEST PUBLIC RISK- EB CONTRIB	001-1120-411.21-01	MONTHLY BILLING	EFT:	3,869.62	3,869.62
02012020	000177	00 01/31/2020		MONTHLY BILLING	EFT:	2,298.12	2,298.12
02012020	000178	00 01/31/2020		MONTHLY BILLING	EFT:	584.42	584.42
02012020	000179	00 01/31/2020		MONTHLY BILLING	EFT:	1,907.48	1,907.48
02012020	000181	00 01/31/2020		MONTHLY BILLING	EFT:	5,426.64	5,426.64
02012020	000182	00 01/31/2020		MONTHLY BILLING	EFT:	8,837.60	8,837.60
02012020	000184	00 01/31/2020		MONTHLY BILLING	EFT:	21,232.72	21,232.72
02012020	000186	00 01/31/2020		MONTHLY BILLING	EFT:	584.42	584.42
02012020	000187	00 01/31/2020		MONTHLY BILLING	EFT:	1,278.38	1,278.38
02012020	000188	00 01/31/2020		MONTHLY BILLING	EFT:	1,075.70	1,075.70
02012020	000189	00 01/31/2020		MONTHLY BILLING	EFT:	5,874.76	5,874.76
02012020	000190	00 01/31/2020		MONTHLY BILLING	EFT:	3,616.94	3,616.94
02012020	000191	00 01/31/2020		MONTHLY BILLING			
02012020	000192	00 01/31/2020		MONTHLY BILLING			

INVOICE NO	SEQ#	VENDOR NAME	VOUCHER P.O. NO	BNK CHECK/DUE DATE	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0000125	00	MIDWEST PUBLIC RISK- EB CONTRIB						
02012020		000199	00	01/31/2020	001-6105-461.21-01	MONTHLY BILLING	EFT:	5,662.94
02012020		000200	00	01/31/2020	001-6120-461.21-01	MONTHLY BILLING	EFT:	5,898.80
02012020		000201	00	01/31/2020	001-7110-471.21-01	MONTHLY BILLING	EFT:	5,471.30
02012020		000202	00	01/31/2020	001-7120-471.21-01	MONTHLY BILLING	EFT:	4,076.88
02012020		000193	00	01/31/2020	501-4110-441.21-01	MONTHLY BILLING	EFT:	3,797.02
02012020		000194	00	01/31/2020	501-4120-441.21-01	MONTHLY BILLING	EFT:	4,168.42
02012020		000195	00	01/31/2020	501-4130-441.21-01	MONTHLY BILLING	EFT:	9,522.66
02012020		000196	00	01/31/2020	521-4220-442.21-01	MONTHLY BILLING	EFT:	6,398.14
02012020		000197	00	01/31/2020	521-4230-442.21-01	MONTHLY BILLING	EFT:	7,949.04
02012020		000198	00	01/31/2020	531-4320-443.21-01	MONTHLY BILLING	EFT:	5,504.04
02012020		000180	00	01/31/2020	601-1230-412.21-01	MONTHLY BILLING	EFT:	594.62
02012020		000203	00	01/31/2020	601-1230-412.21-01	MONTHLY BILLING	EFT:	1,201.36
02012020		000185	00	01/31/2020	602-1340-413.21-01	MONTHLY BILLING	EFT:	3,542.52
02012020		000183	00	01/31/2020	604-1320-413.21-01	MONTHLY BILLING	EFT:	6,037.26
02012020		000176	00	01/31/2020	721-0000-202.03-08	MONTHLY BILLING	EFT:	24,434.80
0001382	00	MISSION COMMUNICATIONS, LLC				VENDOR TOTAL *	.00	153,492.72
1036380		000169	00	01/31/2020	531-4320-443.31-15	SERVICE PACKAGE	EFT:	1,953.00
0000130	00	MOBILPHONE				VENDOR TOTAL *	.00	1,953.00
6091328		000204	00	01/31/2020	501-4130-441.40-03	MONTHLY BILLING	EFT:	44.25
0004832	00	NPB COMPANIES, INC				VENDOR TOTAL *	.00	44.25
01232020		000205	00	01/31/2020	001-6110-461.54-51	JULY 4TH SECURITY DEPOSIT	EFT:	1,040.25
0000142	00	OLATHE WINWATER WORKS				VENDOR TOTAL *	.00	1,040.25
146768 00		000169	00	01/31/2020	521-4230-442.52-32	COUPLING	EFT:	575.00
0001569	00	PAYCOR, INC				VENDOR TOTAL *	.00	575.00
9479721		000214	00	01/31/2020	001-1310-413.31-15	W-2'S PAYROLL SERVICES	CHECK #:	575.00
9484740		000215	00	01/31/2020	001-1310-413.31-15	PAYROLL SERVICES	CHECK #:	2,720.12
								526.38
0000241	00	RAY LINDSEY COMPANY				VENDOR TOTAL *	.00	3,246.50
2020019		000206	00	01/31/2020	531-4320-443.52-12	SEAL & QUAD RING	EFT:	575.73
0000398	00	REEVES-WIEDEMAN CO.				VENDOR TOTAL *	.00	575.73
5528404		000207	00	01/31/2020	531-4320-443.52-01	PLUMBING PARTS	EFT:	109.99
0003110	00	REJIS COMMISSION				VENDOR TOTAL *	.00	109.99
431175		000169	00	01/31/2020	001-2110-421.31-15	SUBSCRIPTION FEE	EFT:	90.28
0004120	00	RIVERGROUP DESIGN				VENDOR TOTAL *	.00	90.28



VEND NO	INVOICE NO	SEQ#	VENDOR NAME	VOUCHER P.O. NO	BNK	CHECK/DUE DATE	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0004418	00	00	STEEL IMAGES, INC.							
0099999	00	00	STONE, BRENT	UT	00	01/23/2020	501-0000-229.00-00	VENDOR TOTAL *	.00	846.00-
000061517								FINAL BILL REFUND	12.21	
0099999	00	00	STOUTBUILT, LLC	UT	00	01/23/2020	501-0000-229.00-00	VENDOR TOTAL *	12.21	
000063031								FINAL BILL REFUND	445.48	
0004785	00	00	SUMNERONE, INC		00	01/31/2020	501-4110-441.43-02	VENDOR TOTAL *	445.48	
2414273			000169					COPIER - ELEC. GEN.	EFT:	60.85
0004482	00	00	SUPERION, LLC					VENDOR TOTAL *	.00	60.85
266823			P10035 007243	00	00	01/14/2020	602-1340-413.47-05	MAINTENANCE FOR 2/1-2/29	EFT:	7,441.15
2666077			000208	00	00	01/31/2020	602-1340-413.47-05	MONTHLY BILLING	EFT:	116.59
0002055	00	00	TG TECHNICAL SERVICES		00	01/31/2020	531-4330-443.43-02	VENDOR TOTAL *	.00	7,557.74
18458			000208					GAS INSTRUMENT CALIBRAT.	EFT:	117.50
0000105	00	00	TYLER TECHNOLOGIES, INC					VENDOR TOTAL *	.00	117.50
025-285278			000208	00	00	01/31/2020	602-1340-413.47-05	MONTHLY BILLING	EFT:	200.00
								VENDOR TOTAL *	.00	200.00
								HAND ISSUED TOTAL ***		164,127.89
								EFT/EPAY TOTAL ***		269,302.36
								TOTAL EXPENDITURES ****		433,430.25
								*****		441,980.76
								GRAND TOTAL	8,550.51	

PREPARED 1/31/20, 8:20:36  
PROGRAM GM342U  
CITY OF GARDNER

NEGATIVE CHECK REGISTER

VENDOR NUMBER VENDOR NAME

AMOUNT

4418 STEEL IMAGES, INC.

846.00-

VEND NO	SEQ#	VENDOR NAME	ACCOUNT NO	ITEM DESCRIPTION	EFT, EPAY OR HAND- ISSUED AMOUNT
0000350	00	AFFINIS CORP.	130-3130-431.62-04	CONSULTING SERVICES	EFT: 6,701.25
7628		PI0041 006982			
0000056	00	AMERICAN EQUIPMENT CO.	001-3120-431.52-16	VENDOR TOTAL *	.00
37221		000221		001-3120-431.52-16	
37611		000222		PLOW MARKERS	EFT: 145.75
				SPREADER PARTS	EFT: 361.60
0004301	00	AMERICAN FIDELITY ASSURANCE CO	721-0000-202.03-11	VENDOR TOTAL *	.00
2060987		000223		CONTRIBUTIONS	EFT: 1,549.98
0003954	00	AMERICAN PAYMENT CENTERS, LLC	604-1320-413.44-02	VENDOR TOTAL *	.00
15-20714		000247		PAYMENT DROP BOX RENTALS	EFT: 1,549.98
0000295	00	ASPLUNDH TREE EXPERT CO. INC.	501-4130-441.31-15	VENDOR TOTAL *	.00
79U10419		PI0051 007058		ANNUAL TREE TRIMMING PROG	EFT: 3,032.40
0000064	00	BIG O TIRES	001-6120-461.43-02	VENDOR TOTAL *	.00
016001-125844		000974		MOWER REPAIR	EFT: 30.00
016001-126806		000224		TIRE	EFT: 197.83
0002420	00	BRENTAG MID-SOUTH, INC	521-4220-442.52-13	VENDOR TOTAL *	.00
BMS496812		PI0042 007234		WATER SYSTEM SUPPLIES	EFT: 2,486.25
BMS485198		PI0045 007247		WATER TREATMENT SUPPLIES	EFT: 940.80
0001509	00	BRUCE, JASON	001-6105-461.46-01	VENDOR TOTAL *	.00
02032020		000219		KRPA STATE CONFERENCE	118.25
0000312	00	C & G MERCHANTS SUPPLY, INC.	001-2110-421.52-20	VENDOR TOTAL *	118.25
143585		000226		PAPER TOWELS	112.70
0004117	00	CENTURYLINK BUSINESS SERVICES	602-1340-413.40-03	VENDOR TOTAL *	112.70
1484999497		000227		MONTHLY BILLING	1,365.31
0001842	00	CITY OF OLATHE	001-6120-461.52-01	VENDOR TOTAL *	1,365.31
1271261		000974		GEN REPAIRS-MATERIALS	EFT: 55.00
1271280		000974		GEN REPAIRS-MATERIALS	EFT: 55.00
0004767	00	CLARK, MARILYN	604-1320-413.53-02	VENDOR TOTAL *	.00
02052020		000246		REIMB. FOR WORK BOOTS	108.86

VEND NO INVOICE NO	SEQ#	VENDOR NAME VOUCHER P.O. NO NO	BNK CHECK/DUE DATE	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0004757	00	CLARK, MARILYN					
0002621 46649	00	CLAYCO ELECTRIC CO, INC. 000230	02/07/2020	521-4220-442.43-02	VENDOR TOTAL * TIMER FOR CLARIFIER	108.86 EFT:	315.00
0001656 2-PW1905 2-PW1905	00	COHORST ENTERPRISES INC. PI0052 007202 00 12/11/2019 000977 00 02/07/2020		117-3120-431.62-05 117-3120-431.62-05	VENDOR TOTAL * CONSTRUCTION CHANGE ORDER	.00 EFT: EFT:	315.00 27,079.36 700.00
0001739 2121308	00	COLE-PARMER INSTRUMENT COMPANY 000231 00 02/07/2020		521-4220-442.52-12	VENDOR TOTAL * CARTRIDGE RESEARCH	.00 EFT:	27,779.36
0004812 02062020	00	CRAFT, AMY 000274 00 02/07/2020		001-6105-461.46-01	VENDOR TOTAL * KRPA CONFERENCE	.00 173.25	782.47
0002830 13313	00	CREATIVE CARNIVALS & EVENTS, LLC 000974 00 02/07/2020		001-6110-461.47-54	VENDOR TOTAL * EVENT RENTAL	173.25 EFT:	285.00
0000601 27713 27710	00	CUSTOM METAL & FABRICATION 000233 00 02/07/2020 000234 00 02/07/2020		001-6120-461.52-01 521-4230-442.52-31	VENDOR TOTAL * GOLF COURSE BRIDGE REPAIR WATER METER LID	.00 EFT: EFT:	285.00 31.52 47.43
0003481 817000070-20	00	DPC INDUSTRIES INC PI0044 007246 00 01/08/2020		521-4220-442.52-13	VENDOR TOTAL * WATER TREATMENT CHEMICALS	.00 EFT:	78.95
0003742 2018-101668	00	ECIVIS, INC 000235 00 02/07/2020		602-1340-413.47-05	VENDOR TOTAL * GRANT MANAGEMENT	.00 EFT:	1,140.00
0000700 DG-2020	00	EKGFOA 000236 00 02/07/2020		001-1310-413.46-02	VENDOR TOTAL * 2020 EKGFOA DUES-GOODSON	.00 50.00	2,850.00
0004946 7011930732 0120000237	00	EVERGY 00 02/07/2020		531-4320-443.40-05	VENDOR TOTAL * MONTHLY BILLING	50.00 379.42	
0000855 8947898	00	EWING IRRIGATION PRODUCTS, INC 000238 00 02/07/2020		001-6120-461.52-01	VENDOR TOTAL * ICE MELT	379.42 439.25	
0002956	00	FASTENAL CO.			VENDOR TOTAL *	439.25	

INVOICE NO	SEQ#	VENDOR NAME VOUCHER P.O. NO NO	BNK	CHECK/DUE DATE	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0002956 KSKA350914	00	FASTENAL CO. 000239	00	02/07/2020	501-4130-441.52-31	HARDWARE FOR TRANSFORMER	EFT:	513.35
0000086 014884305 014884302 014884293	00	GALLS, LLC 000240 000241 000242	00	02/07/2020	001-2120-421.53-02 001-2120-421.53-02 001-2120-421.53-02	VENDOR TOTAL * PATROL BOOTS - WEATHERS PATROL BOOTS - LAURENT PATROL BOOTS - ROBERTS	.00 EFT: EFT: EFT:	513.35 125.00 125.00 119.95
0001826 02042020	00	GARDNER, MIKE 000220	00	02/07/2020	001-3130-431.46-01	VENDOR TOTAL * CONCRETE CONFERENCE	.00 27.50	369.95
0003767 733084	00	GEO SPECIALTY CHEMICALS, INC. PI0043 007245	00	01/09/2020	521-4220-442.52-13	VENDOR TOTAL * WATER TREATMENT CHEMICALS	27.50 EFT:	13,740.48
0099999 000063551	00	GRUBE, JOSHUA UT	00	02/04/2020	501-0000-229.00-00	VENDOR TOTAL * FINAL BILL REFUND	.00 36.17	13,740.48
0000481 1500073178 1500073178	00	HOLLIDAY SAND AND GRAVEL 000242 000242	00	02/07/2020	521-4230-442.52-12 531-4330-443.52-12	VENDOR TOTAL * AXEL TRUCK AXEL TRUCK	36.17 536.25 536.25	
0002906 02042020	00	HOLOPIREK, ADRAINA 000243	00	02/07/2020	001-6105-461.46-01	VENDOR TOTAL * MILEAGE REIMBURSEMENT	1,072.50 69.58	
0000884 48625	00	JAMAR TECHNOLOGIES, INC 000258	00	02/07/2020	001-3130-431.52-02	VENDOR TOTAL * COUNTER GRIPS	69.58 EFT:	115.99
0000014 216637	00	JOHNSON COUNTY AGGREGATES 000973	00	02/07/2020	001-6120-461.52-01	VENDOR TOTAL * GRAVEL LOT IMPROVEMENT	.00 332.64	115.99
0002462 2020-01	00	JOHNSON COUNTY DEPT OF CORRECTIONS 000259	00	02/07/2020	125-1120-411.49-04	VENDOR TOTAL * 2020 ALCOHOL TAX DIST.	332.64 1,483.00	
0003056 M-MC51-SU01 '20000979	00	KANSAS DEPT OF HEALTH&ENVIRONMENT 000242	00	02/07/2020	001-3130-431.46-02	VENDOR TOTAL * MONTHLY BILLING	1,483.00 60.00	1,483.00
0002671 105888591 105962227	00	KANSAS GAS SERVICE 0120 000242 0120 000242	00	02/07/2020	001-2110-421.40-04 001-6120-461.40-04	VENDOR TOTAL * SHOP GAS	60.00 147.38 478.11	

VEND NO	SEQ#	VENDOR NAME	BNK	CHECK/DUE DATE	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0002671	00	KANSAS GAS SERVICE						
0002806	00	KANSAS GOLF AND TURF, INC				VENDOR TOTAL *	625.49	
02-211257	000242	00 02/07/2020			001-6120-461.43-02	MOWER REPAIR	EFT:	153.94
02-211408	000242	00 02/07/2020			001-6120-461.43-02	MOWER REPAIR	EFT:	1,436.75
0099999	00	KEETON, DAVID				VENDOR TOTAL *	.00	1,590.69
000045107	UT	00 02/04/2020			501-0000-229.00-00	FINAL BILL REFUND	214.44	
0000076	00	KONICA MINOLTA BUSINESS SOLUTIONS				VENDOR TOTAL *	214.44	
263420647	000248	00 02/07/2020			602-1340-413.43-02	MONTHLY BILLING	EFT:	230.00
0001757	00	KRANZ OF KANSAS CITY				VENDOR TOTAL *	.00	230.00
KC20191022	000242	00 02/07/2020			001-3120-431.52-16	521 SPREADER REPAIR	490.36	
0004413	00	LASER EQUIPMENT				VENDOR TOTAL *	490.36	
681909	000249	00 02/07/2020			001-2110-421.52-20	PRINTER CARTRIDGES	EFT:	260.00
0004949	00	LEGAL RECORD, THE				VENDOR TOTAL *	.00	260.00
L84354	000250	00 02/07/2020			001-1150-411.47-01	ORDINANCE SUMMARY	3.93	
L84353	000251	00 02/07/2020			001-1150-411.47-01	ORDINANCE SUMMARY	5.90	
L84356	000252	00 02/07/2020			001-1150-411.47-01	ORDINANCE SUMMARY	3.93	
L84355	000253	00 02/07/2020			001-1150-411.47-01	ORDINANCE SUMMARY	3.93	
L84432	000260	00 02/07/2020			001-1305-413.31-01	2019 T-REPORT	19.35	
0004811	00	LESTER, JORDYN				VENDOR TOTAL *	37.04	
02042020	000244	00 02/07/2020			001-6105-461.46-01	MILEAGE REIMBURSEMENT	73.60	
02052020	000275	00 02/07/2020			001-6105-461.46-01	KREA CONFERENCE	55.00	
0002979	00	LOCHNER, H W INC				VENDOR TOTAL *	128.60	1,000.00
17185-1	000242	00 02/07/2020			001-6120-461.31-15	ENGINEERING COST	EFT:	
0003838	00	MEGA INDUSTRIES CORP				VENDOR TOTAL *	.00	1,000.00
4-PW1703	PI0048	007194 00 02/04/2020			401-6120-461.62-23	KILL CREEK TRAIL	EFT:	34,282.50
0004464	00	MID-STATE RENTAL				VENDOR TOTAL *	.00	34,282.50
107922-2	000261	00 02/07/2020			501-4130-441.44-02	HANDHELD CORE DRILL	EFT:	86.95
0000130	00	MOBILPHONE				VENDOR TOTAL *	.00	86.95

INVOICE NO	SEQ#	VENDOR NAME VOUCHER P.O. NO	BNK	CHECK/DUE DATE	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0000130	00	MOBILPHONE	00	02/07/2020	001-3120-431.40-03	MONTHLY BILLING	EFT:	8.24
1541226	000242		00	02/07/2020	521-4220-442.40-03	MONTHLY BILLING	EFT:	36.32
1541226	000242		00	02/07/2020	521-4230-442.40-03	MONTHLY BILLING	EFT:	4.12
1541226	000242		00	02/07/2020	531-4320-443.40-03	MONTHLY BILLING	EFT:	49.76
1541226	000242		00	02/07/2020	531-4330-443.40-03	MONTHLY BILLING	EFT:	4.12
0003872	00	MOZINGO LAW FIRM, LLC				VENDOR TOTAL *	.00	102.56
093685	000254		00	02/07/2020	001-1330-413.31-02	COURT APPT ATTY FEES	EFT:	162.00
094773	000255		00	02/07/2020	001-1330-413.31-02	COURT APPT ATTY FEES	EFT:	114.00
0000132	00	NATIONAL SIGN CO., INC.				VENDOR TOTAL *	.00	276.00
IN-192398	000242		00	02/07/2020	001-3120-431.52-10	SIGN	EFT:	36.00
0000393	00	OLSSON, INC.				VENDOR TOTAL *	.00	36.00
341802	PI0049 007130		00	10/22/2019	401-3130-431.62-24	ENGINEERING SERVICES	EFT:	2,277.20
343351	PI0050 007130		00	11/13/2019	401-3130-431.62-24	ENGINEERING SERVICES	EFT:	2,483.24
0000149	00	PRAXAIR DISTRIBUTION INC				VENDOR TOTAL *	.00	4,760.44
94351979	000242		00	02/07/2020	001-3116-431.44-02	CYLINDER RENTAL	EFT:	43.45
94067117	000974		00	02/07/2020	001-6120-461.52-01	Co2 @ SHOP	EFT:	46.95
0004072	00	PROFESSIONAL ENGINEERING CONSULTANT				VENDOR TOTAL *	.00	90.40
521702	PI0047 007240		00	01/28/2020	551-4540-445.62-10	SANITARY SEWER EXTENSION	7,350.00	
0004198	00	PROTECT YOUTH SPORTS				VENDOR TOTAL *	7,350.00	
779843	000242		00	02/07/2020	001-6110-461.47-53	SPORTS BACKGROUND CHECK	EFT:	64.75
0000150	00	QUILL CORPORATION				VENDOR TOTAL *	.00	64.75
4040810	000242		00	02/07/2020	521-4220-442.52-20	OFFICE SUPPLIES	174.15	
0003110	00	REJIS COMMISSION				VENDOR TOTAL *	174.15	
431325	000256		00	02/07/2020	001-1330-413.46-02	VPN CONNECTION 2020	EFT:	70.00
0002584	00	RICHARD GREENE CO INC				VENDOR TOTAL *	.00	70.00
2002049	000242		00	02/07/2020	521-4220-442.52-12	BLOW DOWN FOR CLARIFIERS	EFT:	1,387.94
0003305	00	RICOH USA INC				VENDOR TOTAL *	.00	1,387.94
5058656812	000242		00	02/07/2020	602-1340-413.43-02	MONTHLY BILLING	238.98	
0000692	00	ROYAL METAL INDUSTRIES, INC.				VENDOR TOTAL *	238.98	

VEND NO	SEQ#	VENDOR NAME	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
0000692	00	ROYAL METAL INDUSTRIES, INC.	521-4220-442.52-12	METAL TUBE	103.60	
309765		000974				
0000160	00	SHAWNEE COPY CENTER INC.	001-1110-411.52-20	VENDOR TOTAL *	103.60	
120623		000242		BUSINESS CARDS-T. ROBERTS	EFT:	50.00
0004179	00	SHELTON, BILL ALAN	551-4520-445.31-15	VENDOR TOTAL *	.00	
01262020		000262		SNOW REMOVAL	1,562.50	
0004321	00	SITEONE LANDSCAPE SUPPLY, LLC	001-6120-461.43-02	VENDOR TOTAL *	1,562.50	
96583687-001		000242		SNOW EQUIPMENT REPAIR	363.21	
0001786	00	SMITTY'S LAWN & GARDEN EQUIPMENT	001-3120-431.52-16	VENDOR TOTAL *	363.21	
532778		000263		PLOW CUTTING EDGES	499.98	
530804		000978		LARGE EQP REPAIR	842.00	
0001566	00	STAPLES BUSINESS ADVANTAGE	001-1310-413.52-20	VENDOR TOTAL *	1,341.98	
8057233121		000242		OFFICE SUPPLIES	EFT:	146.22
8057070549A		000242		OFFICE SUPPLIES	EFT:	74.50
8057233123		000242		OFFICE SUPPLIES	EFT:	88.26
8057233121		000242		COPY PAPER	EFT:	214.44
0004418	00	STEEL IMAGES, INC.	001-6110-461.54-51	VENDOR TOTAL *	.00	
01282020		000169		CREDIT FOR DBL PYMT	EFT:	523.42
0004508	00	TEAMSIDELINE.COM	001-6110-461.47-53	VENDOR TOTAL *	.00	
TS-INV-7643		000242		LEAGUE SCHEDULING SYSTEM	699.00	
0000176	00	TIME WARNER CABLE	602-1340-413.47-05	VENDOR TOTAL *	699.00	
25113602012020		000242		MONTHLY BILLING	114.99	
0004352	00	TRANSUNION RISK & ALTERNATIVE DATA	001-2110-421.31-15	VENDOR TOTAL *	114.99	
196409-202001-1000242		000242		TLO TRANSACTIONS	150.00	
0001741	00	VICTOR L PHILLIPS CO	521-4230-442.43-02	VENDOR TOTAL *	150.00	
SWO004633-3		000242		BACKHOE REPAIR	1,139.27	
SWO004633-3		000242		BACKHOE REPAIR	1,139.28	
0003687	00	WATCHGUARD VIDEO		VENDOR TOTAL *	2,278.55	

VEND NO	SEQ#	VENDOR NAME	ACCOUNT NO	ITEM DESCRIPTION	CHECK AMOUNT	EFT, EPAY OR HAND-ISSUED AMOUNT
INVOICE NO		VOUCHER P.O. NO				
		BNK	CHECK/DUE DATE			
0003687	00	WATCHGUARD VIDEO	001-2120-421.52-20	VISTA CABLES	75.00	
ADVREP179764		000242	00 02/07/2020		7,950.00	
WARINV003950		PI0046 007248	00 01/24/2020	2020 IN-CAR WARRANTY		
0004226	00	WATCHMEN SECURITY SERVICES	501-4120-441.31-15	SECURITY VIDEO MONITORING	8,025.00	
43124		000242	00 02/07/2020	VENDOR TOTAL *	365.99	
0003221	00	WEX BANK	001-2110-421.52-09	FUEL	365.99	99.69
63408744		000980	00 02/07/2020	FUEL		98.90
63408744		000265	00 02/07/2020	FUEL		2,838.19
63408744		000980	00 02/07/2020	FUEL		1,855.90
63408744		000266	00 02/07/2020	FUEL		57.22
63408744		000980	00 02/07/2020	FUEL		16.14
63408744		000267	00 02/07/2020	FUEL		30.35
63408744		000980	00 02/07/2020	FUEL		34.91
63408744		000270	00 02/07/2020	FUEL		1,233.00
63408744		000980	00 02/07/2020	FUEL		1,256.88
63408744		000271	00 02/07/2020	FUEL		73.57
63408744		000980	00 02/07/2020	FUEL		24.74
63408744		000269	00 02/07/2020	FUEL		242.57
63408744		000980	00 02/07/2020	FUEL		268.22
63408744		000272	00 02/07/2020	FUEL		175.62
63408744		000980	00 02/07/2020	FUEL		77.57
63408744		000268	00 02/07/2020	FUEL		53.92
63408744		000980	00 02/07/2020	FUEL		291.61
63408744		000264	00 02/07/2020	FUEL		202.81
0004611	00	WILSON, NICK	001-6105-461.46-01	MILEAGE REIMBURSEMENT	.00	8,931.81
12142019		000974	00 02/07/2020		12.18	
02042020		000243	00 02/07/2020	MILEAGE REIMBURSEMENT	72.45	
				VENDOR TOTAL *	84.63	116,735.87
				EFT/EPAY TOTAL ***		116,735.87
				TOTAL EXPENDITURES ****	30,176.94	146,912.81
				*****		
				GRAND TOTAL		

## COUNCIL ACTION FORM

## CONSENT AGENDA ITEM NO. 3

**MEETING DATE:** FEBRUARY 17, 2020

**STAFF CONTACT:** TIM McELDOWNEY, CITY ENGINEER

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**Agenda Item:** Consider authorizing the execution of a Change Order with Amino Brothers Co., Inc. to construct the Santa Fe Improvements project.

**Strategic Priority:** Infrastructure and Asset Management; Fiscal Stewardship; Quality of Life

**Department:** Public Works

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### **Staff Recommendation:**

Staff recommends authorizing the City Administrator to execute Change Order No. 1 with Amino Brothers Co., Inc. on the Santa Fe Improvements project in an amount not to exceed \$202,061.50.

### **Background/Description of Item:**

On October 7, 2019, Council authorized the City Administrator to execute a contract with Amino Brothers Co., Inc. to construct the Santa Fe Improvements project. Prior to construction starting, it was discovered that a City water line was in conflict with the proposed work. Plans were then prepared and pay items identified to relocate the water line.

### **Financial Impact:**

The City has an agreement through the Johnson County Stormwater Management Program (SMP) to be reimbursed 75% of eligible stormwater related costs. We expect these additional costs to be approved as eligible expenses by the County. Any costs not covered by the County will be financed through the Water Fund.

### **Attachments Included:**

- Change Order

### **Suggested Motion:**

Authorize the City Administrator to execute Change Order No. 1 with Amino Brothers Co., Inc. on the Santa Fe Improvements project, in an amount not to exceed \$202,061.50.

# City of Gardner

## CHANGE ORDER NO. 1

PROJECT NAME: Santa Fe, Waverly to Poplar	DATE: 2/4/20
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CONTRACTOR: Amino Brothers	CITY PROJ. #: PW1702
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REASON FOR CHANGE ORDER:	Utility conflict
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DESCRIPTION OF WORK:	Relocate existing waterline along west side of Waverly Road.
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ITEM	DESCRIPTION	QUANTITY	UNITS	UNIT PRICE	AMOUNT
1	6" C900 PVC Waterline w/ Excavation & Backfill	7	LF	\$81.25	\$568.75
2	8" C900 PVC Waterline w/ Excavation & Backfill	60	LF	\$85.85	\$5,151.00
3	12" C900 PVC Waterline w/ Excavation & Backfill	1325	LF	\$92.45	\$122,496.25
4	8" x 45° Bend w/Backing Block	4	EA	\$607.00	\$2,428.00
5	12" x 22.5° Bend w/Backing Block	4	EA	\$907.00	\$3,628.00
6	12" x 45° Bend w/Backing Block	2	EA	\$868.00	\$1,736.00
7	12" x 8" Tee With Backing Block	2	EA	\$1,033.00	\$2,066.00
8	12" x 6" Tee	1	EA	\$1,004.00	\$1,004.00
9	Straddle Block	3	EA	\$2,927.00	\$8,781.00
10	6" Cap	1	EA	\$412.00	\$412.00
10	12" Cap	4	EA	\$827.00	\$3,308.00
11	6" Gate Valve	1	EA	\$1,279.00	\$1,279.00
11	8" Gate Valve	2	EA	\$1,690.00	\$3,380.00
12	12" Gate Valve	6	EA	\$2,760.00	\$16,560.00
13	6" Solid Sleeve	1	EA	\$588.00	\$588.00
14	8" Solid Sleeve	2	EA	\$688.00	\$1,376.00
15	Fire Hydrant Assembly	2	EA	\$5,312.00	\$10,624.00
16	16" Steel Casing	50	LF	\$212.00	\$10,600.00
17	Traffic Control	1	LS	\$5,200.00	\$5,200.00
18	Construction Staking	1	LS	\$875.50	\$875.50
<b>TOTAL</b>					<b>\$202,061.50</b>

ORIGINAL CONTRACT TOTAL	<b>\$3,904,293.00</b>
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FORCE ACCOUNT, PER CONTRACT - <b>NOT USED FOR THIS CHANGE ORDER</b>	<b>\$0.00</b>
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NET CHANGE BY PREVIOUSLY AUTHORIZED CHANGE ORDERS	<b>\$0.00</b>
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CURRENT CHANGE ORDER AMOUNT	<b>\$202,061.50</b>
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NEW CONTRACT TOTAL INCLUDING THIS CHANGE ORDER	<b>\$4,106,354.50</b>
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THE CONTRACT TIME WILL BE INCREASED BY <b>30 DAYS</b>	
NOT VALID UNTIL SIGNED BY THE OWNER, ENGINEER AND CONTRACTOR	

(Contractor Signature)	(Printed name)	Date:
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(City of Gardner Signature)	(Printed Name)	Date:
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(City of Gardner Signature)	(Printed Name)	Date:
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## COUNCIL ACTION FORM

## CONSENT AGENDA ITEM NO. 4

**MEETING DATE:** FEBRUARY 17, 2020

**STAFF CONTACT:** TIM McELDOWNEY, CITY ENGINEER

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**Agenda Item:** Consider authorizing the execution of an agreement with Kansas Department of Transportation (KDOT) for construction improvements for the Center Street Sidewalk project

**Strategic Priority:** Infrastructure and Asset Management  
Fiscal Stewardship  
Quality of Life

**Department:** Public Works

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### **Staff Recommendation:**

Staff recommends authorizing the Mayor to execute an agreement with KDOT for construction improvements for the Center Street Sidewalk Improvements project.

### **Background/Description of Item:**

In 2018, the City applied to the Mid-America Regional Council (MARC) for funding and was subsequently awarded KDOT funds to be used for construction of the project. The project includes construction of new sidewalk on the west side of N. Center Street from Shawnee to McKinley and widening of the sidewalk on the S. Center Street bridge over BNSF railroad tracks. Construction is expected to take place in 2022.

### **Financial Impact:**

KDOT agrees to be responsible for 80% of construction costs up to a maximum of \$252,000 (80% of \$315,000). The estimated total cost of the project is \$577,000, which includes construction, engineering design, utility relocations, and right-of-way acquisition. Costs incurred by the City of Gardner will be paid from the City's Special Highway Fund.

### **Attachments Included:**

- Agreement

### **Suggested Motion:**

Authorize the Mayor to execute an agreement with KDOT for construction improvements for the Center Street Sidewalk Improvements project.

PROJECT NO. 46 N-0703-01  
TA-N070(301)  
TRANSPORTATION ALTERNATIVES PROJECT  
SIDEWALK  
CITY OF GARDNER, KANSAS

## AGREEMENT

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

### RECITALS:

- A. The Secretary is authorized by the current Federal-Aid Transportation Act to set aside certain portion of Federal funding allocated under the current Federal-Aid Transportation Act for Transportation Alternatives (TA) projects.
- B. The Secretary is empowered to pass through Federal Surface Transportation Program (STP) funds for TA projects to eligible state agencies or local governments.
- C. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for Federal STP funding under the Transportation Alternatives Provision of the current Federal-Aid Transportation Act.
- D. The City has requested and Secretary has authorized a Transportation Alternatives (TA) project, as further described in this Agreement.
- E. Under the terms of the current Federal-Aid Transportation Act and the rules and regulations of the Federal Highway Administration (FHWA), states and local governments are, under certain circumstances, entitled to receive assistance in the financing of TA projects, provided however, that in order to be eligible for such federal-aid, such work is required by Federal law to be done in accordance with the laws of the state.

**NOW THEREFORE**, in consideration of these premises and the mutual covenants set forth herein, the Parties agree to the following terms and provisions.

### ARTICLE I

**DEFINITIONS:** The following terms as used in this Agreement have the designated meanings:

1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
2. **“City”** means the City of Gardner, Kansas, with its place of business at 120 East Main Street, Gardner, KS 66030.

3. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.
4. **“Construction Contingency Items”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
5. **“Construction Engineering”** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.
6. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project.
7. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.
8. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.
9. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
10. **“Encroachment”** means any building, structure, farming, vehicle parking, storage or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.
11. **“FHWA”** means the Federal Highway Administration, a federal agency of the United States.
12. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261 *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430 *et seq.*, Hazardous Waste.
13. **“KDOT”** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
14. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.

15. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, acting on the Secretary’s own behalf and on behalf of the FHWA, reasonably determines are not Participating Costs.
16. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge and road construction projects, as reasonably determined by the Secretary.
17. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the City.
18. **“Preliminary Engineering”** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.
19. **“Project”** means all phases and aspects of the Construction endeavor to be undertaken by the City, as and when authorized by the Secretary prior to Letting, being: **widening existing sidewalk on S. Center Street Bridge over BNSF and constructing a new sidewalk on the westside of N. Center Street from W. Shawnee Street to W. McKinley Street in Gardner, Kansas**, and is the subject of this Agreement.
20. **“Project Limits”** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.
21. **“Responsible Bidder”** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services.
22. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
23. **“Secretary”** means the Secretary of Transportation of the state of Kansas, and his or her successors and assigns.
24. **“Useful Life Period”** means a sufficient period of time, as specifically designated in this Agreement in Article IV, paragraph 2, to secure the investment of federal funds in the Project based on the nature and magnitude of Project costs and generally accepted economic or useful life cycle norms for the type of Construction involved in the Project.
25. **“Utilities” or “Utility”** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

## ARTICLE II

### SECRETARY RESPONSIBILITIES:

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the City acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives to obtain participation of federal funds in the cost of the Project.
2. **Letting and Administration by KDOT.** The Secretary shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the City. The Secretary further agrees, as agent for the City, to administer the Construction of the Project in accordance with the final Design Plans, as required by FHWA, to negotiate with and report to the FHWA and administer the payments due the Contractor or the Consultant, including the portion of the cost borne by the City.
3. **Indemnification by Contractors.** The Secretary will require the Contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party's claim, the Contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.
4. **Payment of Costs.** The Secretary agrees to be responsible for eighty percent (80%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, but not to exceed \$252,000.00 in FFY 2022 TA-KS funds for the Project. The Secretary shall not be responsible for the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed \$315,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for the Project.
5. **Final Billing.** After receipt of FHWA acknowledgement of final voucher claim, the Secretary's Chief of Fiscal Services will, in a timely manner, prepare a complete and final billing of all Project costs for which the City is responsible and shall then transmit the complete and final billing to the City.

## ARTICLE III

### CITY RESPONSIBILITIES:

1. **Secretary Authorization.** The Project shall be undertaken, prosecuted and completed for and on behalf of the City by the Secretary acting in all things as its agent, and the City hereby constitutes and appoints the Secretary as its agent, and all things hereinafter done by the Secretary in connection with the Project are hereby by the City authorized, adopted, ratified and confirmed to the same extent and with the same effect as though done directly by the City acting in its own individual corporate capacity instead of by its agent. The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this Project.

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

3. **Conformity with State and Federal Requirements.** The City shall be responsible to design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current the American Institute of Architects (AIA) standards, the Secretary of the Interior’s Standards for the Treatment of Historic Properties, the American Society of Landscape Architects guidelines, KDOT’s Design Engineering Requirements, the current Local Projects LPA Project Development Manual, Bureau of Local Project’s (BLP’s) project memorandums, memos, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Road Design’s road memorandums, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the current version of the Bureau of Transportation Safety and Technology’s Traffic Engineering Guidelines, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions, and with the rules and regulations of the FHWA pertaining to the Project.

4. **Design and Specifications.** The City shall be responsible to make or contract to have made Design Plans for the Project.

5. **Submission of Design Plans to Secretary.** Upon their completion, the City shall have the Design Plans submitted to the Secretary by a licensed professional engineer, a licensed professional architect, and/or licensed landscape architect, as applicable, attesting to the conformity of the Design Plans with the items in Article III, paragraph 3 above. The Design Plans must be signed and sealed by the licensed professional engineer, licensed professional architect, and/or licensed landscape architect, as applicable, responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies.

6. **Consultant Contract Language.** The City shall include language requiring conformity with Article III, paragraph 3 above, in all contracts between the City and any Consultant with whom the City has contracted to perform services for the Project. In addition, any contract between the City and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article III, paragraph 3 above. In addition, any contract between the City and any Consultant with whom the City has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

- (a) **Completion of Design.** Language requiring completion of all plan development stages no later than the current Project schedule’s due dates as issued by KDOT, exclusive of delays beyond the Consultant’s control.
- (b) **Progress Reports.** Language requiring the Consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

- (c) Third Party Beneficiary. Language making the Secretary a third party beneficiary in the agreement between the City and the Consultant. Such language shall read:

“Because of the Secretary of Transportation of the State of Kansas’ (Secretary’s) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Consultant. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the City or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant’s negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary’s right to payment or reimbursement.”

7. **Responsibility for Adequacy of Design.** The City shall be responsible for and require any Consultant retained by it to be responsible for the adequacy and accuracy of the Design Plans for the Project. Any review of these items performed by the Secretary or the Secretary’s representatives is not intended to and shall not be construed to be an undertaking of the City’s and its Consultant’s duty to provide adequate and accurate Design Plans for the Project. Reviews by the Secretary are not done for the benefit of the Consultant, the construction Contractor, the City, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Consultant or the City.

8. **Design Exception Indemnification.** Any design exception to the current version of the American Association of State Highway and Transportation Officials (AASHTO) Design Standards shall be in accordance with 23 C.F.R. § 625. For any design exception, the City agrees to the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, to defend, indemnify, hold harmless, and save the Secretary and the Secretary’s authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the design exceptions for this Agreement by the City, the City’s employees, or subcontractors.

9. **Authorization of Signatory.** The City shall authorize a duly appointed representative to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

10. **Right of Way.** The City agrees to the following with regard to Right of Way:

(a) **Right of Way Acquisition.** The City will, in its own name, as provided by law, acquire by purchase, dedication or condemnation all the Right of Way shown on the final Design Plans in accordance with the schedule established by KDOT. The City agrees the necessary Right of Way shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and

Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the KDOT's Bureau of Local Projects, such Right of Way has been acquired. The City further agrees it will have recorded in the Office of the Register of Deeds all Right of Way, deeds, dedications, permanent easements and temporary easements.

(b) Right of Way Documentation. The City will provide all legal descriptions required for Right of Way acquisition work. Right of Way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the Right of Way descriptions. The City further agrees to acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives for the participation of federal funds in the cost of the Project. The City agrees copies of all documents, including recommendations and coordination for appeals, bills, contracts, journal entries, case files, or documentation requested by the Office of Chief Counsel will be delivered within the time limits set by the Secretary.

(c) Relocation Assistance. The City will contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1 *et seq.*

(d) Non-Highway Use of Right of Way. Except as otherwise provided, all Right of Way provided for the Project shall be used solely for public street purposes. Any disposal of or change in the use of Right of Way or in access after Construction of the Project will require prior written approval by the Secretary.

(e) Trails and Sidewalks on KDOT Right of Way. *Intentionally Deleted.*

(f) Use of City Right of Way. The Secretary shall have the right to utilize any land owned or controlled by the City, lying inside or outside the limits of the City as shown on the final Design Plans, for the purpose of constructing the Project.

11. **Removal of Encroachments**. The City shall initiate and proceed with diligence to remove or require the removal of all Encroachments either on or above the limits of the Right of Way within its jurisdiction as shown on the final Design Plans for this Project. It is further agreed all such Encroachments will be removed before the Project is advertised for Letting; except the Secretary may permit the Project to be advertised for Letting before such Encroachment is fully removed if the Secretary determines the City and the owner of the Encroachment have fully provided for the physical removal of the Encroachment and such removal will be accomplished within a time sufficiently short to present no hindrance or delay to the Construction of the Project.

12. **Future Encroachments**. Except as provided by state and federal laws, the City agrees it will not in the future permit Encroachments upon the Right of Way of the Project, and specifically will

require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed a distance from the Right of Way line no less than the distance permitted by the National Fire Code.

13. **Utilities.** The City agrees to the following with regard to Utilities:

(a) **Utility Relocation.** The City will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing Utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the **KDOT Utility Accommodation Policy (UAP)**, as amended or supplemented.

(b) **Status of Utilities.** The City shall furnish the Secretary a list identifying existing and known Utilities affected, together with locations and proposed adjustments of the same and designate a representative to be responsible for coordinating the necessary removal or adjustment of Utilities.

(c) **Time of Relocation.** The City will expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The City shall certify to the Secretary on forms supplied by the Secretary that all Utilities required to be moved prior to Construction have either been moved or a date provided by the City as to when, prior to the scheduled Letting and Construction, Utilities will be moved. The City shall move or adjust or cause to be moved or adjusted all necessary Utilities within the time specified in the City's certified form except those necessary to be moved or adjusted during Construction and those which would disturb the existing street surface. The City will initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

(d) **Permitting of Private Utilities.** The City shall certify to the Secretary all privately owned Utilities occupying public Right of Way required for the Construction of the Project are permitted at the location by franchise, ordinance, agreement or permit and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of street or highway improvements.

(e) **Indemnification.** To the extent permitted by law, the City will indemnify, hold harmless, and save the Secretary and the Contractor for damages incurred by the Secretary and Contractor because identified Utilities have not been moved or adjusted timely or accurately.

(f) **Cost of Relocation.** Except as provided by state and federal laws, the expense of the removal or adjustment of the Utilities located on public Right of Way shall be borne by the owners. The expense of the removal or adjustment of privately owned Utilities located on private Right of Way or easements shall be borne by the City except as provided by state and federal laws.

14. **Hazardous Waste.** The City agrees to the following with regard to Hazardous Waste:

(a) **Removal of Hazardous Waste.** The City shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The City

shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The City will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency, State of Kansas environmental laws and regulations, and City and County standards where the Hazardous Waste is located.

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

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

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

15. Inspections. The City is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the current KDOT approved construction engineering program and in accordance with the current edition of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and any necessary Project Special Provisions. The detailed inspection is to be performed by the City or the Consultant. The Secretary does not undertake for the benefit of the City, the Contractor, the Consultant or any third party the duty to perform the day-to-day detailed inspection of the Project, or to catch the Contractor’s errors, omissions, or deviations from the final Design Plans. The City will require at a minimum all personnel performing Construction Engineering to comply with the high visibility requirements of the MUTCD, Chapter 6E.02, High-Visibility Safety Apparel. The agreement for inspection services must contain this requirement as a minimum. The City may require additional clothing requirements for adequate visibility of personnel.

16. Traffic Control. The City agrees to the following with regard to traffic control for the Project:

(a) Temporary Traffic Control. The City shall provide a temporary traffic control plan within the Design Plans, which includes the City’s plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The City’s temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance

pertaining to the same. The Secretary or the Secretary's authorized representative may act as the City's agent with full authority to determine the dates when any road closings will commence and terminate. The Secretary or the Secretary's authorized representative shall notify the City of the determinations made pursuant to this section.

(b) **Permanent Traffic Control.** The location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. 8-2005, must conform to the manual and specifications adopted under K.S.A. 8-2003, and any amendments thereto are incorporated by reference and shall be subject to FHWA approval.

(c) **Parking Control.** The City will control parking of vehicles on the city streets throughout the length of the Project covered by this Agreement. On-street parking will be permitted until such time as parking interferes with the orderly flow of traffic along the street.

(d) **Traffic Movements.** The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may be safely and expeditiously served. The City shall adopt and enforce rules and regulations governing traffic movements as may be deemed necessary or desirable by the Secretary and the FHWA.

17. **Access Control.** The City will maintain the control of access rights and prohibit the construction or use of any entrances or access points along the Project within the City other than those shown on the final Design Plans, unless prior approval is obtained from the Secretary.

18. **Maintenance.** When the Project is completed and final acceptance is issued and until expiration of the Useful Life Period, the City will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the City will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

19. **Financial Obligation.** The City will be responsible for twenty percent (20%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, up to \$315,000.00 for the Project. In addition, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed \$315,000.00 for the Project. Further, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for the Project. The City shall also pay for any Non-Participating Costs incurred for the Project along with the associated Non-Participating Construction Engineering costs.

20. **Remittance of Estimated Share.** The City shall deposit with the Secretary its estimated share of the total Project expenses based upon estimated approved contract quantities. The City will remit its estimated share by the date indicated on the resolution form Authorization to Award Contract, Commitment of City Funds received by the City from the Secretary. The date indicated for the City to deposit its estimated share of the total Project expenses is fifty (50) days after the Letting date.

21. **Payment of Final Billing.** If any payment is due to the Secretary, such payment shall be made within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

22. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the City shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the City to any party outside of the Secretary and all costs incurred by the City not to be reimbursed by the Secretary for Preliminary Engineering, Right of Way, Utility adjustments, Construction, and Construction Engineering work phases, or any other major expense associated with the Project.

23. **Cancellation by City.** If the City cancels the Project, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

#### ARTICLE IV

##### SPECIAL TRANSPORTATION ENHANCEMENT REQUIREMENTS:

1. **No 4(f) Status.** It is the Parties' intention that neither this Agreement nor the Project create or expand the status of any land involved in this Project as a "significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site," for purposes of 49 U.S.C. § 303 and 23 C.F.R. 771.135 ("4(f) status"), except as otherwise modified by this Agreement.

(a) **Transportation Alternatives.** Unless otherwise stated below in this section, the Parties agree the major purposes or functions of land involved in the Project are to preserve or enhance the scenic, historic, environmental or archeological aspects, or the usefulness for intermodal users (including bicyclists, pedestrians, and other non-motorized transportation users) of existing or new transportation facilities. It is further agreed any park, recreation or refuge purposes or functions are secondary or incidental for purposes of 49 U.S.C. § 303 and 23 C.F.R. 771.135. Exceptions: NONE.

(b) **4(f) Determinations.** The Parties agree for purposes of any future determinations of 4(f) status issues as required by 49 U.S.C. § 303 or applicable regulations the Secretary is hereby designated as the public official having jurisdiction of such determinations. However, it is not the intent of this section to affect the determination of whether a historic or archaeological site is on or eligible for inclusion on the National Register of Historic Places.

2. **Useful Life.**

(a) **Useful Life Period.** The Parties agree the Useful Life Period of the Project is twenty years, commencing on the date the Secretary gives notice of final acceptance of the Project.

(b) **Insurance.** If the Project includes improvements to a building, the City will purchase and maintain insurance for property damage to the building continuously during the

Useful Life Period of the Project in an amount equal to or in excess of the federal funds expended on the Project.

(c) Change in Public Use. After the Project is completed and during the entire Useful Life Period, any change in the public use of the real property for the Project will require written approval from the Secretary with FHWA concurrence.

(d) Recapture of Federal Investment.

(i) During the first ten years of the Useful Life Period, if the Project is not used for the purpose set forth in this Agreement or other use approved by the Secretary and the FHWA under subparagraph (c) above, then the City shall pay to the Secretary 100% of the federal funds invested in the Project.

(ii) Following the first ten years of the Useful Life Period and until the Useful Life Period expires, if the Project is not used for the purpose set forth in this Agreement or other use approved by the Secretary and the FHWA under subparagraph (c) above, then the City shall pay to the Secretary as recapture of federal funds invested in the Project an amount, which will be determined according to the following formula:

$$\frac{\text{Total Amount of Federal Funds Invested in the Project}}{\text{Entire Useful Life Period for the Project}} \times \frac{\text{Number of Full Years Remaining in the Useful Life Period at the time of unauthorized change in use}}{\text{Entire Useful Life Period for the Project}} = \text{Recapture Amount}$$

(iii) Any payments due to the Secretary pursuant to this subparagraph (d) shall be made within ninety (90) days after receipt of billing from the Secretary’s Chief of Fiscal Services.

## ARTICLE V

### GENERAL PROVISIONS:

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

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

3. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07.16.19), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

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

5. **Termination.** If, in the judgment of the Secretary, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, the Secretary may terminate this Agreement at the end of its current fiscal year. The Secretary will participate in all costs approved by the Secretary incurred prior to the termination of the Agreement.

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

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

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

ATTEST:

THE CITY OF GARDNER, KANSAS

\_\_\_\_\_  
CITY CLERK (Date)

\_\_\_\_\_  
MAYOR

(SEAL)

Kansas Department of Transportation  
Secretary of Transportation

By: \_\_\_\_\_ (Date)  
Burt Morey, P.E.  
Deputy Secretary and  
State Transportation Engineer

### CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to

comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

6. **Acceptance of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority to Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility for Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, *et seq.*
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

## KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment  
To Contracts or Agreements Entered Into  
By the Secretary of Transportation of the State of Kansas

### PREAMBLE

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and other nondiscrimination requirements and the Regulations, hereby notifies all contracting parties that it will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, color, national origin, sex, age, disability, income-level or Limited English Proficiency (“LEP”).

### CLARIFICATION

Where the term “contractor” appears in the following “Nondiscrimination Clauses”, the term “contractor” is understood to include all parties to contracts or agreements with the Secretary of Transportation, Kansas Department of Transportation. This Special Attachment shall govern should this Special Attachment conflict with provisions of the Document to which it is attached.

### ASSURANCE APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”), agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in its Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration (FHWA), the Federal Transit Administration (“FTA”) or the Federal Aviation Administration (“FAA”) as they may be amended from time to time which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, Including Procurements of Material and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, Federal Transit Administration (“FTA”), or Federal Aviation Administration (“FAA”) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or, the FHWA, FTA, or FAA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA, FTA, or FAA may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any

subcontract or procurement as the Recipient or the FHWA, FTA, or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### ASSURANCE APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Federal Aid Highway Act of 1973 (23 U.S.C. § 324 et. seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et. seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL No. 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)

# COUNCIL ACTION FORM

# CONSENT AGENDA ITEM NO. 5

**MEETING DATE:** FEBRUARY 17, 2020

**STAFF CONTACT:** JASON BRUCE, PARKS AND RECREATION DIRECTOR

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**Agenda Item:** Consider authorizing the purchase of a tractor for the Parks & Recreation Department

**Strategic Priority:** Infrastructure & Asset Management

**Department:** Parks and Recreation

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**Staff Recommendation:**

Staff recommends authorizing the purchase of a new tractor from K.C. Bobcat for the Parks and Recreation Dept. in the amount of \$31,265.00

**Background/Description of Item:**

The existing tractor is a 2007 Mahindra model that has almost 1,200 hours on it. This unit continues to have mechanical issues with its gear ratios, and replacement parts have become obsolete. This unit's 4-wheel drive is not functional and is beyond repair.

The proposed replacement is a 4-wheel drive tractor that staff will be able to utilize for turf maintenance programs throughout city parks. This unit will increase staff production and efficiency, as well as reduce contracting areas of sports field maintenance and park turf care. In addition, this unit will fit on departmental trailers and reduce mobilization times, unlike the existing unit that has to be driven to all locations.

<b>Vendor</b>	<b>Price</b>
K.C. Bobcat	\$31,265.00
Kubota	\$37,508.72
John Deere	\$42,582.00

**Financial Impact:**

The tractor will cost approximately \$31,265. This purchase was not originally included in the 2020 budget, but there is adequate funding available in the Special Parks Fund.

In addition, KC Bobcat has a 'buy bid program' that guarantees a buyer for our existing piece of equipment. KC Bobcat has secured a purchase price of \$6,500 from a third party. At the time of purchase, the City of Gardner will receive a check in that guaranteed amount.

**Attachments:**

- K.C. Bobcat quote
- Kubota quote
- John Deere quote
- Buy Bid email from KC Bobcat

**Suggested Motion:**

Authorize the City Administrator to purchase a new tractor from K.C. Bobcat in the amount of \$31,265.00



**K.C. Bobcat**

Blue Springs, MO: 816.229.4006

Tracy, MO: 806.431.3001

Olathe, KS: 913.829.4600

City of Gardner

Bobcat CT2540 W/ Loader with 72" Medium Duty Rotary cutter Quote

**Bobcat CT2540 - HST Cab, Heat & Air**

w/ Quick Attach Loader & Bucket, 39.6 Engine, 31.9 PTO HP

Tilt steering, Telescopic stabilizer and lower link,

Dual Remote Rear Hydraulic valves,

100" Loader lift height, tractor mounted loader joystick

1558 lb. Loader Capacity at pivot pins max height

Bob-Tach™ 60" quick attach bucket

Hydraulic Top link installed

**Titan 1300 Series Medium-Duty Rotary Cutter**

Brush up to 2" in diameter, 5 year limited gear box warranty, replaceable skids, fully welded

Slip Clutch drive line, chain shielding, flex hitch for quick hitch use

11GA Deck, 75 HP Gearbox

Gardner Bid Price

**\$31,265.00**

**CT2540 Compact Tractor**

Bobcat CT2540 HST

Glow Plug Engine Pre-Heat

Cab Heat/Air

Suspension seat

Rear window wiper/defrost

Dual arm rest

Sun-visor

Cruise control

Floor-mat

Tool Box

Side View Mirror

Rear View Mirror

Dual Air Cleaner

Electric Key Shutoff

Horn

Cupholder

Vinyl, w/ retractable seat belt

Instrumentation: Hourmeter, tachometer, engine temperature, fuel gauge, and warning lights

Lights: headlights, tail lights, brake lights, hazard flashers and turn signals

Hydrostatic Power Steering, Tilt steering

Front Work light

Rear work light

Safety Interlock System

Parking Brake

Four Wheel Drive

Rear Differential Lock

Brakes, Wet Multi Disc

Loader Joystick & Valve

Fuel Heater Kit

Rear PTO

PTO Shield

Three Point Hitch, Category 1

Hydraulic Three Point Lift Position Control System

Rear Three Point Hitch Return to Position

Telescopic stabilizer & Lower link

Lift rod Turnbuckle

Dual Remote Valves (4 port)

Draw Bar, Adjustable

Turf Tires

28X8.5-15 front 41x14-20 rear

CT Front End Loader - FL8



GM - 062117, CE - 040319, AG - B21815  
 NJPA Arkansas 4600041718  
 NJPA Delaware GSS-17673  
 Nebraska 14777 (OC)  
 Mississippi (CE Only) 820036654

L4060HSTC WEB QUOTE #1545895

Date: 1/28/2020 7:42:32 AM

— Customer Information —

Tim Rodgers, City of Gardner Parks and Rec  
 trodgers@gardnerkansas.gov  
 913-238-8146

Quote Provided By  
 Coleman Equipment, Inc.  
 Ed Goldsmith  
 24000 W. 43rd.  
 Bonner Springs, KS 66012  
 email: ed@colemanequip.com  
 phone: 9134495019

— Standard Features —

— Custom Options —



L Series L4060HSTC

\*\*\* EQUIPMENT IN STANDARD MACHINE \*\*\*

**DIESEL ENGINE**

Model # V2403CRE4GL2/GL3  
 Tier IV Engine  
 Common Rail Direct Injection  
 w/ DPF and EGR  
 4 Cyl., 148.5 cu. in.  
 ^ 40.0 Net Eng. HP  
 ^ 32.5 PTO HP  
 @ 2600 Eng. rpm  
 12V 60Amp - 582CCA  
 Radial Air Flow Cooling  
 Dual Air Cleaner Element

**POWER TAKE OFF**

1 Speed Rear Live — HYD. IND.  
 540 rpm @ 2550 Eng. rpm  
 SAE 1-3/8 6 Splines  
 Electric over Hydraulic PTO Switch

**DIMENSIONS**

Overall Height w/Cab 91.1"  
 Overall Length w/3pt. 129.5"  
 Wheel Base 74.6"  
 Crop Clearance 15.9"

**HYDRAULICS**

Open Center  
 Tandem Pump Gear Type  
 4.7 gpm Power Steering  
 9.4 gpm Remote/3 Pt. Hitch  
 14.1 gpm Total Hyd. Flow  
 Category I 3-Pt. Hitch  
 Lift Capacity —  
 At lift Point 3858 lbs.  
 24" Behind 2756 lbs.

**STANDARD EQUIPMENT**

ROPS Certified Cab w/Retractable  
 Seat Belt  
 Highback Adj. Swivel Seat w/  
 Deluxe  
 Suspension w/Arm Rests  
 Safety Start Switches  
 Operator Presence Control System  
 Parking Brakes  
 Flat Deck w/Hanging Pedals  
 Electric Key Shut-off  
 2 Front Work Lights  
 Tilt Steering  
 Wide Anti-Slip Step  
 ISO Mounted Platform  
 Turn Signals / Hazard Flashers  
 SMV Sign  
 Operator Presence Control System  
 Telescoping Lower Links  
 2 Tier Halogen Head Lights  
 4 Position Loader Valve  
 One Piece Metal Hood  
 12V Outlet and Cup Holder  
 Front Wiper w/ asher  
 60 Amp Alternator  
 Interior Light  
 AC/Heater with Internal/External  
 Ventilation  
 Speakers and Radio Wired  
 Horn

**FRONT AXLE**

Hydrostatic Power Steering  
 Cast iron 4WD front axle  
 Tread Spacing — Non-  
 adjustable  
 Bevel Gear drive

**DRIVE TRAIN**

HST PLUS  
 3 Forward / 3 Reverse  
 Hi-Med-Low Range  
 Mech. Wet Disc Brakes  
 Differential Lock  
 Cruise Control

**FLUID CAPACITY**

Fuel Tank 13.5 gal.  
 Cooling System 7.9 qts.  
 Crankcase 8.7 qts  
 Transmission and  
 Hydraulics 11.4 gal.  
 Front Axle Differential 6.9 qts.

**IntelliPanel™**

Lighted Communications Symbols  
 Standard Tachometer  
 Digital Read for Speed, MPH, PTO  
 speeds, diagnostics system and  
 DPF system  
 Warning Symbols

^ Manufacturer Estimate

**SELECTED TIRES**

ALR6813 & ALR6803  
 FRONT - 29x12.50-15 R3 Titan Multi Trac  
 REAR - 44x18-20 R3 Titan Multi Trac 6stud

L4060HSTC Base Price: \$36,803.00

(1) SINGLE LVR VALVE HOSE QUICK COUPLER FOR LOADER (4 HOSES)	\$699.00
L2252-SINGLE LVR VALVE HOSE QUICK COUPLER FOR LOADER (4 HOSES)	
(1) 72" QUICK ATTACH SQUARE BACK BUCKET L2235A-72" QUICK ATTACH SQUARE BACK BUCKET	\$694.00
(1) REMOTE HYD CONTROL / E36 CAB L8396-REMOTE HYD CONTROL / E36 CAB	\$589.00
(4) FRONT SUITCASE WEIGHT (55LBS) BL8069-FRONT SUITCASE WEIGHT (55LBS)	\$284.00
(1) HYD TYPE 2 LVR Q.C. FOR LA805/LA1055 L2270-HYD TYPE 2 LVR Q.C. FOR LA805/LA1055	\$1,505.00
(1) FRONT LOADER FOR GRAND L SERIES L4060 LA805-FRONT LOADER FOR GRAND L SERIES L4060	\$4,553.00
(1) FRONT WEIGHT BRACKET MX8068-FRONT WEIGHT BRACKET	\$96.00
(1) DOUBLE ACTING VALVE L8308-DOUBLE ACTING VALVE	\$241.00
(4) BOLT KIT FOR BL8069 - 1 PER WEIGHT BL8049-BOLT KIT FOR BL8069 - 1 PER WEIGHT	\$32.00
(1) ALL-THREAD BOLT KIT BL8069 W/MX8068 BL8014-ALL-THREAD BOLT KIT BL8069 W/MX8068	\$28.00
<b>Configured Price:</b>	<b>\$45,524.00</b>
<b>Sourcewell Discount:</b>	<b>(\$10,015.28)</b>
<b>SUBTOTAL:</b>	<b>\$35,508.72</b>
<b>Dealer Assembly:</b>	<b>\$637.50</b>
<b>Freight Cost:</b>	<b>\$965.00</b>
<b>PDI:</b>	<b>\$250.00</b>
<b>Land Pride 317-027A Down Pressure installed</b>	<b>\$834.00</b>
<b>Trade-in Mahindra 4530 and Loader</b>	<b>(\$2,000.00)</b>

Total Unit Price: \$36,195.22  
 Quantity Ordered: 1  
 Final Sales Price: \$36,195.22

**Purchase Order Must Reflect  
 the Final Sales Price**

To order, place your Purchase Order directly with the quoting dealer

\*All equipment specifications are as complete as possible as of the date on the quote. Additional attachments, options, or accessories may be added (or deleted) at the discounted price. All specifications and prices are subject to change. Taxes are not included. The PDI fees and freight for attachments and accessories quoted may have additional charges added by the delivering dealer. These charges will be billed separately. Prices for product quoted are good for 60 days from the date shown on the quote. All equipment as quoted is subject to availability.



**Quote Summary**

**Prepared For:**

City Of Gardner Parks & Recreation  
 120 E Main St  
 Gardner, KS 66030  
 Business: 913-238-8146

**Prepared By:**

Richard Shumate  
 Van-Wall Equipment, Inc.  
 9650 Dice Lane  
 Lenexa, KS 66215  
 Phone: 913-397-6009  
 richard.shumate@vanwall.com

**Quote Id:** 21151732  
**Created On:** 29 January 2020  
**Last Modified On:** 29 January 2020  
**Expiration Date:** 31 March 2020

Equipment Summary	Suggested List	Selling Price	Qty	Extended
JOHN DEERE 3039R Compact Utility Tractor (31 PTO hp)	\$ 47,047.70	\$ 37,622.00 X	1 =	<del>\$ 37,622.00</del>
<i>X</i> JOHN DEERE 3046R Compact Utility Tractor (34 PTO hp)	\$ 50,155.20	\$ 40,180.00 X	1 =	\$ 40,180.00
JOHN DEERE 4044R Compact Utility Tractor (33 PTO hp)	\$ 50,110.90	\$ 39,960.00 X	1 =	<del>\$ 39,960.00</del>
LANDPRIDE 12 SERIES - 72" ROTARY CUTTER Laminated Tailwheel, Slip-Clutch	\$ 2,750.00	\$ 2,053.00 X	1 =	\$ 2,053.00
<i>X</i> LANDPRIDE 18 SERIES - 72" ROTARY CUTTER Laminated Tailwheel, Slip-Clutch	\$ 3,350.00	\$ 2,402.00 X	1 =	\$ 2,402.00
<b>Equipment Total</b>				<b>\$ 122,217.00</b>

Trade In Summary	Qty	Each	Extended
MAHINDRA 4530 Cut PayOff	1	\$ 1,500.00	\$ 1,500.00
Total Trade Allowance			\$ 1,500.00
MASSEY FERGUSON 283 Tractor PayOff	1	\$ 1,000.00	\$ 1,000.00
Total Trade Allowance			\$ 1,000.00
<b>Trade In Total</b>			<b>\$ 2,500.00</b>

Quote Summary	
Equipment Total	\$ 122,217.00
Trade In	\$ (2,500.00)
SubTotal	\$ 119,717.00

42,582.00

Salesperson : X \_\_\_\_\_

Accepted By : X \_\_\_\_\_



**JOHN DEERE**

# Trade In

Quote Id: 21151732

Customer: CITY OF GARDNER PARKS & RECREATION

MAHINDRA 4530 Cut	
<b>Machine Details</b>	
<b>Description</b>	<b>Net Trade Value</b>
MAHINDRA 4530 Cut	\$ 1,500.00
<b>Your Trade In Description</b>	
<b>Total</b>	<b>\$ 1,500.00</b>

MASSEY FERGUSON 283 Tractor	
<b>Machine Details</b>	
<b>Description</b>	<b>Net Trade Value</b>
MASSEY FERGUSON 283 Tractor	\$ 1,000.00
<b>Stock Number :</b>	
<b>Your Trade In Description</b>	
<b>PayOff</b>	<b>\$ 0.00</b>
<b>Total</b>	<b>\$ 1,000.00</b>

## Jason Bruce

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**From:** Tim Rodgers  
**Sent:** Wednesday, February 5, 2020 11:18 AM  
**To:** Jason Bruce  
**Subject:** Fwd: Mahindra

Sent from my iPhone

Begin forwarded message:

**From:** Calvin Loveall <[cloveall@kcbobcat.com](mailto:cloveall@kcbobcat.com)>  
**Date:** February 5, 2020 at 11:14:25 AM CST  
**To:** Tim Rodgers <[trodgers@gardnerkansas.gov](mailto:trodgers@gardnerkansas.gov)>  
**Subject: Re: Mahindra**

Our buy bid that we got for your 2007 Mahindra is \$6,500

On Wed, Feb 5, 2020 at 11:08 AM Tim Rodgers <[trodgers@gardnerkansas.gov](mailto:trodgers@gardnerkansas.gov)> wrote:  
Yes please

Sent from my iPhone

On Feb 5, 2020, at 11:03 AM, Calvin Loveall <[cloveall@kcbobcat.com](mailto:cloveall@kcbobcat.com)> wrote:

Sorry about that. I knew it was a 2007 and so did our bidder. Just a typo I guess. Do you want me to send you a new email with the buy bid and correct year?

On Wed, Feb 5, 2020 at 10:54 AM Tim Rodgers <[trodgers@gardnerkansas.gov](mailto:trodgers@gardnerkansas.gov)> wrote:

Hey Calvin

The bid buy price on the Mahindra you sent me had the wrong year. It's a 2007. Could you just send another with the correct year?

Thank you

Sent from my iPhone

## COUNCIL ACTION FORM

## CONSENT AGENDA ITEM NO. 6

**MEETING DATE:** FEBRUARY 17, 2020

**STAFF CONTACT:** Gonz Garcia, Utilities Director

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**Agenda Item:** Consider authorizing the execution of an agreement with Schlagel & Associates for the design of the East Sewer Main Interceptor at Prairie Trace.

**Strategic Priority:** Promote Economic Development  
Increase Infrastructure and Asset Management

**Department:** Utilities – Water and Wastewater

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### **Staff Recommendation:**

Staff recommends authorizing the City Administrator to execute a professional service agreement with Schlagel & Associates for the design of the East Sewer Main Interceptor at Prairie Trace as part of the GRATA sewer infrastructure improvements.

### **Background/Description of Item:**

On November 8, 2019, Schlagel & Associates submitted a proposal for the design of Prairie Trace East Sewer Interceptor in the amount of \$35,356. The alignment for this infrastructure runs from the City pump station through a single-family development prior to crossing the proposed streets to serve the commercial areas adjacent to 175th Street and Clare Road. This will require close coordination with the design of the improvements for the residential subdivision and roadways to avoid conflicts with other required utilities, namely storm sewer and box culvert crossings. Schlagel & Associates is already providing the design for these residential subdivisions improvements, therefore we believe they are the best fit for the design of the proposed East Sewer Interceptor to keep this important and highly-visible project on schedule.

Staff has reviewed the proposal and found scope of work and cost to be reasonable and competitive with similar projects.

### **Financial Impact:**

The design of the Prairie Trace East Sewer Interceptor will cost \$35,356. Staff anticipates issuing General Obligation Bonds to finance the design and construction of sewer infrastructure improvements for the GRATA Development Project. The sewer improvements are anticipated to cost approximately \$4,600,000. Future debt service payments will come from the Wastewater Fund.

### **Attachments included:**

- Schlagel & Associates Proposal
- Professional Service Agreement

### **Suggested Motion**

Authorize City Administrator to execute a professional service agreement for the design of Prairie Trace East Sewer Interceptor with Schlagel & Associates in the amount of \$35,356.



# SCHLAGEL & ASSOCIATES, P.A.

Engineers • Planners • Surveyors • Landscape Architects

November 8, 2019

Mr. Gonzalo Garcia  
Director of Utilities  
City of Gardner  
1150 E. Santa Fe Street  
Gardner, KS 66030

**RE: PRAIRIE TRACE EAST GRAVITY SEWER INTERCEPTOR**

Dear Gonzalo:

Thank you for the opportunity to submit our proposal for the above mentioned project. We believe we are uniquely qualified to provide design services for this sewer project given our involvement with the Prairie Trace Development.

The alignment of this proposed sewer main is provided on the attached exhibit taken from the Prairie Trace development agreement. As shown, this alignment will run from a pump station (by others) through a single-family neighborhood prior to crossing the proposed collector and arterial streets to serve the commercial areas adjacent to 175<sup>th</sup> street. This will require close coordination with the design of the improvements for the residential subdivision and proposed collector and arterial streets to avoid conflicts with other required utilities, namely storm sewer and box culvert crossings. Additional, service line elevations and locations for the single-family areas will also have to be provided. Since we are already providing the design for the residential subdivisions and the collector and arterial streets, we believe we are the best fit for the design of the proposed East Sewer Interceptor to keep this important and highly-visible project on schedule.

We propose to provide these services for **\$35,356.00**, and have provided our detailed fee proposal outlined on the attached Exhibit B. We anticipate that our contract form would closely follow EJCDC protocol, or any other industry standard format you deem acceptable.

Thanks again for the opportunity, and please feel free to contact me with any questions or concerns.

SCHLAGEL & ASSOCIATES, P.A.

Mark A. Breuer, PE  
Principal / Engineering Manager

Direct 913-322-7154  
[MAB@schlagelassociates.com](mailto:MAB@schlagelassociates.com)

/mdr  
Attachments

F:\PROPOSALS\2019\2019-171 Prairie Trace EAST Gravity Sewer Interceptor\Proposal.docx





## AGREEMENT FOR PROFESSIONAL SERVICES

This agreement ["Agreement"], is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the City of Gardner, Kansas, [hereinafter "City"], and SCHLAGEL & ASSOCIATES, P.A., [hereinafter referred to as "Consultant"].

### RECITALS

WHEREAS, Consultant represents that it is a duly qualified Professional Engineering Firm, experienced in the preparation of sanitary sewer main extension plans 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 **Prairie Trace East Gravity Sewer**.

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 January 30<sup>th</sup>, 2020 to December 31<sup>st</sup>, 2021 unless a different term is specified within the Scope of Services as described on Exhibit A or unless terminated earlier in accordance with the provisions of Article 2 below. In the event that the services rendered under this Agreement may extend beyond any one budget year, the continuation of this Agreement from year to year is contingent upon the approval of sufficient budgetary authority for the continuation of this Agreement by the Governing Body of the City in the establishment of its annual budget.

2.0 Termination.

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

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

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

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

- 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 Mark A. Breuer as Principal (name/contact info) 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 Jeff LeMire (913) 856-0916 (name/contact info) 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 utilities\_department@gardnerkansas.gov .
- 5.4 Right to Withhold Payment. City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to Consultant, to protect City from loss because of:
  - 1) Defective Work not remedied by Consultant nor, in the opinion of City, likely to be remedied by Consultant;
  - 2) Claims of third parties against City or City's property;
  - 3) Failure by Consultant to pay Subcontractors or others in a prompt and proper fashion;

- 4) Evidence that the balance of the Work cannot be completed in accordance with this Agreement for the unpaid balance of the Contract Price;
- 5) Evidence that the Work will not be completed in the Contract Time required for substantial or final completion;
- 6) Persistent failure to carry out the Work in accordance with this Agreement;
- 7) Damage to City or a third party to whom City is, or may be, liable; or
- 8) Conditions unfavorable for the prosecution of Work, or because of conditions which, in the opinion of the Engineer, warrant such action.

#### 6.0 Cash Basis and Budget Laws.

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

#### 7.0 Indemnification.

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

#### 8.0 Insurance.

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

- 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.
- Additional Insurance - The Consultant shall be required to purchase an Owner's Protective Liability Insurance Policy, issued on an occurrence basis and covering bodily injury (and death) and property damage, naming the City as named insured. The liability limits shall be as stated in the Instructions to Bidders or in the Special Conditions. The original policy shall be placed on file with the City and maintained during the life of the Contract. Such policy shall contain no exclusion relative to any function performed by the City or its employees and agents in connection with the Work.
- Special Hazards - Additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Instructions to Bidders or Special Conditions

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

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

- 1) Is licensed to do business in the State of Kansas;
  - 2) Carries a Best's policyholder rating of A or better;
- AND
- 3) Carries at least a Class X financial rating.

OR

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

9.0 Conflict of Interest.

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

10.0 Nondiscrimination.

Consultant must comply with the Kansas Act Against Discrimination and if applicable, execute a Certificate of Nondiscrimination and Affirmative Action as provided in K.S.A. §44-1030. The Consultant further agrees that the Consultant shall abide by the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans with Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

11.0 Facilities and Equipment.

Consultant shall furnish at its own cost and expense all labor, tools, equipment, materials, transportation, and any other accessories, services and facilities required to complete the Project as designated, described in accordance with this Agreement, including any attached exhibits and any addendums to this Agreement. The City expressly denies responsibility for or ownership of any item purchased until the same is delivered to and accepted by the City.

12.0 Accessibility.

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

13.0 Records, Ownership and Inspection.

13.1 Ownership of Documents.

All documents prepared by Consultant in the performance of this Agreement, although instruments of professional service, are and shall be the property of City, whether the project for which they are made is executed or not.

13.2 Open Records.

In recognition of the City's obligations under the Kansas Open Records Act ("KORA"), Consultant acknowledges that this Agreement along with any reports and/or records

provided pursuant to this Agreement are public documents and are subject to disclosure under KORA.

13.3 Maintenance of Records.

Except as otherwise authorized by the City, Consultant shall retain such documentation for a period of three (3) years after receipt of final expenditure report under this contract, unless action, including but not limited to litigation or audit resolution proceedings, necessitate maintenance of records beyond this three (3) year period.

14.0 Independent Contractor.

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

15.0 Compliance with Laws.

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

15.2 Pursuant to K.S.A. 16-113, if the Consultant does not have a resident agent in the State of Kansas, it shall execute and file "Certificate of Appointment of Process of Agent" with the Clerk of the District Court of Johnson County, Kansas. These forms may be obtained at the Office of the Clerk of the District Court. Consultant shall be responsible for the filing fee. This certificate is pursuant to the General Statutes of Kansas, and shall be filed prior to the formal execution of the Contract Documents. Failure to comply with these requirements shall disqualify the Consultant for the awarding of the Contract.

16.0 Assignment.

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

17.0 Confidentiality.

All reports and documents prepared by Consultant in connection with the performance of this Agreement are confidential until released by City to the public. Consultant shall not

make any such documents or information available to any individual or organization not employed by Consultant or City without the written consent of City before any such release.

18.0 Notices.

All notices hereunder shall be given in writing and sent as follows:

To City:

Jeff LeMire  
Utilities Senior Staff Engineer  
1150 E. Santa Fe St.  
Gardner, KS 66030

To Consultant:

Mark A. Breuer, PE  
Project Manager/Principal  
Schlagel & Associates, P.A.  
14920 W. 107<sup>th</sup> Street  
Lenexa, KS 66215

19.0 Amendments.

19.1 This document represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, and agreements, either written or oral.

19.2 This document may be amended only by written instrument, signed by both City and Consultant.

20.0 No Third Party Beneficiaries.

City and Consultant specifically agree that this Agreement is not intended to create any third party beneficiary relationship nor to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement; the duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.

21.0 Force Majeure.

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

- 22.0 Titles.  
The titles in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 23.0 Negotiations.  
City and Consultant agree that disputes relative to the project should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Consultant shall proceed with the work as per this Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without both parties' express written consent.
- 24.0 Costs and Attorney Fees.  
If on account of a continued default or breach by either party of such party's obligations under the terms of this agreement after any notice and opportunity to cure as may be required hereunder, it shall be necessary for the other party to employ one or more attorneys to enforce or defend any of such other party's rights or remedies hereunder, then, in such event, any reasonable amounts incurred by such other party, including but not limited to attorneys' fees, experts' fees and all costs, shall be paid by the breaching or defaulting party.
- 25.0 Severability.  
If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
- 26.0 Authority to Enter into Agreement.  
Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.
- 27.0 Incorporation of Appendices.  
Appendix A - Scope of Services, Appendix B - Fees are attached hereto and made a part hereof as if fully set out herein.
- 28.0 Entire Agreement.  
This Agreement represents the entire agreement between the Parties hereto and any provision not contained herein shall not be binding upon either party, nor have any force or effect.
- 29.0 Governing Law and Venue.  
This Agreement shall be governed by the laws of the State of Kansas and, in the event of litigation, the sole and exclusive venue shall be within the District Court of Johnson County, Kansas.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF GARDNER, KANSAS

CONSULTANT



\_\_\_\_\_  
(Mayor/City Administrator)

\_\_\_\_\_  
SCHLAGEL & ASSOCIATES, P.A.  
Mark A. Breuer  
Principal

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ryan Denk, City Attorney

## EXHIBIT A - SCOPE OF SERVICES

### A. INTRODUCTION

The City of Gardner, Kansas (City) wishes to contract with SCHLAGEL & ASSOCIATES, P.A. (Engineer) for the design of the Prairie Trace East Gravity Main, located within the Prairie Trace development. The sewer main design shall generally follow the conceptual alignment provided in the Prairie Trace Development Agreement. The design shall be coordinated with the development plan for the area, and shall include necessary service line extensions for the single family homes to be constructed in phase one of the development. The main extension will connect to the East Pump Station, as depicted in the Prairie Trace Development Agreement, which is being designed by others.

### B. SCOPE OF SERVICES

#### **B1. Initial Research**

1.1. Coordinate with the City to establish the design criteria and detailed requirements for project drawings and specifications.

1.2. Advise the City of the need for services not provided by the engineer.

1.3 Prepare a topographic survey along the alignment to support the design

1.4 Establish Property boundary lines as determined by a Registered Land Surveyor in the State of Kansas

#### **B2. Preliminary Design**

2.1. Attend one (1) meeting with the City to establish the detailed requirements for plan and specification submittal.

2.2. Develop Preliminary Alignment and Easements

2.2.1. Develop a conceptual layout of the alignment using AIMS information.

2.2.2 Coordinate the proposed design with the designs of proposed developments being concurrently undertaken by property owners.

2.2.3. Contact municipalities, known utility companies, and regulatory agencies including railroads and KDOT. The Engineer will attempt to meet with representatives of these agencies to discuss potential conflicts and considerations that affect the proposed alignment. The Engineer will provide to the City documentation of the interactions with these agencies.

2.2.4. Perform horizontal and vertical control survey to establish the base for layout of property and lot lines. Field surveying will be accomplished using modern electronic distance measuring and field data collection equipment. Horizontal and vertical control

shall be the Johnson County survey control network. Reference reports shall be filed with the county and state for all section corners, quarter corners and center corners located for a project as required by state law. The Engineer will survey the locations of grade-dependent facilities.

2.2.5 Prepare a sewer tributary map with flow calculations based upon City design criteria. Complete a hydraulic analysis to determine sewer pipe sizes and provide to City for review.

2.2.6. Prepare preliminary plan and profile sheets. The Engineer will develop a preliminary vertical design of the sewer using a ground surface profile developed from the AIMS contour mapping supplemented with GPS collected data. To the greatest extent possible, the Engineer will show existing facilities (utilities and on-site sewage disposal systems) on the drawings. The Engineer will show the proposed permanent and temporary easements and property owner information on the plan and profile sheets. The Engineer will submit to the City, two (2) copies of the preliminary plan and profile sheets for review. Upon receipt of comments from the City, the Engineer will revise the plan and profile sheets to address the comments and resubmit.

2.2.7. Following City approval of the alignment and easement layout, prepare legal descriptions of easements and easement exhibits. The easement descriptions will be provided to the City in a word processing file format.

### **B3. Final Design**

3.1. Attend one (1) meeting with the City to discuss any comments or changes to the preliminary project drawings.

3.2. Produce contract specifications including: (1) the City standard "front-end" contract documents which include instructions to bidders, bid forms, bond forms, general conditions (a version from the National Society of Professional Engineers, unmodified), supplemental conditions, and special provisions to the technical specifications, (2) technical specifications, (3) subsurface information.

3.3. Submit five (5) copies of the final project drawings and contract specifications to City for review along with an electronic version of the drawings in PDF format.

3.4. Outline a plan for obtaining sub-surface information for the project. The plan shall include the approach to obtaining subsurface information as follows:

3.4.1. At every manhole location or at intervals not to exceed 300 feet.

3.4.2. The depth of soil borings will be to one (1) foot below proposed sewer invert elevation or one (1) foot below auger refusal whichever is deepest.

3.4.3. At every third manhole and at the end of every tunnel or horizontal bore, if auger refusal is encountered above sewer invert elevation, rock corings will be made to a depth of one (1) foot below the sewer invert elevation. Obtain two rock cores to one foot below

sewer invert on every horizontal bore. Review the subsurface investigation plan with City and revise per City comments. Obtain quotes and schedules from a minimum of two (2) geotechnical engineering firms to obtain subsurface information. Provide copies of the quotes and schedules to the City as well as a recommendation for completion of the subsurface investigations. Soil boring and coring logs will be made available by the Engineer for the prospective bidders.

3.5. The Engineer shall prepare a Soil and Erosion Control Plan, prepare a Project Memorandum that satisfies the US Army Corps of Engineers requirements for Section 404 permitting which may require a stream wetland inventory report, apply for Kansas Clean Water Act Section 401 permit, submit Kansas Notice of Intent, and apply for applicable City soil and erosion control and land disturbance permits.

#### **B4. Bidding Phase**

4.1. Coordinate with the City term and supply construction document services supplier to provide and distribute project drawings and contract specifications in accordance with City Purchasing Procedures to all interested parties.

4.2. Consider inquiries prior to the bid opening from contractors, subcontractors, and suppliers, and draft addenda to the project contract documents as required. The City shall approve all written addenda.

4.3. Distribute all written addenda through the City document services supplier.

4.4. Conduct a pre-bid conference for prospective bidders if deemed necessary by the City.

4.5. Assist the City in reviewing the bids for completeness and accuracy. Develop a bid tabulation spreadsheet and submit it to the City in a PDF format. Submit a written recommendation of contract award to the City.

4.6. Provide the successful bidder with three (3) sets of the contract specifications ready for contract execution.

#### **B5. Construction Phase**

5.1. Assist City in conducting a pre-construction conference with the contractor and all interested parties. Provide a written summary of the conference. The Engineer will notify all affected utility companies in writing, prior to the pre-construction conference.

5.2. Review shop drawings, test results and other submittals which the contractor submits, to show conformance to the contract documents.

5.3. Engineer shall establish temporary benchmarks along the length of the project. Trees, which are indicated to be saved on the drawings, will be marked with flagging by the Engineer. Detailed construction staking is not the responsibility of the Engineer.

5.4 Review applications for payment with the contractor for compliance with the contract documents and submit to City with a recommendation for payment.

5.5. Review any change orders and provide recommendations to City.

5.6. Conduct an inspection to determine if the project is substantially complete, and submit to the contractor a list of observed items requiring completion or correction. The resident construction observer, provided by the City, will be present during and provide documentation for the Contractor's performance of infiltration and exfiltration testing, deflection testing, manhole vacuum testing and line lamping activities.

5.7. Advise City when the project is fully completed. Conduct an inspection, in the company of the City and contractor, to verify that the project is fully completed. Submit a recommendation for final acceptance of the project to the City.

5.8. Provide City with one (1) set of as-constructed drawings on paper prints of as-constructed drawings. Provide digital PDF copy of the as-constructed drawings.

#### **THE CITY WILL:**

City staff will meet periodically with the Engineer during the development of the work to provide guidance information, assist with the coordination of the East Pump Station location and provide copies of design information for the East Pump Station and associated force main. The City shall provide the final desired location and flowline of the East Pump Station for connection to the East Gravity Sewer main by June 1, 2020.

Tentative timeline:

Contract Award: February 17, 2020 City Council

Preliminary Design Complete: May 1, 2020

Final Design Complete: June 15, 2020

Bid Advertise: June 30, 2020

**EXHIBIT B - FEES**



## COUNCIL ACTION FORM

## CONSENT AGENDA ITEM NO. 7

**MEETING DATE:** FEBRUARY 17, 2020

**STAFF CONTACT:** JASON BRUCE, PARKS AND RECREATION DIRECTOR

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**Agenda Item:** Consider authorizing the execution of a contract with William Morris Endeavor Entertainment for headlining entertainment during the 2020 Independence Day event

**Strategic Priority:** Quality of Life; Fiscal Stewardship

**Department:** Parks and Recreation

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### **Staff Recommendation:**

Staff recommends authorizing the City Administrator to execute a contract with William Morris Endeavor Entertainment for Independence Day 2020 headlining entertainment in the amount of \$40,000.00.

### **Background/Description of Item:**

Every year, the Parks and Recreation Department hires artists to perform at the City's annual Independence Day event at Celebration Park. The show's headliner (to be named later) costs more than the City Administrator's spending authority. Per the City's purchasing policy, staff requires City Council approval for any purchase over \$25,000.

### **Financial Impact:**

Funds for this contract are included in the adopted 2019-2020 Parks and Recreation budget.

### **Attachments:**

- Contract

### **Suggested Motion:**

Authorize the City Administrator to execute a contract with William Morris Endeavor Entertainment for headlining entertainment during the 2020 Independence Day event in the amount of \$40,000.00.



1201 Demonbreun Street, 15th Floor  
 Nashville, TN 37203  
 USA  
 Phone: +1 615-349-4584  
 email: SCF@WMEAgency.com

ENTERTAINMENT

ARTIST RIDER AND ADDENDA ATTACHED HERETO HEREBY MADE A PART OF THIS CONTRACT

Agreement made 04 Feb 2020 between [REDACTED] ENTERTAINMENT (hereinafter referred to as "PRODUCER") furnishing the services of [REDACTED] (hereinafter referred to as "ARTIST") and CITY OF GARDNER/Amy Craft (hereinafter referred to as "PURCHASER")

It is mutually agreed between the parties as follows:

The PURCHASER hereby engages the PRODUCER to furnish the services of ARTIST for the Engagement (as described herein) upon all the terms and conditions herein set forth, including, without limitation, Addendum "A" (Additional Terms and Conditions), the Artist Rider, and any other PRODUCER addenda referenced herein (if any), all of which are attached hereto and fully incorporated herein by reference.

**1. ENGAGEMENT VENUE(S):**

CELEBRATION PARK  
 32501 W 159th St  
 Gardner, KS 66030  
 USA

**2. DATE(S) OF ENGAGEMENT:**

Sat 04 Jul 2020

a. Number of Shows:

1

b. Show Schedule(s):

04:30 PM: Doors

05:30 PM: Support - Confirmed: Big Time Grain Company; (60 min.); Confirmed

07:00 PM: Support - Confirmed: Jerry Jacobs; (75 min.)

08:30 PM: [REDACTED]; (75 min.); Confirmed to close

10:00 PM: Fireworks to Follow Performance

-Exact show schedule TBD and per advance

**3. BILLING (in all forms of advertising):**

100% Sole Headling Billing

**4. COMPENSATION:**

\$40,000.00 USD (Forty Thousand U.S. Dollars) flat GUARANTEE.

DEPOSIT requirements and PAYMENT TERMS are further set forth below in Section 10.

**5. PRODUCTION AND CATERING:**

- Purchaser to provide and pay for sound and lights as required by Artist.

- The parties acknowledge there shall be NO charge backs to Producer or Artist of any kind (including, but not limited to in relation to labor and/or production costs) under any circumstances unless such charge back is expressly agreed to and pre-approved in writing by Producer or WME.

- Purchaser to provide and pay for catering as required by Artist

**Production Contact:**

Andy Van Meter  
 (785) 565-8271 (off.)  
 audioguy75@hotmail.com

**6. TRANSPORTATION AND ACCOMMODATIONS:**

- a) Air transportation:
- b) Accommodations: - Purchaser agrees to provide and pay for three (3) double hotel rooms as required by Artist
- c) Air freight and excess baggage:
- d) Ground transportation: - Purchaser to provide and pay for a runner with vehicle as required by Artist.
- e) Meals and incidentals:
- f) Other:

Any changes to the above-mentioned arrangements are subject to the sole and exclusive prior written approval of PRODUCER.

**7. SPECIAL PROVISIONS:**

**PURCHASER AGREES TO:**

- Please make all balance of show checks for [REDACTED] payable to: [REDACTED] Entertainment, PO Box 330903, Nashville, TN 37203.
- All interview and PR requests should be directed to Regina Stuve - rstuve@pfamedia.net.
- All shows should be advanced with Robert Gatlin / robert.gatlin12@gmail.com.
- Marketing plans must be approved prior to announcing and placing the engagement on sale. E-mail all marketing plans to NT@wmeagency.com.
- Purchaser to provide ticket counts to WME/Nashville on Mondays and Thursdays. Counts should be called in to 615-963-3352 or e-mailed to nashticketcounts@wmeentertainment.com by 12:00 Noon CST on ticket count days.
- Purchaser to pay for and utilize Artist-supplied ad mats, radio and television spots from Tour Design. No other forms of advertising are permitted without management approval. Contact Bill Kittle, 323-769-4776 OR (billkittle@tourdesign.com) or go to http://bit.ly/[REDACTED] for ordering information.
- In the case of a force majeure event, provided Artist is ready, willing, and able to perform, Artist shall be paid in full.
- In the case of inclement weather, Artist shall be paid in full. Purchaser represents and warrants it has sufficient insurance or funds to cover any such cancellation.
- Support act, if any, directly prior to Artist must be Artist approved. No exceptions. Purchaser must submit list of potential support acts for approval prior to confirming any Artist as support.
- There shall be absolutely NO audio and/or video recording, live broadcasts, webcasts, photography, and/or any other recording, broadcast and/or exploitation of ARTIST or ARTIST'S performance. Any requests for the foregoing shall be subject to PRODUCER'S prior written approval and terms in all instances

Any sums (e.g., deposit and/or guarantee) remitted under any performance contract and/or engagement confirmation are in consideration for, among other things, the performance of our respective client(s) (including, but not limited to: exclusivity of the performance of our respective client(s) within a certain geographic area and during a certain time; advertising of the performance (including use of the name, likeness, and image of our respective client(s) for that purpose); solicitation of sponsorships and ticket sales based upon the name, likeness, and image of our respective client(s); and personal performance at the contracted-for and/or confirmed engagement). The sums remitted under the performance contract and/or engagement confirmation are non-refundable, except in instances specifically set out herein.

**8. ARTIST RIDER:**

PURCHASER shall provide and pay for all terms and conditions contained in the ARTIST rider and shall fully comply with all provisions thereof.

**9. CURRENCY AND EXCHANGE RATE:**

**10. PAYMENT TERMS:**

a. DEPOSIT in the amount of \$20,000.00 USD shall be paid to and in the name of PRODUCER's agent, WILLIAM MORRIS ENDEAVOR ENTERTAINMENT, LLC, to be received not later than 04 Jun 2020; (50% of guarantee due to WME via wire no less than thirty (30) days prior to performance. Purchaser does not require FXK to send deposit)

All deposit payments shall be paid via certified or cashier's check sent to:

WILLIAM MORRIS ENDEAVOR ENTERTAINMENT, LLC  
 ATTN: Spencer Foote  
 1201 Demonbreun Street, 15th Floor  
 Nashville, TN 37203  
 USA

OR via bank wire as follows:

CITY NATIONAL BANK  
 54 Music Square East  
 Nashville, TN 37203

ABA no.: 064009445  
 William Morris Endeavor Account No.: 684001426  
 ORG: City of Gardner / REF: [REDACTED] / Jul 04, 2020  
 WME booking code: PAC 915276

Please be sure to specify the following to avoid confusion and/or misapplication of funds: your company name (as sender), name of the artist, start date of the Engagement(s).

b. BALANCE of the monies shall be paid to and in the name of PRODUCER by certified or cashier's check or bank wire (as designated by PRODUCER), to be received by PRODUCER not later than prior to the first show of the Engagement.

c. Earned percentages, overages and/or bonuses, if applicable, are to be paid to PRODUCER in cash (if requested by PRODUCER, and to the extent permitted by law), or by certified or cashier's check or bank wire (as designated by PRODUCER), immediately following the last show of the Engagement.

d. In the event the full price agreed upon to be paid by PURCHASER does not include percentages or overages, and the actual gross box office receipts from the Engagement exceed the gross potential as stated herein, such amounts shall be paid in full to PRODUCER in cash (if required by PRODUCER and to the extent permitted by law) or by certified or cashier's check or bank wire (as designated by PRODUCER), immediately following the last show of the Engagement.

**11. SCALING AND TICKET PRICES:**

	CAP.	TYPE	PRICE	COMPS	KILLS	SELLABLE	FAC.FEE	PARKING	CHARITY	TIC.FEE	VIP	SCNDRY	OTHER	NET PRICE	GROSS POT.
Sat 04 Jul 8:30 PM	10,000	Lawn		0	0	0									
	10,000			0	0	0									

**SCALING NOTES:**

- Outdoor / Covered Stage / Rain or Shine
- Free show
- Estimated attendance: 8,000-10,000
- Attendees are permitted to bring their own seating

ADJUSTED GROSS POTENTIAL:
TAX:
NET POTENTIAL:

**12. EXPENSES:**

N/A

**13. MERCHANDISING:**

Artist sells; All Merchandise: 100.00% of proceeds to ARTIST.

**14. VISAS AND WORK PERMITS:**

**15. TAXES:**

ADDENDUM "A" (ADDITIONAL TERMS AND CONDITIONS), ARTIST RIDER, AND ANY OTHER PRODUCER ADDENDA REFERENCED HEREIN (IF ANY), ARE ALL ATTACHED HERETO AND FULLY INCORPORATED HEREIN BY REFERENCE.

IN WITNESS WHEREOF, the parties hereto have hereunto set their names and seals on the day and year first above written.

By:

CITY OF GARDNER  
Amy Craft  
120 E Main St  
Gardner, KS 66030  
USA

By:

 ENTERTAINMENT

*Return all signed contracts to WILLIAM MORRIS ENDEAVOR ENTERTAINMENT, LLC at the address above; Attention: Foote*

ADDENDUM "A"

ADDITIONAL TERMS AND CONDITIONS

**A. COMPENSATION**

- (1) Unless otherwise specified, all payments shall be made in full without any deductions whatsoever. If not already indicated on the face page of this Agreement, PURCHASER will advise PRODUCER, or PRODUCER's agent, promptly upon request (but in no event later than the on-sale date), of the net admissions prices for the entertainment presentation and shall further disclose any added charges and applicable tax in connection therewith.
- (2) In the event the payment to PRODUCER shall be based in whole or in part on receipts of the performance(s) hereunder, PURCHASER agrees to deliver to PRODUCER a certified statement of the gross receipts of each performance within two (2) hours following such performance. PRODUCER shall have the right to have a representative present in the box office at all times and such representative shall have access to box office records of PURCHASER relating to gross receipts of the Engagement.
- (3) In the event that the payment of PRODUCER's share of said performance(s) receipts is based in whole or in part upon expenses related to the Engagement, PURCHASER shall verify by paid receipts, cancelled check or similar documents all such expenses, or they shall not be included as an expense of the Engagement.
- (4) In the event the payment to PRODUCER does not include a percentage payment, if the actual gross box office receipts from the Engagement exceed the gross potential as stated on the face of this Agreement or as otherwise agreed in writing between the parties, such excess shall be immediately paid in full to PRODUCER in cash.

**B. TICKETS**

- (1) PURCHASER shall not announce, advertise, promote or sell tickets to the Engagement until authorization in writing has been received from PRODUCER.
- (2) ALL TICKETS MUST BE NUMBERED. NO TICKETS SHALL BE PRICED AT MORE THAN THE AGREED UPON PRICE EXCLUSIVE OF VALUE ADDED TAX OR OTHER SALES-BASED TAX WITHOUT PRODUCER'S PRIOR APPROVAL.
- (3) If ticket price scaling shall be varied in any respect, the percentage of compensation payable to PRODUCER shall be based upon whichever of the following is more favorable to PRODUCER: (i) the ticket price scaling set forth on the face page of this Agreement or as otherwise agreed in writing by the parties, or (ii) the actual ticket price scaling in effect for the Engagement.
- (4) The PRODUCER's representative shall have the right to inspect ticket racks and all box office and other records with respect to such receipts, including, but not limited to, unsold tickets, printed but unsold tickets (so-called "deadwood") and stubs of tickets sold, for the purpose of verifying the statements. PRODUCER's representative will upon request be admitted to the box office at all times during the sale of tickets for the Engagement hereunder.
- (5) There shall be no dynamic ticket pricing unless mutually agreed upon by PRODUCER and PURCHASER in writing. In the event the parties agree to participate in dynamic ticket pricing all terms thereof shall be subject to mutual written approval including, without limitation, all ticket prices and adjustments thereto, scaling, gross box office potential and additional ticketing charges (if any). All elements thereof, including, without limitation, all ticket pricing/scaling/adjustments, ticketing charges (if any) and final gross revenue must be transparent and presented at settlement in writing to PRODUCER to evidence compliance with the foregoing.
- (6) PURCHASER agrees that any inclusion of ARTIST's performance hereunder in a subscription or other type of series is subject to the prior written consent of PRODUCER.
- (7) PURCHASER shall not commit ARTIST to any interviews, promotional appearances, meet & greets, or otherwise without PRODUCER's prior, written consent, which shall be given or withheld in PRODUCER's sole discretion.

**C. FACILITIES**

- (1) PURCHASER agrees to furnish at its sole cost and expense on the date(s), time(s) and place(s) of the performance(s) all that is necessary for the proper and lawful presentation of the Engagement, including, without limitation, a suitable venue, well-heated, ventilated, lighted, clean and in good order, stage curtains, properly tuned grand piano or pianos and all necessary first class sound equipment in perfect working condition including amplifiers, microphones in number and quality required by PRODUCER, dressing rooms (clean, comfortable, properly heated and air-conditioned and near the stage), all necessary electricians and stage hands, all necessary first class lighting, tickets, house programs, all licenses (including musical performing rights licenses), adequate security, ushers, ticket sellers, ticket takers, appropriate and sufficient advertising in all media and PURCHASER shall pay all other necessary expenses in connection therewith.
- (2) PURCHASER shall also provide at its sole cost and expense all necessary equipment for the Engagement hereunder as provided on the face of the Agreement, or as designated in the attached ARTIST Rider, unless otherwise agreed by PRODUCER and PURCHASER in writing. Exact requirements to be advised if same differs from ARTIST Rider specifications.
- (3) PURCHASER will pay all music royalties in connection with PRODUCER's use of music, and in addition, the costs of any musicians (including contractor) other than those furnished by PRODUCER as part of PRODUCER's regular company.
- (4) PURCHASER agrees to pay all amusement taxes, if applicable.
- (5) PURCHASER shall comply with all regulations and requirements of any union(s) that may have jurisdiction over any of the said materials, facilities and personnel to be furnished by PURCHASER and PRODUCER.
- (6) If PRODUCER so requires, PURCHASER will furnish at its expense all necessary facilities, electricians, stage hands and other personnel for lighting and dress rehearsals. PURCHASER shall furnish at its own expense all other items and personnel including, but not limited to, any and all personnel, including musicians, as may be required by any national or local union(s) required for the proper presentation of the performance hereunder, and any rehearsals therefore, except for those items and personnel which PRODUCER herein specifically agrees to furnish.
- (7) PURCHASER shall ensure compliance with all applicable requirements of laws and regulations as to health and safety, licensing, insurance, hygiene, fire, access, egress, security, and generally in relation to the performance(s) and the venue(s) for such performance(s).
- (8) PURCHASER shall be solely responsible for providing a safe environment for the Engagement, including but not limited to with respect to the staging, stage covering, grounding, supervision and direction of the Engagement, and security, so that the Engagement and all persons and equipment are free from adverse weather and other conditions, situations and events ("Adverse Conditions"). PRODUCER/ARTIST shall not have any liability for any damage or injury caused by such Adverse Conditions.

#### D. PRODUCTION CONTROL

- (1) PRODUCER shall have the sole exclusive creative control over the production and presentation of ARTIST's performance at the Engagement hereunder, including, but not limited to, the details, means and methods of the performance of the performing artists hereunder, and PRODUCER shall have the sole right, as PRODUCER may see fit, to designate and change at any time the performing personnel other than the ARTIST herein specifically named.
- (2) ARTIST shall at all times be the headline act and will be the closing act of each show, unless otherwise specified herein. PURCHASER agrees that no performers other than those to be furnished by PRODUCER hereunder will appear on or in connection with the Engagement hereunder. PURCHASER agrees to supply and pay for all supporting acts, if any, which must be requested and/or approved by PRODUCER.
- (3) PURCHASER agrees to promptly comply with PRODUCER's directions as to stage settings for the performance hereunder.
- (4) It is understood that no stage seats are to be sold or used without PRODUCER's prior written consent.

#### E. EXCUSED PERFORMANCE

If, as the result of a Force Majeure Event (as defined below), PRODUCER or ARTIST is unable to, or is prevented from, performing the Engagement or any portion thereof or any material obligation under this Agreement, then PRODUCER's and ARTIST's obligations hereunder will be fully excused, there shall be no claim for damages or expenses by PURCHASER, and PURCHASER shall bear its own costs and expenses in connection with this Agreement. Notwithstanding the foregoing: (i) PURCHASER shall be obligated and liable to PRODUCER for such proportionate amount of the payment provided for herein as may be due hereunder for any performance(s) which PRODUCER may have rendered up to the time of the inability to perform by reason of such Force Majeure Event; and (ii) in the event of such non-performance as a result of a Force Majeure Event, if ARTIST is ready, willing, and able to perform (but for the occurrence of such Force Majeure Event), then PURCHASER shall nevertheless pay PRODUCER an amount equal to the full GUARANTEE plus all other payments and compensation due hereunder. For clarification, in the event of cancellation due to any Force Majeure Event, and whether or not ARTIST is ready, willing and able to perform, PURCHASER shall remain responsible for all transportation, accommodations, expense reimbursements and any other payments or compensation for PRODUCER/ARTIST and entourage pursuant to the terms of this Agreement.

A "Force Majeure Event" shall mean any one or more of the following acts which makes any performance(s) by PRODUCER or ARTIST contemplated by this Agreement impossible, infeasible or unsafe: acts of God; act(s) or regulation(s) of any public authority or bureau, civil tumult, epidemic, act(s) of the public enemy; act(s) or threats of terrorism; threats; insurrections; riots or other forms of civil disorder in, or around, the Engagement venue or which PRODUCER and/or ARTIST reasonably believe jeopardizes the safety of ARTIST, any of ARTIST's equipment, musicians or other performers, or any of PRODUCER's key personnel; embargoes; labor disputes (including, without limitation, strikes, lockouts, job actions, or boycotts); fires; explosions; floods; shortages of energy or other essential services; failure of technical facilities; failure or delay of transportation; death, disability, illness, injury or other inability to perform of ARTIST, any of ARTIST's musicians, other performers, crew, representatives or advisors, any of ARTIST's family members, any of PRODUCER's key personnel, or any other person personally known to ARTIST whose death, disability, illness or injury adversely impacts ARTIST's ability to perform in connection with the Engagement; or other similar or dissimilar causes beyond the control of ARTIST or PRODUCER which make any performance(s) contemplated by this Agreement impossible, infeasible or unsafe.

#### F. INCLEMENT WEATHER

Notwithstanding anything contained to the contrary herein, inclement weather shall not be deemed a Force Majeure event and PURCHASER shall remain liable for payment to PRODUCER of the full GUARANTEE plus all other compensation due hereunder if the performance(s) is rendered impossible, infeasible or unsafe by such weather conditions. For clarification, PURCHASER shall remain responsible for all other terms and conditions of this Agreement, including, without limitation accommodations, transportation, and expense reimbursements for ARTIST and touring party.

#### G. PRODUCER'S RIGHT TO CANCEL

PURCHASER agrees that PRODUCER may cancel the Engagement hereunder without liability by giving the PURCHASER notice thereof at least thirty (30) days prior to the commencement date of the Engagement hereunder. Upon termination of the Agreement in accordance with this Section G, PRODUCER shall return to PURCHASER any deposit previously received by PRODUCER in connection with the Engagement. Subject to the foregoing, upon such termination, the parties shall have no further rights or obligations hereunder, and each of the parties shall bear its own costs incurred in connection with this Agreement.

#### H. BILLING

- (1) ARTIST shall receive billing in such order, form, size and prominence as directed by PRODUCER in all advertising and publicity issued by or under the control of the PURCHASER, including, but not limited to, displays, newspapers, radio and television ads, electric lights, posters, houseboards and announcements.
- (2) PURCHASER may only use ARTIST's name and pre-approved: voice, likeness, materials, pictures, photographs, image, or other identification of ARTIST (collectively, "ARTIST's Likeness") in connection with PURCHASER's advertising and publicizing of the Engagement, however PURCHASER's use of ARTIST's Likeness shall not be as an endorsement or indication of use of any product or service and no corporate or product/service name or logo shall be included in any such advertising and publicity absent PRODUCER's prior written approval in each instance. Notwithstanding the foregoing, the placement, form, content, appearance, and all other aspects of PURCHASER's use of ARTIST's Likeness shall at all times be subject to the prior written approval of PRODUCER.

#### I. MERCHANDISING

PRODUCER shall have the exclusive right to sell souvenir programs, ballet books, photographs, records and any and all types of merchandise including, but not limited to, articles of clothing (i.e. T-shirts, hats, etc.), posters, stickers, etc., on the premises of the place(s) of performance without any participation in the proceeds by PURCHASER subject, however, to concessionaire's requirements, if any, as specified in this Agreement.

## J. NO RECORDING/BROADCAST

PURCHASER shall not itself, nor shall it permit or authorize others (including, without limitation, PURCHASER or venue employees, representatives or contractors) to record, broadcast, televise, film, photograph, webcast, or otherwise reproduce the visual and/or audio performances hereunder (or any part thereof) and/or ARTIST and/or PRODUCER's personnel at any time during the Engagement. In the event PRODUCER does so grant any of the aforementioned rights, such rights shall be subject to a separate written agreement and PURCHASER shall be responsible, at PURCHASER's sole cost and expense, for securing any and all necessary third party rights, licenses, clearances, and permissions (including, but not limited to, all necessary publishing and record label clearances) required in connection with PURCHASER's capture and/or exploitation of the same. Notwithstanding the foregoing, and further to any additional obligations of PURCHASER to indemnify PRODUCER/ARTIST contained in this Agreement, PURCHASER shall indemnify and hold harmless PRODUCER and ARTIST from any and all damage(s) it, or they, may sustain as a result of PURCHASER's failure to comply herewith.

## K. PURCHASER DEFAULT

(1) In the event PURCHASER refuses or neglects to provide any of the items herein stated or comply with any provisions hereunder, and/or fails to promptly make any of the payments as provided herein and/or fails to proceed with the Engagement and/or fails to furnish PRODUCER or ARTIST with any documentation, tickets or notice or proof thereof as required hereunder, at the times herein specified, then any such failure shall be deemed a substantial and material breach of this Agreement and PRODUCER shall have the right (in PRODUCER's sole discretion), without prejudice to any other rights and remedies to: (i) immediately terminate this Agreement and cancel any or all remaining Engagement hereunder; (ii) retain all amounts already paid to PRODUCER by PURCHASER as partial compensation for such breach; (iii) receive the full GUARANTEE (or the unpaid balance thereof) plus all other payments and other compensation due pursuant to this Agreement and all out of pocket expenses incurred by PRODUCER and ARTIST in connection with the Engagement or the transactions contemplated by this Agreement; and (iv) PRODUCER and ARTIST shall have no further liabilities and/or obligations in connection with the Engagement or the transactions contemplated by this Agreement. For the avoidance of doubt, in all instances PURCHASER shall remain responsible for all transportation, accommodations, and expense reimbursements for PRODUCER/ARTIST and entourage pursuant to the terms of this Agreement.

(2) If, on or before the date of any scheduled engagement, PURCHASER has failed, neglected, or refused to perform any contract with PRODUCER/ARTIST, and/or any contract with any third party relating to this Engagement, and/or any other contract with any other performer for any other engagement (whether or not related), or if the financial standing or credit of PURCHASER has been impaired or is in PRODUCER's opinion unsatisfactory, PRODUCER shall have the right to demand payment of the full GUARANTEE and all other compensation due pursuant to this Agreement. If PURCHASER fails or refuses to make such payment forthwith, then any such failure shall be deemed a substantial and material breach of this Agreement, and PRODUCER shall have the right (in PRODUCER's sole discretion), without prejudice to any other rights and remedies, to: (i) immediately terminate this Agreement and cancel any or all remaining Engagement hereunder; (ii) retain all amounts already paid to PRODUCER by PURCHASER as partial compensation for such anticipatory breach; (iii) receive the full GUARANTEE (or balance thereof) and all other compensation due pursuant to this Agreement and all out of pocket expenses incurred by PRODUCER and ARTIST in connection with the Engagement or the transactions contemplated by this Agreement; and (iv) PRODUCER and ARTIST shall have no further liabilities and/or obligations in connection with the Engagement or the transactions contemplated by this Agreement. For the avoidance of doubt, in all instances PURCHASER shall remain responsible for all transportation, accommodations, and expense reimbursements for PRODUCER/ARTIST and entourage pursuant to the terms of this Agreement.

## L. INSURANCE/INDEMNIFICATION

(1) PURCHASER shall obtain and maintain, from the date hereof through completion of the Engagement, commercial general liability insurance coverage, including a contractual liability endorsement as respects this Agreement, liquor liability (either from PURCHASER, if PURCHASER is furnishing liquor, or from PURCHASER's designated concessionaire), in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence (but in no event in amounts less than the limits required by the venue and/or as set forth in the ARTIST rider, if any); business automobile liability insurance covering all owned, non-owned and hired vehicles used by or on behalf of PURCHASER with a minimum combined bodily injury and property damage liability limit of Five Million Dollars (\$5,000,000) per occurrence; and workers compensation and employer's liability insurance (including stop gap liability where applicable) with minimum limits of One Million Dollars (\$1,000,000) per claim (but in no event in limits less than those required by law and/or less than the limits required by the venue and/or as set forth in the ARTIST rider, if any.) Notwithstanding the foregoing, for any Engagement at which the allowable capacity is in excess of Twenty-Five Thousand (25,000) attendees, but less than Fifty Thousand (50,000) attendees, the required commercial general liability insurance coverage limit shall be in an amount of not less than Ten Million Dollars (\$10,000,000) per occurrence, and for any Engagement at which the allowable capacity is Fifty Thousand (50,000) or more attendees, the required commercial general liability insurance coverage limit shall be in an amount of not less than Fifteen Million Dollars (\$15,000,000) per occurrence. All of the insurance requirements set forth above shall not be construed as a limitation of any potential liability on behalf of PURCHASER. All such insurance required above shall be primary and non-contributory, and shall be written by insurance companies qualified to do business in the state(s) of the Engagement(s) with A.M. Best ratings not less than A minus or better. Such insurance policies shall contain a waiver(s) of subrogation with respect to the PRODUCER, ARTIST and their respective officers, directors, principals, agents, employees and representatives and shall provide that the coverage thereunder may not be materially changed, reduced or canceled unless thirty (30) days prior written notice thereof is furnished to PRODUCER/ARTIST. Not less than ten (10) days prior to each Engagement, PURCHASER shall furnish PRODUCER/ARTIST with an appropriate certificate(s) of insurance evidencing compliance with the insurance requirements set forth above and naming PRODUCER, ARTIST and PRODUCER/ARTIST's respective officers, directors, principals, agents, employees and representatives as additional insureds. PRODUCER's failure to request, review or comment on any such certificates shall not affect PRODUCER's rights or PURCHASER's obligations hereunder. Upon request, PURCHASER shall immediately furnish to PRODUCER/ARTIST a full and complete copy of all insurance policies required to be maintained by PURCHASER herein.

(2) PURCHASER hereby agrees to save, indemnify and hold harmless PRODUCER and ARTIST, and their respective agents, representatives, principals, employees, officers and directors, from and against any claims, suits, arbitrations, liabilities, penalties, losses, charges, costs, damages or expenses, including, without limitation, reasonable attorney's fees and legal expenses, incurred or suffered by or threatened against PRODUCER or ARTIST or any of the foregoing in connection with or as a result of any claim including without limitation, a claim for death, personal injury or property damage or otherwise brought by or on behalf of any third party person, firm or corporation as a result of or in connection with the Engagement, or any acts or omissions of PURCHASER or its employees, agents, or other representatives in connection with the transactions contemplated by this Agreement, which claim does not directly result from the gross negligence of the ARTIST and/or PRODUCER.

## M. ROLE OF AGENT

WILLIAM MORRIS ENDEAVOR ENTERTAINMENT, LLC acts only as agent for PRODUCER and assumes no liability hereunder and in furtherance thereof and for the benefit of William Morris Endeavor Entertainment, LLC, it is agreed that neither PURCHASER nor PRODUCER/ARTIST will name or join William Morris Endeavor Entertainment, LLC, or any of its parents, subsidiaries, officers, directors, principals, agents, employees and representatives (collectively, "WME") as a party in any civil action or suit anywhere in the world, arising out of, in connection with, or related to any acts of commission or omission pursuant to or in connection with this Agreement by either PURCHASER or PRODUCER/ARTIST. To the extent applicable, without limiting the generality of the foregoing and for the avoidance of doubt, WME expressly assumes no liability hereunder for any claims, losses, damages, complications, consequences, or other events that may occur as a result of the failure of either party hereto to obtain any of the visas, work permits, and/or other documentation required for the performance of the parties' obligations hereunder (hereinafter, the "Travel Documents"). It is agreed that neither PURCHASER nor PRODUCER/ARTIST will name or join WME as a party in any civil action or suit anywhere in the world, arising out of, in connection with, or related to any failure of either party hereto to obtain, secure, or procure the Travel Documents.

## N. NOTICES

All notices required hereunder shall be given in writing at the addresses stated in the preamble of this Agreement.

## O. CONTROLLING PROVISIONS

In the event of any inconsistency or conflict between the provisions of this Agreement and the provisions of any riders, addenda, exhibits or any other attachments hereto, the parties agree that the provisions most favorable to PRODUCER and ARTIST shall control.

## P. LIMITATION OF LIABILITY

In no event shall PRODUCER and/or ARTIST (nor any of their respective agents, representatives, principals, employees, officers, directors and affiliates) be liable to PURCHASER (or any third party) for any indirect, incidental, consequential, special, punitive (or exemplary), or any similar damages, including, without limitation, lost profits, loss of revenue or income, cost of capital, or loss of business reputation or opportunity, as to any matter under, relating to, or arising out of the Engagement or the transactions contemplated by this Agreement, whether in contract, tort or otherwise, even if PRODUCER and/or ARTIST has been advised of the possibility of such damages. Under no circumstances shall the liability of PRODUCER and/or ARTIST (or any of their respective agents, representatives, principals, employees, officers, directors or affiliates) exceed, in the aggregate, an amount equal to the lesser of (i) the amount of reasonably necessary out-of-pocket expenses directly incurred by PURCHASER in connection with ARTIST's performance at the Engagement taking into account any amounts PURCHASER has recovered using its best efforts to mitigate losses; or (ii) the amount of the GUARANTEE which ARTIST and/or PRODUCER have actually received in accordance with the terms of this Agreement. PURCHASER agrees that it shall not (and shall cause its affiliates not to) seek indirect, incidental, consequential, special, punitive (or exemplary), or any other similar damages as to any matter under, relating to, or arising out of the Engagement or the transactions contemplated by this Agreement.

## Q. MISCELLANEOUS PROVISIONS

(1) Nothing in this Agreement shall require the commission of any act contrary to applicable law or to any rules or regulations of any union, guild or similar body having jurisdiction over the services and personnel to be furnished by PRODUCER to PURCHASER hereunder. In the event of any conflict between any provision of this Agreement and any such law, rule or regulation, such law, rule or regulation shall prevail and this Agreement shall be curtailed, modified, or limited only to the extent necessary to eliminate such conflict.

(2) Purchaser shall comply, and shall ensure that its affiliates, subsidiaries, directors, managers, officers, employees, agents, and representatives comply, at Purchaser's expense, with all applicable laws, rules, and regulations in relation to its operations and performance of its obligations under this Agreement, including without limitation, any law, regulation, statute, prohibition, or other measure maintained by any agency or department of any national government, regional body, multilateral institution or other body which is responsible for the adoption, implementation or enforcement of sanction laws, including, but not limited to, the United Nations Security Council, the Council of the European Union, the European Commission, the relevant competent authorities of individual European Union Member States, the United States Department of Treasury's Office of Foreign Assets Control, the United States Department of Commerce, the relevant competent authorities of Australia, or any replacement or other regulatory body responsible for sanctions laws in any country relating to the implementation, application and enforcement of economic sanctions, export controls, trade embargos or any other restrictive measures, including but not limited to those measures which prohibit or otherwise restrict either party's ability to make a service available either directly or indirectly to a sanctioned person and those measures which restrict or prohibit either party from engaging in specified dealings with a specified class of person, whether defined by nationality, business sector or otherwise.

(3) Purchaser represents and warrants that neither it nor its affiliates, subsidiaries, directors, managers, officers, employees, agents, or representatives is (i) a person or entity or, (ii) controlled by a person or entity, on the U.S. Treasury Department's list of Specially Designated Nationals and Foreign Sanctions Evaders List, the U.S. Commerce Department's Denied Persons List or Entity List, the U.K. HM Treasury Consolidated List of Financial Sanctions Targets, the U.K. Export Control Organisation's Iran List, the Australian Government Sanctions Consolidated List, or otherwise designated as subject to financial sanctions or prohibited from receiving Australian, U.S., or U.K. services, or any other equivalent local provisions. Purchaser agrees to notify both Producer and WME immediately in writing of any change in ownership or control that might violate this Section of the Agreement. Producer or WME may terminate this Agreement upon providing written notice of termination to Purchaser, if Producer or WME's performance of its obligations or receipt of consideration hereunder would, as reasonably determined by WME or Producer, result in non-compliance with any laws, rules and regulations applicable to Producer or WME.

(4) Purchaser agrees to comply with all applicable laws and regulations, including, but not limited to, the US Foreign Corrupt Practices Act, the UK Bribery Act and the laws of the country in which any transactions are made or services are provided under this Agreement. Purchaser further agrees that Purchaser and any person or entity working on Purchaser's behalf in connection with the services provided under this Agreement shall not make any payment or transfer anything of value, directly or indirectly, to: (i) any governmental official or employee (including employees of government-owned and government-controlled corporations and public international organizations); (ii) any political party, official of a political party, or candidate for public office; (iii) any intermediary, including, but not limited to, agents, close associates or family members of government officials, for payment to any government official; (iv) any other person or entity in a corrupt or improper effort to obtain or retain business or any advantage, in

connection with Purchaser's affairs; or (v) any other person or entity; if such payment or transfer would violate the US Foreign Corrupt Practices Act, the UK Bribery Act, and/or laws of the country in which the transaction is made and/or services are provided under this Agreement.

(5) This (and any of PRODUCER's: riders, addenda, exhibits or attachments hereto) constitutes the sole, complete and binding agreement between the parties hereto, and may not be amended, supplemented, altered or discharged except by an instrument in writing signed by the parties. If any part of this Agreement is determined to be void, invalid or unenforceable, such invalid or void portion shall be deemed to be separate and severable from the other portions of this Agreement, and the other portions shall be given full force and effect, as though the void and invalid portions or provisions were never a part of this Agreement.

(6) This Agreement shall be construed in accordance with the laws of the State of Tennessee applicable to agreements entered into and wholly to be performed therein. Unless stipulated to the contrary in writing, all disputes arising out of this Agreement, wherever derived, shall be resolved in Nashville, Davidson County in the State of Tennessee in accordance with the laws of that State; in the event of any such dispute, either party may effect service of process on the other party by certified mail, return receipt requested, and said service shall be equivalent to personal service and shall confer personal jurisdiction on the courts in Nashville, Davidson County in the State of Tennessee and shall be deemed effective upon the earlier of the recipient's mail receipt date or ten (10) days after the mailing of such process, provided that a duplicate of such process shall have been mailed to the other party by ordinary mail at the same time as the certified mailing.

(7) PURCHASER shall not have the right to assign or transfer this Agreement, or any provision thereof.

(8) The waiver of any breach of any provision of this Agreement shall not be deemed a continuing waiver, and no delay in exercise of a right shall constitute a waiver.

(9) Nothing herein contained shall ever be construed as to constitute the parties hereto as a partnership, or joint venture, nor to make PRODUCER and/or ARTIST liable in whole or in part for any obligation that may be incurred by PURCHASER, in PURCHASER's carrying out any of the provisions hereof, or otherwise. THE PERSON EXECUTING THIS AGREEMENT ON PURCHASER'S BEHALF WARRANTS HIS/HER AUTHORITY TO DO SO, AND SUCH PERSON HEREBY PERSONALLY ASSUMES LIABILITY FOR THE PAYMENT OF SAID PRICE IN FULL.

(10) The terms "ARTIST" and "PURCHASER" as used herein shall include and apply to the singular and the plural and to all genders.

(11) This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one (1) and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopier or electronic delivery (i.e. PDF format), including electronically signed versions of the same, shall be as effective as delivery of a manually executed counterpart of this Agreement and shall be sufficient to bind the Parties to the terms and conditions of this Agreement.

# COUNCIL ACTION FORM                      COMMITTEE RECOMMENDATION No. 1

**MEETING DATE:**    **FEBRUARY 17, 2020**

**STAFF CONTACT:**    **LARRY POWELL, BUSINESS & ECO DEV DIRECTOR**

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**Agenda Item:**                      Consider adopting an ordinance rezoning 71.4 acres located just west of the Kill Creek Road and W 167th Street from County RUR (Rural, Agriculture) District to City R-1 (Single-Family Residential) District. (Z-19-05)

**Strategic Priority:**    Economic Development; Asset and Infrastructure Management

**Department:**                      Business & Economic Development

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## **Planning Commission Recommendation:**

After review of case Z-19-05, a rezoning from RUR (Rural, Agricultural uses and single family dwellings) District to R-1 (Single-Family Residential) District for Hilltop Ridge, Tax Id 2F221422-1003, located on the south side of 167<sup>th</sup> Street approximately 200' west of Kill Creek Road, and a staff report dated January 28, 2020, the Planning Commission recommends the Governing Body approve the application.

## **Staff Recommendation:**

Staff recommends the Planning Commission recommend approval of case Z-19-05, a rezoning from RUR (Rural, Agricultural uses and single family dwellings) District to R-1 (Single-Family Residential) District for Hilltop Ridge, Tax Id 2F221422-1003, located on the south side of 167<sup>th</sup> Street approximately 200' west of Kill Creek Road, to the Governing Body.

## **Background/Description of Item:**

At the January 28, 2020 Planning Commission meeting, an application for a preliminary plat (PP-19-06) representing five phases, 150 lots, and three tracts on 71 acres, was considered for Hilltop Ridge. This proposed development is for a single-family residential housing subdivision.

The site for the proposed development was annexed into the City of Gardner on December 2019 (Ordinance No. 2631). Currently, the property is not in use. At the time the property was annexed into the City, it had a County zoning designation as RUR (Rural, Agricultural uses and Single-Family dwellings).

The *City of Gardner 2014 Comprehensive Plan* identifies this parcel for low-density residential future land use, described as “areas primarily consist of detached single family homes, but may also include duplexes or triplexes arranged in a low density format on larger lots, with buildings in character with typical single family homes. These “New Residential Growth Areas” include undeveloped land that provides a “clean slate” for future residential development. The Comprehensive Plan addresses these growth areas as having three major components that help to ensure the community’s goals of providing high quality neighborhoods that satisfy demand for a broad type of housing. These goals are: neighborhood character, connectivity, and open space preservation & conservation design. The design and layout the applicant is proposing is consistent with the goals of the Comprehensive Plan.

The site is located near electric, water, and gas utility infrastructure. The applicant shall work with the Gardner Utility Department and Kansas Gas to bring utilities on site to serve the residential units. The developer will also need to construct sanitary sewer and stormwater infrastructure for the development.

The properties to the west and east are zoned County RUR Rural Residential District (developed with single-family homes and agricultural cropland). The properties to the north and south are zoned R-1 Single-Family Residential District (developed with single-family homes). The proposed zoning district and potential use are found to be compatible to the existing residential to the south and north. This should support compatibility.

At the January 28, 2020 meeting, the Planning Commission held a public hearing as part of the application process for Hilltop Ridge. During the public hearing, several persons from the adjacent neighborhood to the south voiced concerns regarding saving the trees located along the proposed development's southern boundary. Staff will work with Public Works on the extension of Madison Road and the Utility Department to try and save this tree line. Additionally, some neighbors were concerned with traffic that may speed in their neighborhood. It was explained that the proposed development is not designed with long straight streets and there will be a controlled intersection at Osage Street and the new Madison Road.

The Planning Commission considered the request to rezone the property from RUR (Rural, Agricultural uses and single family dwellings District) to R-1 (Single-Family Residential District) at the January 28, 2020 meeting, and recommended approval with a unanimous vote.

### **ACTIONS**

Per Section 17.03.030 (D) of the *Gardner Land Development Code*, the Governing Body may:

1. Adopt such recommendation by ordinance, (simple majority vote);
2. Override the Planning Commission's recommendation by at least a two-thirds vote of the membership of the Governing Body, or
3. Return such recommendation to the Planning Commission with a statement specifying the basis for the Governing Body's failure to approve or disapprove. If the Governing Body returns the Planning Commission's recommendation, the Planning Commission after considering the same may resubmit its original recommendation giving the reasons therefor or submit new and amended recommendations. Upon the receipt of such recommendation, the Governing Body by a simple majority may adopt or may revise or amend and adopt such recommendation by ordinance or it need take no further action thereon. If the Planning Commission fails to deliver its recommendation to the Governing Body following the Planning Commission's next regular meeting after receipt of the Governing Body's report, the Governing Body shall consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly.

### **Financial Impact:**

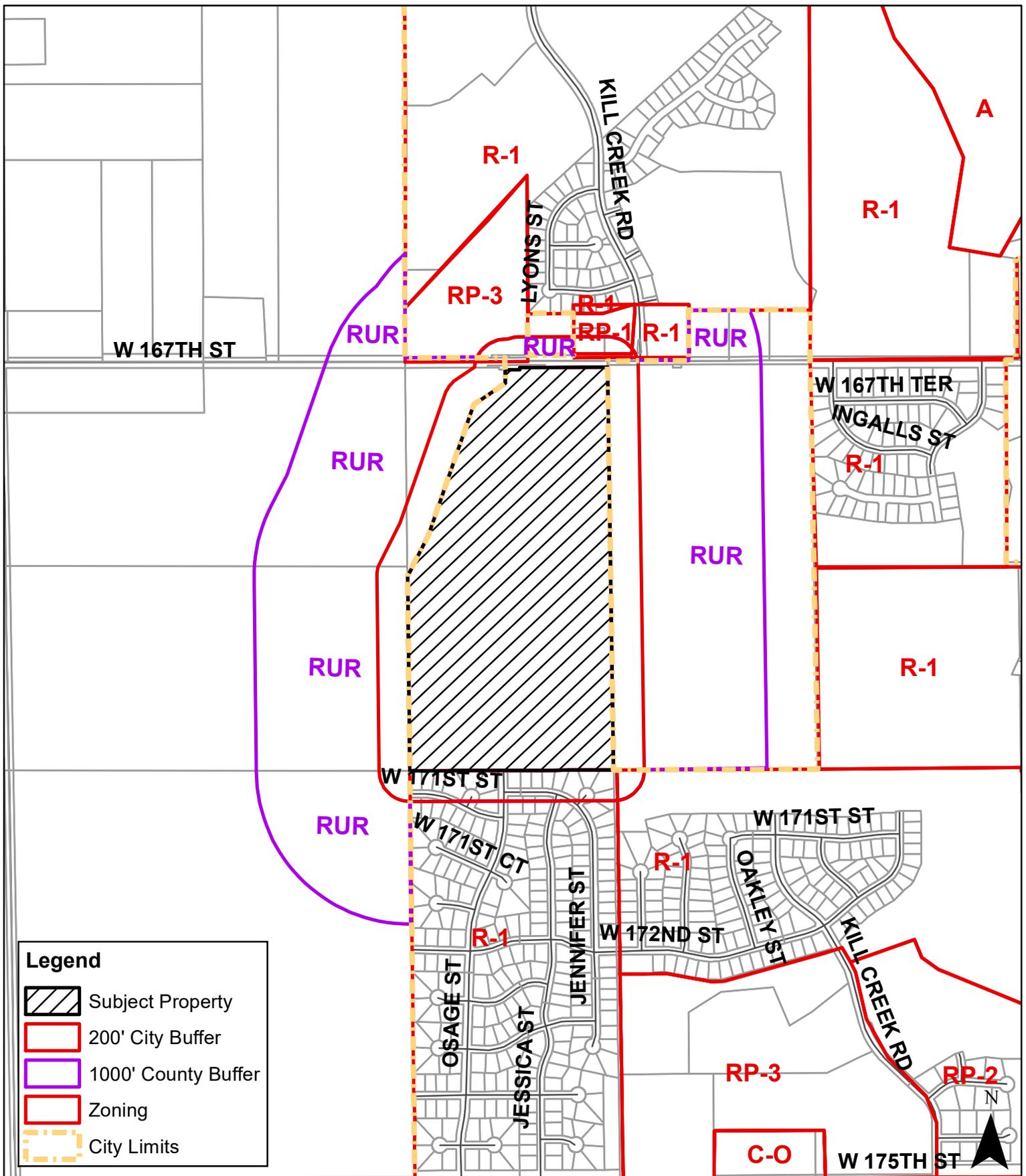
None at this time.

### **Attachments included:**

- Vicinity Map
- Ordinance No. 2649
- January 28, 2020 draft Planning Commission minute excerpt
- Planning Commission packet

**Suggested Motion:**

Adopt Ordinance No. 2649, an ordinance changing the zoning classifications or districts of certain lands located in the City of Gardner, Kansas, under the authority granted by Title 17 of the Municipal Code of the City of Gardner, Kansas



**Legend**

-  Subject Property
-  200' City Buffer
-  1000' County Buffer
-  Zoning
-  City Limits

**Gardner City Council**  
**Z-19-05: A (Agriculture) District to R-1 (Single-Family) District**  
**Meeting Date: February 17, 2020**



**ORDINANCE NO. 2649**

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

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

**SECTION ONE:** That having received a recommendation from the Planning Commission on January 28, 2020, and proper notice having been given and hearing held as provided by law and under the authority of and subject to the provisions of the Gardner, Kansas Land Development Code, the zoning classification or districts of the lands legally described hereby are changed as follows:

The following described property located on the south side of 167<sup>th</sup> Street approximately 200' west of Kill Creek Road shall hereafter have a zoning classification of R-1 (Single-Family Residential) District for Hilltop Ridge, and subject to the following conditions:

1. Provide a 10' wide trail along 167<sup>th</sup> Street and also extends down along the floodplain located on the northwest side of the development.
2. Provide 60' of ½ right-of-way along 167<sup>th</sup> Street.
3. Approval of a Stormwater Management Plan by the Public Works Department.

**CASE NO. Z-19-05**

Rezoning from RUR (Rural, Agricultural uses and single family dwellings District) to R-1 (Single-Family Residential) District:

**Legal Description:**

All that part of the West Half of the Northwest Quarter of Section 22, Township 14 South, Range 22 East, Johnson County, Kansas, described as follows: Commencing at the Northwest corner of the Northwest Quarter of said Section 22; thence North 88 degrees 16 minutes 55 seconds East, along the North line of the Northwest Quarter of said Section 22, a distance of 652.13 feet to the point of beginning; thence South 1 degree 43 minutes 05 seconds East, a distance of 142.44 feet; thence South 54 degrees 07 minutes 26 seconds West, a distance of 247.56 feet; thence South 17 degrees 40 minutes 26 seconds West, a distance of 899.98 feet; thence South 25 degrees 28 minutes 37 seconds West, a distance of 300.35 feet to a point on the West line of the Northwest Quarter of said Section 22; thence South 2 degrees 10 minutes 37 seconds East, along the West line of the Northwest Quarter of said Section 22, a distance of 1271.06 feet to the Southwest corner of the Northwest Quarter of said Section 22; thence North 88 degrees 16 minutes 13 seconds East, along the South line of the Northwest Quarter of said Section 22, a distance of 1329.32 feet to the Southeast corner of the West half of the Northwest Quarter of said Section 22; thence North 2 degrees 22 minutes 27 seconds West, along the East line of the West Half of the Northwest Quarter of said Section 22, a distance of 2668.43 feet to the Northeast corner of the West Half of the Northwest Quarter of said Section 22; thence South 88 degrees 16 minutes 55 seconds West, along the North line of the Northwest Quarter of said Section 22, a distance of 668.00 feet to the point of beginning, containing 71.15 acres, more or less.

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

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

PASSED by the Governing Body this 17<sup>th</sup> day of February, 2020.

SIGNED by the Mayor this 17<sup>th</sup> day of February, 2020.

CITY OF GARDNER, KANSAS

(SEAL)

\_\_\_\_\_  
Steve Shute, Mayor

Attest:

\_\_\_\_\_  
Sharron Rose, City Clerk

Approved as to form:

\_\_\_\_\_  
Ryan B. Denk, City Attorney

**EXCERPT OF PLANNING COMMISSION MEETING MINUTES**  
CITY OF GARDNER, KANSAS  
Tuesday, January 28, 2020

**CALL TO ORDER**

The meeting of the Gardner Planning Commission was called to order at 7:00 p.m. on Tuesday, January 28, 2020, by Chairman Scott Boden.

**PLEDGE OF ALLEGIANCE**

Chairman Boden led the Pledge of Allegiance.

**ROLL CALL**

Commissioners present:

Chairman Boden  
Commissioner Deaton  
Commissioner Ford  
Commissioner Hansen  
Commissioner Meder  
Commissioner McNeer

Commissioners Absent:

Commissioner Simmons-Lee

Staff members present:

Larry Powell, Director, Business & Economic Development  
Kelly Drake Woodward, Chief Planner  
Michelle Leininger, Principal Planner  
Robert Case, Planner  
Kristie Hatley, Planning Technician  
Ryan Denk, City Attorney

There were twelve members of the public in attendance.

**REGULAR AGENDA**

**2. HILLTOP RIDGE**

Located at the southwest corner of Kill Creek Road and W 167<sup>th</sup> Street

- a. **Z-19-05:** Consider a rezoning from RUR (Rural, Agricultural uses and single family dwellings) District to R-1 (Single-Family Residential) District for Hilltop Ridge.
- b. **PP-19-06:** Consider a preliminary plat for Hilltop Ridge, a 71.15 acre, 150 lot single-family residential subdivision.

Mr. Robert Case, Planner, began the presentation with Z-19-05, the rezoning of 71 acres. This request is compatible with the surrounding properties and appropriate for the character of the area which is used as farmland or single-family homes. It was also consistent with the City's Comprehensive Plan. When in the county, the property was zoned for agricultural and large lot residential which was an appropriate residential density when utility infrastructure was unavailable.

The area is urbanizing with the planned growth of Gardner and staff has found the property better suited for an R-1 designation. The removal of the property's current restriction of the minimum ten-acre lot size will result in increased density, traffic and stormwater in the area. However, the applicant is providing for the continuation of Madison Street that will provide another important road connection for existing subdivisions to the south and improve public safety. This single-family development will provide a positive gain to the City's economic growth and the development of new streets will provide interconnectivity between neighborhoods. The applicant's proposal offers a more efficient means of travel within the northwest area of the City. Staff recommends approval of the rezoning as it will not adversely affect the capacities of the utilities, infrastructure or public services in the vicinity. The application to rezone to R-1 single-family development supports the adopted policy of the Comprehensive Plan for the new residential growth areas. It also supports the extension of the existing trail system through its interconnection with the Kill Creek trail future location, which is consistent with the adopted Park System Master Plan.

Mr. Brett Cox, Renaissance Infrastructure, represented the applicant and was available to answer questions.

### **PUBLIC HEARING**

Mr. Tim Coach, 32580 W 171<sup>st</sup> St, stated he has three areas of concern. The first is the low water pressure they are experiencing but said he is aware the City was just doing a water study of the area. Secondly, he said that 172<sup>nd</sup> and Osage is already a drag strip and the proposed design with Osage becoming a through street past Madison to an area further down the hill is just a longer runway for the teenagers. Lastly, his most important concern is the existing trees that are almost 90 years old that he does not want to lose. These are on the south side of Madison and are of high importance to the area.

Ms. Tracy Haney, 32626 W 171<sup>st</sup> St, said her backyard is against those trees and she chose that lot because of the gorgeous view. Everyone in the neighborhood comments how much they like living there because of the beautiful view of trees. They need to be maintained and not torn out to be replaced with new trees.

Ms. Lisa Culbertson, 32500 W 171<sup>st</sup> St, stated she wants the trees to remain, too. Her front yard is 171<sup>st</sup> St with Jessica St teeing into her front windows. Her backyard will be Madison St so she wanted to know the proposed size of the planned easement between her backyard and Madison St. She also inquired if there would be a sidewalk on her side of the street so she could plan for fencing, if needed.

**Motion to close the Public Hearing made by McNeer and seconded by Meder.**

**Motion passed 6-0.**

**COMMISSION DISCUSSION**

No discussed ensued.

**Motion made after review of case Z-19-05, a rezoning from RUR (Rural, Agricultural uses and single family dwellings) District to R-1 (Single-Family Residential) District for Hilltop Ridge, Tax Id 2F221422-1003, located on the south side of 167<sup>th</sup> Street approximately 200' west of Kill Creek Road, and a staff report dated January 28, 2020, the Planning Commission recommends the Governing Body approve the application.**

**Motion by Ford and seconded by McNeer**

**Motion passed 6-0.**

Mr. Case continued the presentation with the preliminary plat review. The preliminary plat proposed by the developers includes 150 single-family lots with all utilities located along both W 167<sup>th</sup> St and Osage St. Madison St will be extended along the southern boundary of the plat and a proposed trail extends along the creek to W 167<sup>th</sup> St that will eventually connect with the Kill Creek trail system. Staff has found the application in is in accordance with the Comprehensive Plan and compliant with the Land Development Code. The Comprehensive Plan calls for plans in the new residential growth areas to implement a sidewalk/trail infill program that includes pedestrian through-access connecting subdivisions. This plan connects with St. Johns Trace Subdivision to the south and with the Symphony Farms Subdivision to the north. The proposed phasing is clearly indicated in the application and demonstrates a logical and coordinated approach to development. Impacts identified by specific studies or technical reports, including a preliminary review of storm water, are mitigated with generally accepted and sound planning, engineering, and urban design solutions that reflect long-term solutions and sound fiscal investments. The application does not deter any existing or future development on adjacent property from meeting the goals and policies of the Comprehensive Plan nor impedes the construction of anticipated or planned future public infrastructure within the area. Staff recommends approval.

Mr. Brett Cox, Renaissance Infrastructure, represented the applicant and said they were in agreement with all of the conditions and were working on some minor details on the storm water study. He responded to the questions by the public by stating they planned to match grade on Madison St. as much as possible to save trees and minimize impact by the existing houses.

**COMMISSION DISCUSSION:**

Commissioner Meder asked about the staff report note regarding the fire department request for a secondary access to the south after phase two of the development is completed. She felt it would help alleviate some of the traffic problems and asked if that should be added as a condition on this motion.

Mr. Larry Powell, Director of Business & Economic Development, replied to earlier questions before answering Commissioner Meder. He said the right-of-way for Madison St is 60' wide, and is directly adjacent to the property line with no right-of-way taken from St. John's Trace nor the backyards of any of the houses along the north side of St. John's. Between the property line and the street is a 15' grassy, treed area on the south side of what will be the new Madison roadway. There will be a stop sign where Osage intersects Madison from the north and the south. The through street is broken up to avoid the same long run as there is for the existing homes.

It was suggested by the public to add a flashing stop sign at that intersection as people may run the stop sign.

Mr. Powell continued to say if there is still a problem with the raceway then a possible solution is to add a stop sign somewhere along the route. The police department could look at that if that is an issue.

The public in attendance felt the stop sign at Osage and Madison should take care of the issue.

Mr. Powell said staff would look at the sidewalk requirement on both sides of Madison and if the south sidewalk was not necessary it could be removed from the plan and that would extend the grass and tree area. Staff will make note of that request.

Commissioner Meder asked if the location of the second access required by the fire department was known.

Mr. Powell responded that dependent upon construction of phase two, the applicant has the choice to either go up to the middle to where the Osage St connection is and go that way or they could go to the right along the west side and hit where Madison will come into existence and take Madison over. Either way is appropriate for providing the secondary access to the south.

It was decided not to add the condition to the motion regarding the secondary access but due to its importance, staff would make note that it would continue to be addressed.

**Motion made after review of case PP-19-06, a preliminary plat for Hilltop Ridge, Tax Id 2F221422-1003, located on the south side of 167<sup>th</sup> Street approximately 200' west of Kill Creek Road, and staff report dated January 28, 2020, the Planning Commission recommends the Governing Body approve the application subject to the following conditions:**

1. Provide a 10' wide trail along 167<sup>th</sup> Street and also extends down along the floodplain located on the northwest side of the development.
2. Provide 60' of ½ right-of-way along 167<sup>th</sup> Street.

**3. Approval of a Stormwater Management Plan by the Public Works Department.**

**Motion made by McNeer and seconded by Ford.**

**Motion passed 6-0.**

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**PROJECT NUMBER / TITLE: Z-19-05 Rezoning from RUR to R-1 with an associated Preliminary Plat PP-19-06 for Hilltop Ridge Subdivision**

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**PROCESS INFORMATION**

**Type of Request:** Rezoning and Preliminary Plat  
**Date Received:** December 13, 2019

**APPLICATION INFORMATION**

**Applicant:** Brett Cox, Renaissance Infrastructure Consulting  
**Owner:** Sunrise Investments Corporation  
**Parcel ID:** 0461352202001002020  
**Location:** Part of the West Half of the Northwest Quarter of Section 22, Township 14 South, Range 22 East; containing approximately 71 acres between 167<sup>th</sup> Street and Madison Road just north of St. Johns Trace IV Subdivision.

**REQUESTED ACTION**

The applicant has requested approval of a rezoning from RUR (Rural, Agricultural uses and single family dwellings) District to R-1 (Single-Family Residential) District and an associated preliminary plat for the Hilltop Ridge, a 150 lot subdivision.

**EXISTING ZONING AND LAND USE**

Currently the property is zoned RUR (Single-Family Residential) District which is a Johnson County zoning district with undeveloped agricultural land on the property. Properties that are annexed retain their County zoning until they are formally rezoned within the City.

**SURROUNDING ZONING AND LAND USE**

<b>Zoning</b>	<b>Use(s)</b>
<b>North of subject property</b>	
R-1 (Single-Family Residential) District, RP-3 (Planned Garden Apartment) District, and County RUR (Rural, Agricultural uses and Single-Family dwellings) District	Farmsteads and Single-Family Residences
<b>East of subject property</b>	
County RUR (Rural, Agricultural uses and Single-Family dwellings) District	Vacant property
<b>South of subject property</b>	
R-1 (Single-Family Residential) District	Single-Family Residences

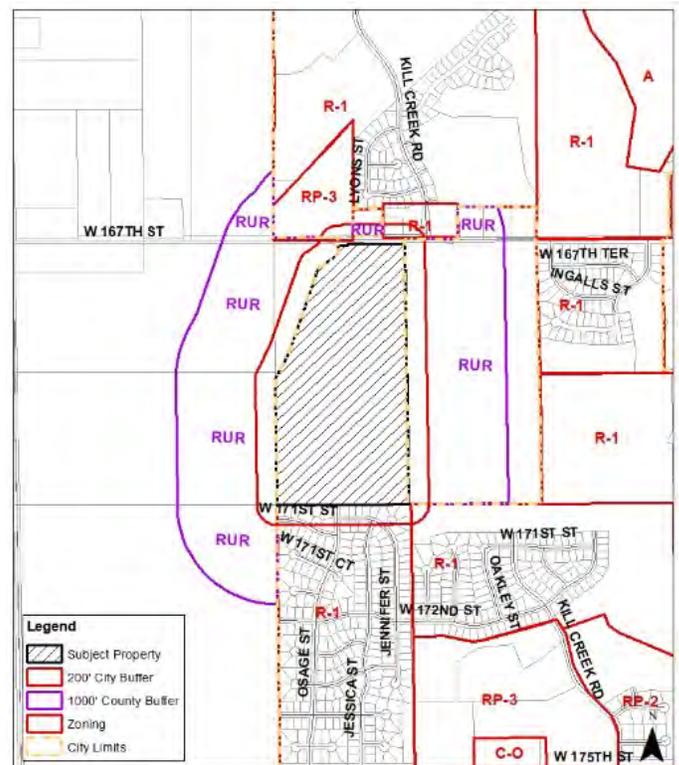
West of subject property	
County RUR (Rural, Agricultural uses and Single-Family dwellings) District	Vacant property

**EXISTING CONDITIONS**

Currently the subject property is vacant agricultural land. The property is bound on the north by 167<sup>th</sup> Street and on the south by St. Johns Trace Subdivision. Properties located directly to the east and west are vacant agricultural uses.



The subject lots are notated in black hatch marks below, with the 200' notification within City limits outlined in red, and 1,000' within the unincorporated County notification outlined in purple.



**BACKGROUND / HISTORY**

The site for the proposed development was annexed into the City of Gardner on December 2019 (Ordinance No. 2631). Currently, the property is not in use. At the time the property was annexed into the City, it had a County zoning designation as RUR (Rural, Agricultural uses and Single-Family dwellings).

**CONSISTENCY WITH COMPREHENSIVE PLAN**

The *City of Gardner 2014 Comprehensive Plan* identifies this parcel for low-density residential future land use, described as “areas primarily consist of detached single family homes, but may also include duplexes or triplexes arranged in a low density format on larger lots, with buildings in character with typical single family homes. These “New Residential Growth Areas” include

undeveloped land that provides a “clean slate” for future residential development. The Comprehensive Plan addresses these growth areas as having three major components that help to ensure the community’s goals of providing high quality neighborhoods that satisfy demand for a broad type of housing. These goals are; neighborhood character, connectivity, and open space preservation & conservation design. The design and layout the applicant is proposing is consistent with the goals of the Comprehensive Plan.

### **STAFF ANALYSIS - ZONING MAP AMENDMENT**

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

This application is for a rezoning to a base district (not a planned development). The applicant has also submitted a preliminary plat with average lot sizes of 10,000 to 15,000 square feet indicating use of the Detached House – Suburban building type.

#### **17.03.030 (B) Review Criteria:**

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

**Staff Comment:** *The character of the area is generally single-family residential, rural residential and agricultural. Staff finds this rezoning appropriate for the character of the area, as it provides a similar use to the existing single family to the south and north.*

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

**Staff Comment:** *The properties to the west and east are zoned County RUR Rural Residential District (developed with single-family homes and agricultural crop land). The properties to the north and south are zoned R-1 Single-Family Residential District (developed with single-family homes). The proposed zoning district and potential use are found to be compatible to the existing residential to the south and north. This should support compatibility.*

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

**Staff Comment:** *While in the County, the subject property was zoned for agriculture and large lot residential. This was an appropriate residential density when utility infrastructure was not available. However, the area is urbanizing with the planned growth of the Gardner community. The property is better suited for an R-1 zoning designation, which will provide a buffer between the existing rural residential in the County.*

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

**Staff Comment:** *The most pertinent current restriction is the minimum lot size of 10 acres. Removing that will result in increased density, traffic, stormwater impact, etc. However, the applicant is providing for the continuation of Madison Street, which will also offer another important road connection for existing subdivisions to the south, and improved public safety. This should benefit nearby properties.*

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

**Staff Comment:** *The subject property has been farmland at least since the 1940's.*

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

**Staff Comment:** *Single family development within this area will provide a positive gain to the City's economic growth. Also, through the development of new streets that provide inter-connectivity between neighborhoods the applicant is helping to provide a more efficient means of travel within the northwest area of the community.*

7. The recommendations of professional staff;

**Staff Comment:** *Staff recommends approval of the rezoning application.*

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

**Staff Comment:** *As stated previously, the Comprehensive Plan identifies the property for low-density residential, which translates to the R-1 zoning district as proposed. The intent of the R-1 Single-Family Residential District is "to provide residential living in a low-density neighborhood setting, with access to supporting uses such as schools, churches, parks and other public facilities which reinforce residential neighborhoods". This district can be used to implement development patterns identified in the new growth areas where the subject property is located.*

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

**Staff Comment:** *The proposed zoning change and use would not adversely affect the capacity of any utilities, infrastructure or public service in the vicinity. The infrastructure is in place for the use and would not adversely impact the surrounding area.*

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

**Staff Comment:** *The rezoning application to R-1, single-family development supports the adopted policy in the Comprehensive Plan for new residential growth areas. This proposal also*

*supports the extension of our trail system through the inter-connection with the Kill Creek Trail which is consistent with the adopted Park System Master Plan.*

### **STAFF ANALYSIS - PRELIMINARY PLAT**

#### **17.03.020 (D1) Review Criteria:**

1. The application is in accordance with the Comprehensive Plan and in particular the physical patterns, arrangement of streets, blocks, lots and open spaces, and public realm investments that reflect the principles and concepts of the plan.

**Staff Comment:** *The application is in accordance with the Comprehensive Plan with regard to the physical patterns, arrangement of streets, blocks, lots and open spaces, and public realm investments that reflect the principles of the plan. The applicant is proposing a preliminary plat for 150 lots, two tracts of land, and right-of-way dedication on approximately 71 acres. Properties directly adjacent to the development are primarily single-family residential and agricultural. The Comprehensive Plan also calls for plans in the "New Residential Growth" areas to implement a sidewalk/trail infill program that includes pedestrian through-access, connecting residential subdivisions through footpaths and trails. This subdivisions will be providing cross connectivity with St. Johns Trace Subdivision to the south and will provide the means for connecting with Symphony Farms Subdivision to the north with sidewalks, trails and streets.*

2. Compliance with the requirements of this Land Development Code, and in particular the blocks and lots proposed are capable of meeting all development and site design standards under the existing or proposed zoning.

**Staff Comment:** *The plat meets the site design standards regarding lot size minimum, block length, cul-de-sac length and easements. The plan complies with the requirements of the Gardner Land Development Code in that the blocks and lots proposed can meet all development and site design standards. The development is proposed to be a Detached House - Suburban building type for single-family residential, with a Suburban Yard frontage design type. While this development is within the service area of Celebration Park, they are still dedicating approximately 10% of the space to open and civic space. The street and sidewalk minimums have not been met with the existing preliminary plat lay-out. 6' sidewalks will need to be provided along the new proposed Madison Street and a 10' trail will be required along 167<sup>th</sup> Street. Also, 167<sup>th</sup> Street R-O-W will need to be increased from 40' to 60'. With these minor corrections to the plat, this development will be in compliance with the development and site design standards of the Code. These are recommended conditions of approval.*

3. Any phasing proposed in the application is clearly indicated and demonstrates a logical and coordinated approach to development, including coordination with existing and potential development on adjacent property.

**Staff Comment:** *There are five (5) phases proposed for this plat. The Fire Department has required that after phase two (2) is completed and before any further development can occur, a secondary access will be provided to the south. This property shares a border with a subdivision to the south and should be able to provide secondary access with the extension of an existing street after phase two (2) has been developed.*

4. Any impacts identified by specific studies or technical reports, including a preliminary review of storm water, are mitigated with generally accepted and sound planning,

engineering, and urban design solutions that reflect long-term solutions and sound fiscal investments.

**Staff Comment:** *The Stormwater Plans have not yet been approved. No impacts in need of mitigation were identified by the technical reports therefore this criteria is met.*

5. The application does not deter any existing or future development on adjacent property from meeting the goals and policies of the Comprehensive Plan.

**Staff Comment:** *This plat application will not deter any existing or future development on adjacent property. The adjacent property is mainly developed with single-family residential which is what is planned for this property which is consistent with the comprehensive plan.*

6. The design does not impede the construction of anticipated or planned future public infrastructure within the area.

**Staff Comment:** *This application does not impede the construction of planned or future public infrastructure. This project will connect incomplete streets in the area and provide more options for people access 167<sup>th</sup> Street.*

7. The recommendations of professional staff, or any other public entity asked to officially review the plat.

**Staff Comment:** *Staff recommends approval of the preliminary plat of Hilltop Ridge with conditions outlined below.*

## **STAFF ANALYSIS – INFRASTRUCTURE / OTHER**

**ELECTRIC** – Electric is currently installed both to the north and south of the subject property and is to be extended into the project from there.

**SANITARY SEWER** – The subject property is within the Gardner sanitary sewer service area. Sanitary sewer service will be extended throughout the subdivision by a gravity system that flows to the north and will be treated at the City's northern waste water treatment facility.

**Staff Comment:** *Electrical, water, or sanitary sewer infrastructure are not readily available throughout the site, the developer will be required to extend the services to all lots. City Electric is working on getting power transferred over from Evergy.*

## **STORM WATER**

Two stormwater detention ponds have been integrated into the project. A Stormwater Management Plan has not been revised based on the request of the Public Works Department. This will be a condition of approval.

## **ROADWAY NETWORK; VEHICULAR ACCESS; SIDEWALKS**

Internal road networks within the subject property will connect to 167<sup>th</sup> Street to the north and with Osage Street to the south.

## **FIRE SERVICE**

Johnson County Fire District #1, as previously mentioned, has requested that secondary access be provided once "Phase II" is developed. Phase III and all other further phases will only be

allowed if a secondary access is provided into this subdivision. This secondary access will allow for fire and other emergency vehicles to gain access into this subdivision in case the main entrance is blocked. This will be a recommended condition of approval for Phases III thru V.

### **ACTIONS**

Per Section 17.03.010 (G) of the *Gardner Land Development Code*, a review body may take the following actions (or recommend the following actions):

1. Approve the application.
2. Approve the application with conditions or modifications to lessen or mitigate a potential impact from the proposed application.
3. Deny the application.
4. Continue the application to allow further analysis. The continued application shall not be more than 60 days from the original review without consent of the applicant. No application shall be continued more than once by each review body without consent of the applicant.

### **EFFECT OF DECISION**

Zoning Map Amendment (Rezoning) – Amendments to the official zoning map (rezoning) shall be approved by the Governing Body in the form of an ordinance. Approved changes shall be indicated on the official zoning map by the Director within 30 days following such action.

Preliminary Plat – The approval of the preliminary plat does not constitute an acceptance of the subdivision, but authorizes preparation of the final plat. If the Planning Commission tables a plat, the applicant shall have 60 days to submit information sufficient for approval or the application shall be deemed denied. The applicant may request that a denied preliminary plat be submitted to the Governing Body and the Planning Commission shall submit all information to the Governing Body, which can make a determination consistent with these regulations. The approval of the preliminary plat shall be effective for 18 months, except that any approval of a final plat for any phase specifically indicated on a preliminary plat shall renew the 18-month period. The Planning Commission may grant an extension of this period for up to one year, if the applicant demonstrates substantial progress towards the design and engineering requirements necessary to submit a final plat.

### **ATTACHMENTS**

- I. Rezoning Application
- II. Public hearing mailed notice letters
- III. Preliminary Plat
- IV. Preliminary Plat Application

### **RECOMMENDATION**

*Zoning request from RUR (Rural, Agricultural uses and single family dwellings District) to R-1 (Single-Family Residential District)*

Staff recommends the Planning Commission recommend approval of case Z-19-05, a rezoning from RUR (Rural, Agricultural uses and single family dwellings District) to R-1 (Single-Family Residential District) for Hilltop Ridge, Tax Id 2F221422-1003, located on the south side of 167<sup>th</sup> Street approximately 200' west of Kill Creek Road, to the Governing Body.

**Recommended Motion:**

After review of case Z-19-05, a rezoning from RUR (Rural, Agricultural uses and single family dwellings District) to R-1 (Single-Family Residential District) for Hilltop Ridge, Tax Id 2F221422-1003, located on the south side of 167<sup>th</sup> Street approximately 200' west of Kill Creek Road, and a staff report dated January 28, 2020, the Planning Commission recommends the Governing Body approve the application.

***Preliminary Plat***

Staff recommends the Planning Commission approve case PP-19-06, a preliminary plat for Hilltop Ridge, Tax Id 2F221422-1003, located on the south side of 167<sup>th</sup> Street approximately 200' west of Kill Creek Road.

**Recommended Motion:**

After review of case PP-19-06, a preliminary plat for Hilltop Ridge, Tax Id 2F221422-1003, located on the south side of 167<sup>th</sup> Street approximately 200' west of Kill Creek Road and staff report dated January 28, 2020, the Planning Commission recommends the Governing Body approve the applications subject to the following conditions:

1. Provide a 10' wide trail along 167<sup>th</sup> Street and also extends down along the floodplain located on the northwest side of the development.
2. Provide 60' of ½ right-of-way along 167<sup>th</sup> Street.
3. Approval of a Stormwater Management Plan by the Public Works Department.

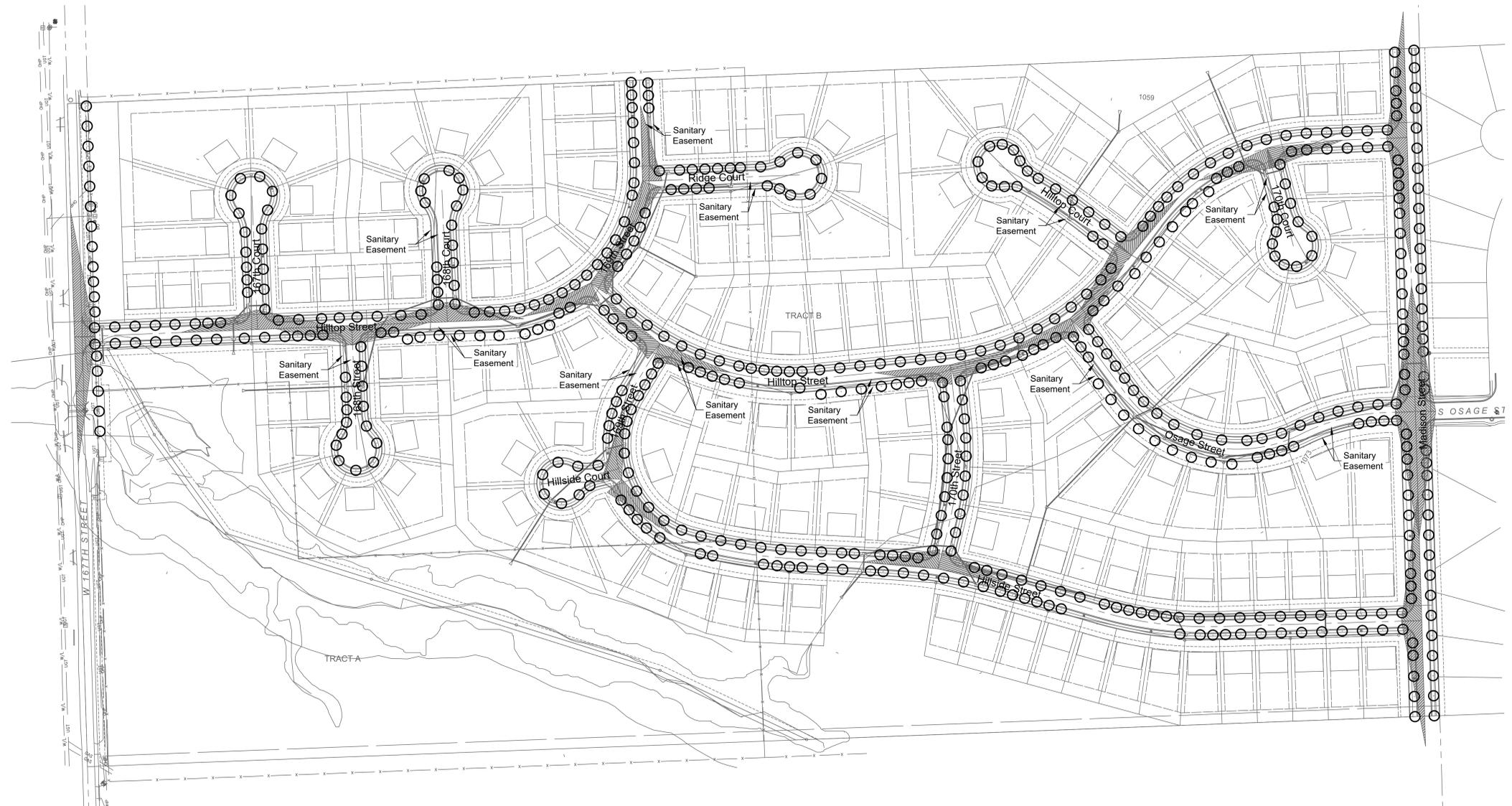




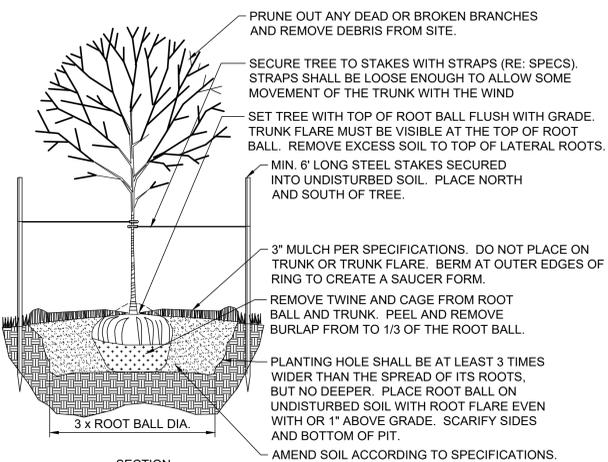






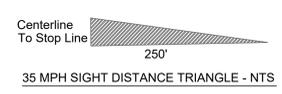
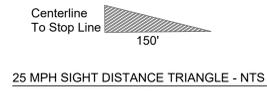


NOTES:  
1. TREES THAT DO NOT MEET THE SIZE REQUIREMENT WILL BE REJECTED  
2. TREES SHALL BE INSPECTED BY OWNERS REPRESENTATIVE PRIOR TO INSTALLATION.



Street Tree Requirements at 1 tree/ 40'

Street	Length	Required Trees	Provided Trees
167th Street	- 660'	Required Trees: 17	Provided Trees: 17
167th Court	- 622'	Required Trees: 16	Provided Trees: 16
168th Street	- 585'	Required Trees: 15	Provided Trees: 15
168th Court	- 615'	Required Trees: 16	Provided Trees: 16
Ridge Court	- 715'	Required Trees: 18	Provided Trees: 20 *2 shifted from 169th Street Sanitary Easement
169th Street	- 914'	Required Trees: 22 each side	Provided Trees: 40 *2 Shifted to Ridge Court due to Sanitary Easement
Hillside Street	- 2427'	Required Trees: 36 each side	Provided Trees: 73
Hillside Court	- 320'	Required Trees: 8	Provided Trees: 8
Hilltop Street	- 2869'	Required Trees: 71 each side	Provided Trees: 142
Hilltop Court	- 720'	Required Trees: 18	Provided Trees: 18
170th Court	- 490'	Required Trees: 13'	Provided Trees: 13
Osage Street	- 800'	Required Trees: 20each side	Provided Trees: 40
Madison Street	- 1329'	Required Trees: 33	Provided Trees: 66



CONCEPT PLANT SCHEDULE

STREET TREE - 2" CAL. B&B	505
Acer rubrum 'October Glory' TM / October Glory Maple	
Ginkgo biloba 'Princeton Sentry' / Princeton Sentry Ginkgo	
Gleditsia triacanthos 'Skyline' / Skyline Honey Locust	
Gleditsia triacanthos inermis 'Shademaster' TM / Shademaster Locust	
Quercus shumardii / Shumard Red Oak	
Ulmus americana 'Valley Forge' / American Elm	
Zelkova serrata 'City Sprite' TM / City Sprite Zelkova	

General Notes:  
1. Street Trees shall be located between the curb and sidewalk unless otherwise shown on plan.  
2. Street Trees shall be shifted to avoid utility conflicts.  
3. Street Trees shall be spaced 25'-40' o.c. and may be in the sight distance triangle provided 30' of spacing remains between tree and intersection street back of curb, per Gardner Municipal Code 17.04.010 Street Network Design.







Business & Economic Development  
 Planning Division  
 120 E. Main St. Gardner, KS 66030  
 P: 913.856.0913 | F: 913.856.4562  
[www.gardnerkansas.gov](http://www.gardnerkansas.gov)

**ZONING MAP AMENDMENT (REZONING APPLICATION)**

Pre-App Date	_____
Fee	<u>\$875.00 pd</u>
File No.	<u>Z-19-05</u>

**OWNER INFORMATION**

Name(s) Sunrise Investments Corp.  
 Contact Patrick B. Miller  
 Address P.O. Box 393  
 City Stilwell State KS Zip 66085  
 Phone (913) 851-1333 Email dennispugh2@gmail.com

**APPLICANT/AGENT INFORMATION**

Name(s) Renaissance Infrastructure Consulting  
 Contact Ryan DaMetz, PE  
 Address 132 Abbie Avenue  
 City Kansas City State KS Zip 66103  
 Phone (913) 317-9500 Email rdametz@ric-consult.com

**SITE INFORMATION**

Property Address/Location: SW of Intersection of Kill Creek Road & 167th Street (see Tract B of attached Exhibit)  
 Legal Description (Attach If Necessary) Attached  
 Total Site Area 71.15 Acres  
 Present Zoning A (Agricultural) Proposed Zoning R-1 (Single Family Residential)  
 Present Land Use Future Growth Area Proposed Land Use Low Density Residential  
 Proposed Building Type(s) Single Family Residential

**Please indicate a reason for the request:**

Owner would like to develop property into single family home residential subdivision.

**SIGNATURE**

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

Signature(s):  Date 12/13/2019  
 \_\_\_\_\_ Date \_\_\_\_\_

## ZONING MAP AMENDMENT (REZONING) APPLICATION CHECKLIST

### APPLICATION SUBMITTAL REQUIREMENTS

- | Yes                                 | No                                  |  |
|-------------------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 1. Complete application packet   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 2. Application fee   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 3. Digital copies (PDF) of the completed application and legal description (Word)            |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 4. Sign posting affidavit  |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 5. Preliminary Development Plan application and plans (if rezoning to a planned development) |

**Please respond to the following statements:**

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

The project consists of public and private improvements for a 150-lot single-family development, and five tracts on approximately 71 acres of previously undeveloped property. Common areas will be maintained by the homeowners' association. Homeowners must adhere to the codes, covenants, and restrictions prepared for the project to assure ongoing maintenance and upkeep of their personal residences and common properties. This development will increase the tax base for the developed lots and will provide ample permanent greenspace within the development.

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

There are new stormwater detention facilities to be constructed that will attenuate the peak runoff rate to less than existing conditions. The private open space will also retain much of the existing natural vegetation and natural waterways. Runoff from within the development will be conveyed in an enclosed storm sewer system and released into the detention facilities. Modern and safe, walkable streets with sidewalks and curb and gutter will be constructed. New sanitary sewers will be constructed that will minimize infiltration and inflow within the system conveyed to the treatment facility.

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

  
 Signature of Applicant

12/13/2019  
 Date



OWNER AFFIDAVIT

I/WE Sunrise Investments Corp., hereby referred to as the "Undersigned", being of lawful age, do hereby on this 24<sup>th</sup> day of October, 2019, make the following statements to wit:

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

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

2. I/We the undersigned, have previously authorized and hereby authorize Renaissance Infrastructure Consulting (Herein referred to as "Applicant"), to act on my/our behalf for the purpose of making application with the City of Gardner, regarding Tract B (see attached Exhibit) (common address), the subject property, or portion thereof. Such authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process. I/We further attest that I/We agree to be legally bound by the application made on our behalf by applicant and the resultant action upon such application by the City of Gardner.

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

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

B. Miller  
Owner

\_\_\_\_\_  
Owner

STATE OF Kansas  
COUNTY OF Johnson

The foregoing instrument was acknowledged before me on this 24<sup>th</sup> day of October, 2019, by Brian Miller

My Commission Expires: 2/21

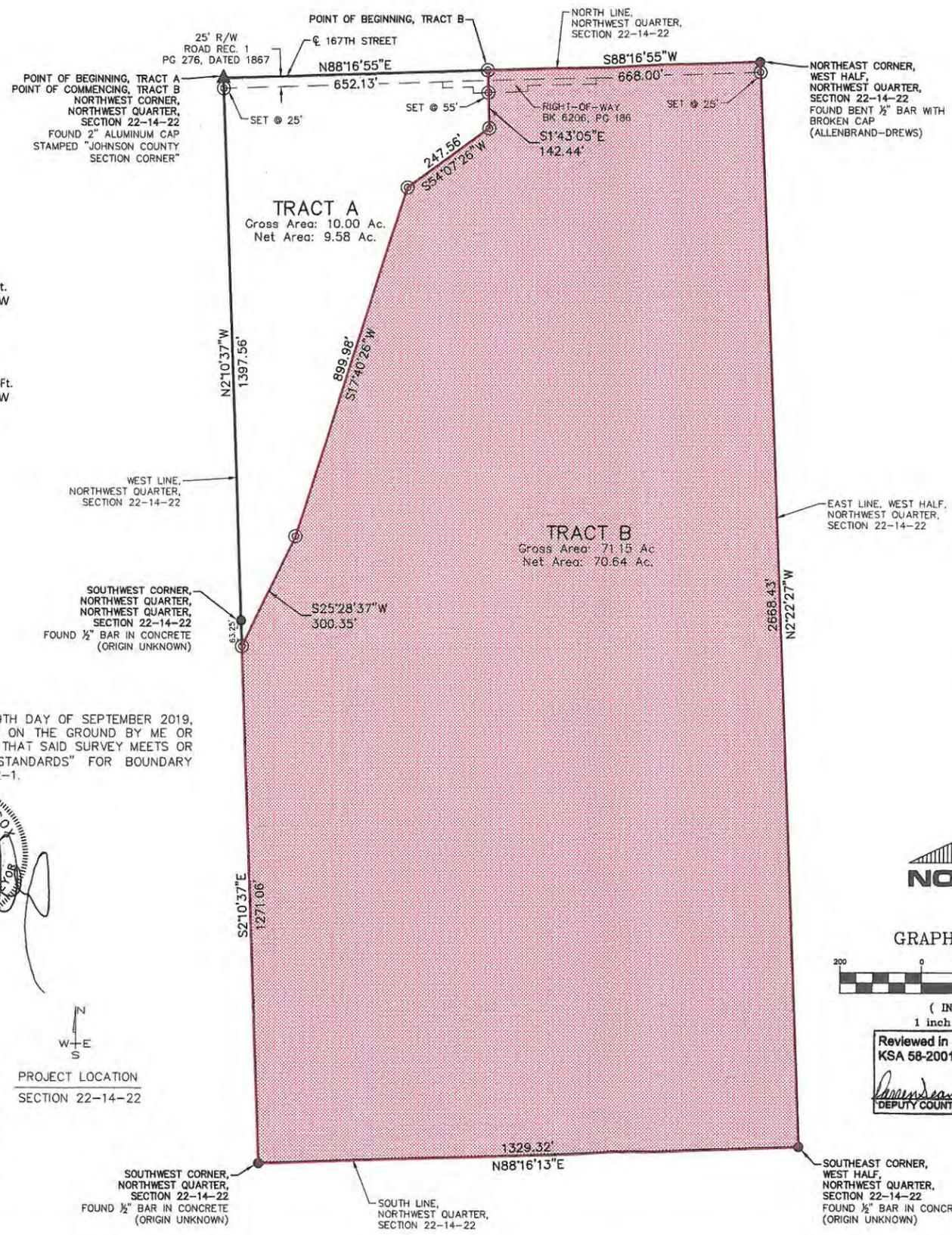
[Signature]  
Notary Public

Notary Public-State of Kansas  
Marjorie Minnich  
My Appointment Expires 2/21

## Exhibit A, Legal Description

All that part of the West Half of the Northwest Quarter of Section 22, Township 14 South, Range 22 East, Johnson County, Kansas, described as follows: Commencing at the Northwest corner of the Northwest Quarter of said Section 22; thence North 88 degrees 16 minutes 55 seconds East, along the North line of the Northwest Quarter of said Section 22, a distance of 652.13 feet to the point of beginning; thence South 1 degree 43 minutes 05 seconds East, a distance of 142.44 feet; thence South 54 degrees 07 minutes 26 seconds West, a distance of 247.56 feet; thence South 17 degrees 40 minutes 26 seconds West, a distance of 899.98 feet; thence South 25 degrees 28 minutes 37 seconds West, a distance of 300.35 feet to a point on the West line of the Northwest Quarter of said Section 22; thence South 2 degrees 10 minutes 37 seconds East, along the West line of the Northwest Quarter of said Section 22, a distance of 1271.06 feet to the Southwest corner of the Northwest Quarter of said Section 22; thence North 88 degrees 16 minutes 13 seconds East, along the South line of the Northwest Quarter of said Section 22, a distance of 1329.32 feet to the Southeast corner of the West half of the Northwest Quarter of said Section 22; thence North 2 degrees 22 minutes 27 seconds West, along the East line of the West Half of the Northwest Quarter of said Section 22, a distance of 2668.43 feet to the Northeast corner of the West Half of the Northwest Quarter of said Section 22; thence South 88 degrees 16 minutes 55 seconds West, along the North line of the Northwest Quarter of said Section 22, a distance of 668.00 feet to the point of beginning, containing 71.15 acres, more or less.

20 CD KS BK: 201910 PG: 002932  
 20191009-0002932 10/30/2019  
 Pages: 1 F: \$21.00 \$129.00  
 Register of Deeds 120190956100



**ERROR OF CLOSURE:**

**TRACT A**  
 Perimeter: 3640.02' Area: 435668.76 Sq. Ft.  
 Error Closure: 0.0045 Course: N28°55'32\"/>

Precision 1: 808893.33

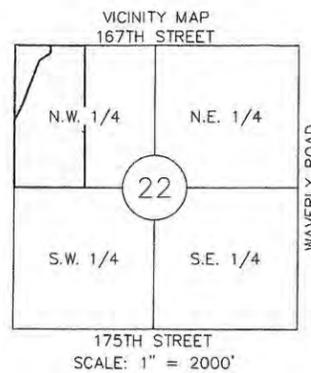
**TRACT B**  
 Perimeter: 7527.13' Area: 3099214.71 Sq. Ft.  
 Error Closure: 0.0070 Course: S39°01'41\"/>

Precision 1: 1075304.29

**LEGEND**

- ▲ MONUMENT FOUND AS DESCRIBED
- BAR FOUND AS DESCRIBED
- ⊙ SET 1/2" x 24" REBAR WITH PLASTIC KS CLS 93 CAP

THIS IS TO CERTIFY THAT ON THE 19TH DAY OF SEPTEMBER 2019, THIS FIELD SURVEY WAS COMPLETED ON THE GROUND BY ME OR UNDER MY DIRECT SUPERVISION AND THAT SAID SURVEY MEETS OR EXCEEDS THE "KANSAS MINIMUM STANDARDS" FOR BOUNDARY SURVEYS PURSUANT TO K.A.R. 66-12-1.



PROJECT LOCATION  
 SECTION 22-14-22

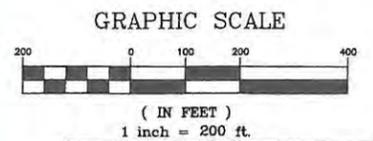
**LEGAL DESCRIPTIONS:**

**PARENT TRACT**  
 (per deed Book 201307, Page 003161)  
 West Half of the Northwest Quarter (W/2 NW/4) in Section Twenty-two (22), Township Fourteen (14) South, Range Twenty-two (22) East, in Johnson County, Kansas

**TRACT A**  
 All that part of the West Half of the Northwest Quarter of Section 22, Township 14 South, Range 22 East, Johnson County, Kansas, described as follows: Beginning at the Northwest corner of the Northwest Quarter of said Section 22; thence North 88 degrees 16 minutes 55 seconds East, along the North line of the Northwest Quarter of said Section 22, a distance of 652.13 feet; thence South 1 degree 43 minutes 05 seconds East, a distance of 142.44 feet; thence South 54 degrees 07 minutes 26 seconds West, a distance of 247.56 feet; thence South 17 degrees 40 minutes 26 seconds West, a distance of 899.98 feet; thence South 25 degrees 28 minutes 37 seconds West, a distance of 300.35 feet to a point on the West line of the Northwest Quarter of said Section 22; thence North 2 degrees 10 minutes 37 seconds West, along the West line of the Northwest Quarter of said Section 22, a distance of 1397.56 feet to the point of beginning, containing 10.00 acres, more or less.

**TRACT B**  
 All that part of the West Half of the Northwest Quarter of Section 22, Township 14 South, Range 22 East, Johnson County, Kansas, described as follows: Commencing at the Northwest corner of the Northwest Quarter of said Section 22; thence North 88 degrees 16 minutes 55 seconds East, along the North line of the Northwest Quarter of said Section 22, a distance of 652.13 feet to the point of beginning; thence South 1 degree 43 minutes 05 seconds East, a distance of 142.44 feet; thence South 54 degrees 07 minutes 26 seconds West, a distance of 247.56 feet; thence South 17 degrees 40 minutes 26 seconds West, a distance of 899.98 feet; thence South 25 degrees 28 minutes 37 seconds West, a distance of 300.35 feet to a point on the West line of the Northwest Quarter of said Section 22; thence North 88 degrees 16 minutes 13 seconds East, along the South line of the Northwest Quarter of said Section 22, a distance of 1329.32 feet to the Southeast corner of the West Half of the Northwest Quarter of said Section 22; thence North 2 degrees 22 minutes 27 seconds West, along the East line of the West Half of the Northwest Quarter of said Section 22, a distance of 2668.43 feet to the Northeast corner of the West Half of the Northwest Quarter of said Section 22; thence South 88 degrees 16 minutes 55 seconds West, along the North line of the Northwest Quarter of said Section 22, a distance of 668.00 feet to the point of beginning, containing 71.15 acres, more or less.

PREPARED FOR:  
 D&Z EXPLORATION  
 P.O. BOX 159  
 ST. ELMO, ILLINOIS 62458  
 PHONE: (618) 829-3274  
 CONTACT: ZANE BELDEN



Reviewed in accordance with  
 KSA 58-2001 to 2005  
*Matthew R. Cox* 10-8-19  
 DEPUTY COUNTY SURVEYOR DATE

**SURVEY**

**PT. OF NW 1/4  
 SECTION 22-14-22  
 JOHNSON COUNTY, KANSAS**

**CIVIL ENGINEERS  
 LAND SURVEYORS - LAND PLANNERS**

122 N. WATER STREET  
 OLATHE, KANSAS 66061  
 PHONE: (913) 764-1076 FAX: (913) 764-8886

Scale: 1"=200'	Drawn By: MRC	Project: 34761
Date: 9/13/2019	Checked By: MRC	Section: 22-14-22

T:\DRAWINGS\_34000\34761 D&Z Exploration Tract Split\042 - W Half NW Qtr 22-14-22 Tract Split.dwg Scale=1:1 Drawn September 19, 2019 - 3:44pm By Matt

**ORDINANCE NO. 2631**

AN ORDINANCE ANNEXING LAND TO THE CITY OF GARDNER, KANSAS.

WHEREAS, the following described land is located in Johnson County, Kansas;

WHEREAS, a written petition and/or consent for annexation of the following described land, signed by all of the owners thereof, have been filed with the City of Gardner, Kansas pursuant to K.S.A. 12-520(a)(7), as amended; and

WHEREAS, the governing body of the City of Gardner, Kansas, finds it advisable to annex such land.

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

Section 1. That the following described land is hereby annexed and made a part of the City of Gardner, Kansas:

**Legal Description:**

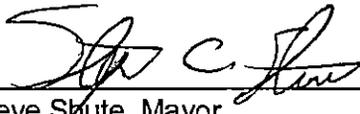
All that part of the West Half of the Northwest Quarter of Section 22, Township 14 South, Range 22 East, Johnson County, Kansas, described as follows: Commencing at the Northwest corner of the Northwest Quarter of said Section 22; thence North 88 degrees 16 minutes 55 seconds East, along the North line of the Northwest Quarter of said Section 22, a distance of 652.13 feet to the point of beginning; thence South 1 degree 43 minutes 05 seconds East, a distance of 142.44 feet; thence South 54 degrees 07 minutes 26 seconds West, a distance of 247.56 feet; thence South 17 degrees 40 minutes 26 seconds West, a distance of 899.98 feet; thence South 25 degrees 28 minutes 37 seconds West, a distance of 300.35 feet to a point on the West line of the Northwest Quarter of said Section 22; thence South 2 degrees 10 minutes 37 seconds East, along the West line of the Northwest Quarter of said Section 22, a distance of 1271.06 feet to the Southwest corner of the Northwest Quarter of said Section 22; thence North 88 degrees 16 minutes 13 seconds East, along the South line of the Northwest Quarter of said Section 22, a distance of 1329.32 feet to the Southeast corner of the West half of the Northwest Quarter of said Section 22; thence North 2 degrees 22 minutes 27 seconds West, along the East line of the West Half of the Northwest Quarter of said Section 22, a distance of 2668.43 feet to the Northeast corner of the West Half of the Northwest Quarter of said Section 22; thence South 88 degrees 16 minutes 55 seconds West, along the North line of the Northwest Quarter of said Section 22, a distance of 668.00 feet to the point of beginning, containing 71.15 acres, more or less.

The entire width of the adjacent right of way immediately North of the above described real property, such right of way being 50 to 90 feet in width, such right of way being identified as 167<sup>th</sup> street.

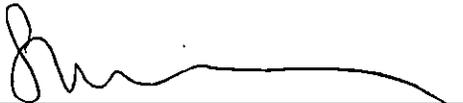
Section 2. That this ordinance shall be effective from and after its passage, approval and publication in the official city newspaper.

PASSED AND APPROVED by the Governing Body of the City of Gardner, Kansas this  
4<sup>th</sup> day of November, 2019.



  
\_\_\_\_\_  
Steve Shute, Mayor

ATTEST:

  
\_\_\_\_\_  
Sharon Rose, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Ryan B. Derk, City Attorney



### PRELIMINARY PLAT APPLICATION

Pre-App Date	_____
Fee	_____
File No.	_____

#### OWNER INFORMATION

Name(s) Patrick B. Miller & Dennis Pugh  
 Contact Patrick B. Miller  
 Address P.O. Box 393  
 City Stilwell State KS Zip 66085  
 Phone (913) 851-1333 Email dennispugh2@gmail.com

#### APPLICANT/AGENT INFORMATION

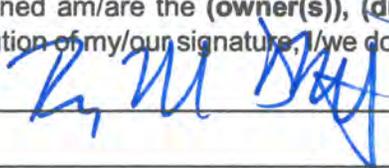
Name(s) Renaissance Infrastructure Consulting  
 Contact Ryan DaMetz, PE  
 Address 132 Abbie Avenue  
 City Kansas City State KS Zip 66103  
 Phone (913) 317-9500 Email rdametz@ric-consult.com

#### SITE INFORMATION

Property Address/Location SW of Intersection of Kill Creek Road & 167th Street (see Tract B of attached Exhibit)  
 Legal Description (Attach If Necessary) Attached  
 Number of Existing Lots 0 Number of Proposed Lots 150  
 Total Site Area 71.15 Acres Present Zoning A (Agricultural) - R-1 Pending  
 Number of Existing Structures 0 Present Land Use Low Density Residential Pending  
 Proposed Street Design Type(s) & Class Standard Local and Collector  
 Proposed Type(s) Open & Civic Space Walking Trail and Amenity Area  
 Proposed Frontage Type(s) Suburban Yard; Neighborhood Yard  
 Proposed Building Types(s) House - Suburban

#### SIGNATURE

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

Signature(s):  Date 12/13/2019  
 \_\_\_\_\_ Date \_\_\_\_\_

## PRELIMINARY PLAT APPLICATION CHECKLIST

### APPLICATION SUBMITTAL REQUIREMENTS

- | Yes                                 | No                                  |  |
|-------------------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 1. <b>Complete application packet</b>  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 2. <b>Application fee</b>  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 3. <b>10 complete sets of full sized plans printed and folded</b>  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 4. <b>Digital copies (PDF) of the completed application, plans, and legal description</b>  |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 5. <b>1 copy of existing covenants and restrictions</b> applicable to the development, if any (reference book and page).   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 6. <b>Letter of intent</b> as to whether a Homeowners Association will be created and if any covenants and restrictions are proposed by the subdivider.  |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 7. <b>Preliminary Floodplain modeling</b> using HEC-RAS model provided by the City if encroachment is proposed within a FEMA or Shaded Zone X 100-year floodplain. (Contact City Engineer to obtain model and requirements). |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 8. <b>Preliminary Stormwater Management Plan</b> (2 printed and 1 digital copy)  |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 9. <b>Preliminary Traffic Assessment</b> See Access Management Code. (2 printed and 1 digital copy)  |

### PRELIMINARY PLAT REQUIREMENTS

- |                                     |                          |  |
|-------------------------------------|--------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 1. <b>Name of subdivision</b> (unique and numerically consistent and the words "PRELIMINARY PLAT," prominently displayed as the title.)  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 2. <b>Names, addresses, and phone numbers</b> of all companies, firms, or individuals involved in the preparation of the plat (i.e. property owner, engineer, surveyor, etc.).   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 3. <b>Date of preparation</b> of preliminary plat and/or revisions.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 4. <b>Vicinity map</b> (drawn at a scale of 1"=2,000', locating the proposed subdivision in relation to the section of land, including township and range, section street names, and a north arrow.)                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 5. <b>A legal boundary description</b> with angular bearings and linear distances, referenced to section or quarter-section corners, Point of Commencing and/or Point of Beginning, and the overall area of the plat in acres. |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 6. <b>Location of monuments</b> , shown in reference to existing official monuments or the nearest established ¼ section corner, including the bearings and distances to such reference points or monuments.                   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 7. <b>Boundary lines</b> of the subdivision shall be enclosed with one continuous bold line, showing approximate dimensions (bearings and distances).  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 8. <b>All public streets</b> within the plat conform to the applicable minimum design standards set forth in the Land Development Code and Technical Specifications.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 9. <b>Building setback lines</b> along public and private streets with dimensions in feet.   |

- | Yes                                 | No                       |   |
|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 10. <b>Platted and unplatted land</b> adjacent to the plat boundary. Include identification of adjacent platted subdivisions and unplatted tracts with external bearings and distances of adjacent plats and property owners for a distance of not less than 400 feet. Include original plat names if replatted. Exterior dimensions shall coincide with adjoining plats unless differences are noted |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 11. <b>Lots and tracts</b> identified clearly, with blocks numbered or lettered boldly and clearly in the center of the block, and lot dimensions with bearings and distances, and area in square feet.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 12. <b>Note on plat</b> indicating intended ownership, purpose, and maintenance responsibilities for any parcels labeled as tracts.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 13. <b>Existing streets, driveways, trails, and sidewalks</b> which abut, touch upon or extend through the subdivision and/or streets located within 400 feet of the plat. The description shall include types and widths of existing surfaces, right-of-way widths, and dimensions of any bridges and culverts, access points and signals.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 14. <b>Location of existing open space, alleys, parks, streams, ponds, vegetation,</b> or other similar features within plat, and whether they are to be retained or removed.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 15. <b>Location of existing buildings</b> and structures within 200 feet of the plat.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 16. <b>Existing utilities,</b> including sanitary sewer, force main, water main, gas mains, culverts and storm sewer pipe, street lights, electric conduits, and invert elevations of sewers at points of proposed connection.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 17. <b>Topography</b> of the area contained in the plat and within 20 feet of the plat boundary shown by 2-foot contour intervals and proposed preliminary grading. Contour lines shall be legible but not overpowering.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 18. <b>Proposed street network,</b> including right-of-way, bearings, tangents, and horizontal and vertical curvature data (use of flow direction arrows and percent of grade is permitted at preliminary for vertical curve data, unless otherwise specified/required) along the centerline of each street.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 19. <b>Proposed sidewalks</b> and/or trail locations including proposed widths.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 20. <b>Proposed utilities,</b> including approximate location of sanitary sewer, water main, street lights, storm sewer, detention and treatment facilities.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 21. <b>Existing and proposed easements</b> with dimensions. Existing easements shall be labeled with book and page number.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 22. <b>Any area within a federally designated floodplain.</b> Location, stations, and elevations of the 100-year floodplain within the plat and 100-year elevations at rear lot corners adjacent to FEMA and Shaded Zone X floodplains. The source of the floodplain information shall be clearly labeled (example: FIRM, Map #20091C0041D, September 27, 1991).                                      |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 23. <b>Stream corridor boundary</b> and dimensions.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 24. <b>Intersection site distance analysis.</b>   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 25. <b>Copies of all pertinent exception documents,</b> or a copy of a current American Land Title Association (ALTA) survey, or both.  |

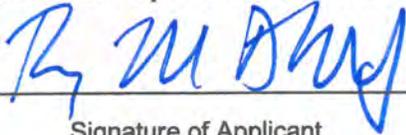
**Written explanations** for any items not checked or checked "No" (attach additional sheets, if necessary):

5. No existing covenants and restrictions exist.

7. No encroachment is proposed within a FEMA or Shaded Zone X 100-year floodplain.

9. It was determined during pre-application meeting that the proposed layout adheres to proper street separation. A traffic impact study will need to be performed whenever Kill Creek Road is extended to the south.

I hereby submit all information required for preliminary plat review. I understand that failure to provide the required information may result in a postponement of my request for review until all information has been submitted. By signing this application, I acknowledge that all public streets and public infrastructure within the plat shall conform to the applicable minimum design standards set forth in the Gardner Municipal Code and the Technical Specifications.



Signature of Applicant

12/13/2019

Date



**OWNER AFFIDAVIT**

I/WE Sunrise Investments Corp., hereby referred to as the "Undersigned", being of lawful age, do hereby on this 24<sup>th</sup> day of October, 2019, make the following statements to wit:

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

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

- 2. I/We the undersigned, have previously authorized and hereby authorize Renaissance Infrastructure Consulting (Herein referred to as "Applicant"), to act on my/our behalf for the purpose of making application with the City of Gardner, regarding Tract B (see attached Exhibit) (common address), the subject property, or portion thereof. Such authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process. I/We further attest that I/We agree to be legally bound by the application made on our behalf by applicant and the resultant action upon such application by the City of Gardner.

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

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

B. Miller \_\_\_\_\_  
Owner Owner

STATE OF Kansas  
COUNTY OF Johnson

The foregoing instrument was acknowledged before me on this 24<sup>th</sup> day of October, 2019, by Brian Miller

My Commission Expires: 2/21

[Signature]  
\_\_\_\_\_  
Notary Public

Notary Public-State of Kansas  
**Marjorie Minnich**

My Appointment Expires 2/21

**COUNCIL ACTION FORM**                      **COMMITTEE RECOMMENDATION NO. 2**  
**MEETING DATE: FEBRUARY 17, 2020**  
**STAFF CONTACT: LARRY POWELL, BUSINESS & ECO DEV DIRECTOR**

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**Agenda Item:** Consider adopting an ordinance approving amendment TA-20-01 to GMC Title 17 *Land Development Code* of the *Gardner Municipal Code*.

**Strategic Priority:** Increase Infrastructure and Asset Management; Fiscal Stewardship

**Department:** Business & Economic Development

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**Planning Commission Recommendation:**

The Planning Commission recommends that the Governing Body approve text amendment TA-20-01 to the *Gardner Land Development Code*, revising the use provisions for Communications and Utilities to permit Public Utility Facility – Major as a Conditional Use subject to specific use standards in the additional zoning district of A (Agriculture) District as presented in the January 28, 2020 staff report.

**Staff Recommendation:**

Staff recommended approval of TA-20-01 as presented in the January 28, 2020 staff report.

**Background/Description of Item:**

On January 6, 2020, the Governing Body initiated this potential text amendment to the *Gardner Land Development Code* (LDC), directing the Planning Commission to consider revising the use provisions for Communications and Utilities to permit Public Utility Facility – Major as a Conditional Use subject to additional standards in additional zoning districts (including the agriculture district). As the community grows, there is a need to provide public utility services to outlying areas. Based on a comparison of the adopted utility plans and future land-use maps, it may be advisable that some major public utility facilities be developed on sites planned for agriculture or residential zoning.

Public Utility Facility – Major is described as “Utility services of a regional nature, including generating plants, electrical switching facilities and primary substations, water and wastewater treatment plants, and similar facilities to provide the general public with electricity, natural gas, steam, water, sewage collection, or other similar service.” Public Utility Facility – Major uses are currently **conditional** uses ONLY in the commercial and industrial districts (currently not permitted in the Agriculture or any Residential Districts).

Current regulations would result in Public Utility Facility – Major uses having to be built or expanded on land that is zoned or rezoned to a commercial or industrial district, even though the facilities would perhaps be located adjacent to agriculture or residential uses. If the facility were ever decommissioned or redeveloped, the site would potentially be open to various commercial and industrial uses that may not be compatible with the adjacent land uses, unless the property was rezoned before redevelopment.

Of additional concern, the LDC provides that nonconforming uses (that were legally initiated prior to the adoption or amendment of this Code, but would not meet the terms of the current code) may continue to exist, but may not be expanded beyond the existing area of the lot. The City's wastewater treatment plant is located on a site-zoned Agriculture District near Celebration Park along W. 159<sup>th</sup> Street. Without the amendment, this facility would require rezoning to be expanded. This amendment would also facilitate the development of Public Utility Facility – Major uses to serve new growth areas south of I-35 as consistent with adopted plans without having to rezone the land to a more intense zoning district.

Conditional uses, and their expansions, include a public hearing and recommendation of the Planning Commission, with final approval of the Governing Body. The review criteria and specific use standards address mitigation of potential impacts of the facility, and additional conditions can be stipulated to address any other concerns arising from the context while supporting essential public services in an efficient manner.

On January 28, 2020, the Planning Commission held a public hearing on the proposed amendment to allow Public Utility Facility – Major as a Conditional Use subject to specific use standards in the additional zoning district of Agriculture. No members of the public spoke, and the text amendment was unanimously recommended for approval.

**Financial Impact:**

None

**Other Impacts:**

This amendment simplifies the process for approving major public utility facilities in growth areas of the community and ensures efficient provision of public utility services.

**Attachments included:**

- Ordinance No. 2650
- Draft minutes of the January 28, 2020 Planning Commission meeting excerpt
- Packet materials from the January 28, 2020 Planning Commission meeting

**Suggested Motion:**

Adopt Ordinance No. 2650, an ordinance amending the Land Development Code of the City of Gardner, Kansas by amending the sections of Title 17 of the Gardner Municipal Code

**ORDINANCE NO. 2650**

**AN ORDINANCE AMENDING THE LAND DEVELOPMENT CODE OF THE CITY OF GARDNER, KANSAS BY AMENDING THE SECTIONS OF TITLE 17 OF THE GARDNER MUNICIPAL CODE.**

WHEREAS, the City of Gardner, Kansas initiated changes to Sections of Title 17 entitled "Land Development Code", by action of the City Council on the 6th day of January, 2020; and

WHEREAS, a public hearing on the herein changes to the Land Development Code was properly noticed and held before the Planning Commission of the City of Gardner, Kansas, on the 28th day of January, 2020; and

WHEREAS, said Planning Commission has recommended that the herein amendments to the Land Development Code of the City of Gardner, Kansas be approved.

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

**Section 1: Title 17 of the Code of the City of Gardner Kansas, 2016, shall be amended in part to read as follows:**

**CHAPTER 17.05 ZONING DISTRICTS & USE STANDARDS**

**Section 17.05.030 GENERAL USE STANDARDS, Subsection A. Permitted Uses. Table 5-2: Use Table, Communications and Utilities.**

Public Utility Facility – Major use to be identified as a Conditional Use subject to specific use standards, limitations and performance criteria (C\*) in the additional district of A – Agriculture District.

**Section 2:** All other ordinances not in conformity herewith are hereby repealed or amended to conform hereto.

**Section 3:** This ordinance shall take effect and be in force from and after its passage, approval, and publication as provided by law.

PASSED by the City Council this 17th day of January, 2020.

APPROVED by the Mayor this 17th day of January, 2020.

CITY OF GARDNER, KANSAS

(SEAL)

\_\_\_\_\_  
Steve Shute, Mayor

Attest:

\_\_\_\_\_  
Sharon Rose, City Clerk

Approved as to form:

\_\_\_\_\_  
Ryan B. Denk, City Attorney

**EXCERPT OF PLANNING COMMISSION MEETING MINUTES**  
CITY OF GARDNER, KANSAS  
Tuesday, January 28, 2020

**CALL TO ORDER**

The meeting of the Gardner Planning Commission was called to order at 7:00 p.m. on Tuesday, January 28, 2020, by Chairman Scott Boden.

**PLEDGE OF ALLEGIANCE**

Chairman Boden led the Pledge of Allegiance.

**ROLL CALL**

Commissioners present:

Chairman Boden  
Commissioner Deaton  
Commissioner Ford  
Commissioner Hansen  
Commissioner Meder  
Commissioner McNeer

Commissioners Absent:

Commissioner Simmons-Lee

Staff members present:

Larry Powell, Director, Business & Economic Development  
Kelly Drake Woodward, Chief Planner  
Michelle Leininger, Principal Planner  
Robert Case, Planner  
Kristie Hatley, Planning Technician  
Ryan Denk, City Attorney

There were twelve members of the public in attendance.

**REGULAR AGENDA**

**3. TEXT AMENDMENT**

- a. **TA-20-01:** Hold a public hearing and consider proposed text amendment TA-20-01 to the *Gardner Land Development Code* regarding the Public Utility Facility-Major land use.
- b. Initiate text amendments to various sections of Title 17 Land Development Code of the Gardner Municipal Code enabling regulations that are consistent with the context of rural areas of Gardner and that preserve rural character.

Ms. Kelly Drake Woodward, Chief Planner, began her presentation of text amendment TA-20-01 stating that specific standards for public utility and airport uses were adopted into the LDC in 2017. Utility uses were classified as either minor or major. Major public utility facilities include generating plants, electrical switching facilities and primary substations, water and wastewater treatment plants, and other similar facilities that provide the general public with services regionally. Currently, in the agriculture and residential zoning districts, minor public utilities are a conditional use subject to additional standards, and major public utilities are not permitted. In the commercial and industrial zoning districts, minor public utilities are a permitted use, and major public utilities are a conditional use, all subject to additional specific use standards. The proposal is to allow major public utilities in the additional zoning district of A – Agriculture as a conditional use subject to additional specific use standards.

This amendment was initiated by the Governing Body to consider allowing the major public utility facility use in additional districts for a more efficient process. Conditional uses, and their expansions, entail a public hearing and recommendation by the Planning Commission with final approval by the Governing Body. The use can be approved with additional conditions to address any other concerns arising from the context, thereby mitigating any potential community concerns while supporting essential public services in an efficient manner. There are ten review criteria for conditional uses which pertain to furthering the intent of the zoning district and adjacent districts, having a positive impact on the public realm, ensuring adequate drainage and public utilities, and being found to be compatible with the character of the area in design and function. All Public Utility Facility – Major uses are subject to additional specific use standards regulating setback from residential districts, height transitions, landscape buffers, and fencing.

As the community grows, there is a need to provide public utility services to outlying areas. Based on a comparison of the adopted utility plans and future land use maps, it may be advisable that some major public utility facilities be developed on sites planned for agriculture or residential zoning. Currently, new major public utility facilities would have to be built on land that is rezoned to a commercial or industrial district, even though the facilities would perhaps be located adjacent to agriculture or residential uses. Then, if the facility was ever decommissioned or redeveloped, the site would potentially be opened up to various commercial and industrial uses that may not be compatible with the adjacent land uses unless the property was rezoned before redevelopment. Of additional concern, the LDC provides that nonconforming uses (that were legally initiated prior to the adoption or amendment of this Code, but would not meet the terms of the current code) may continue to exist (or be grandfathered in), but may not be expanded beyond the existing area of the lot. The City's wastewater treatment plant is located on a site zoned Agriculture District near Celebration Park along W 159<sup>th</sup> St. Without the amendment, this facility would have to be rezoned to be expanded. Examples of existing and planned facilities that would be affected if this amendment was not implemented were presented, including a new electric substation and wastewater treatment plant planned south of I-35. Staff recommends approval of this text amendment.

Commissioner Ford asked what would be considered "major" facilities.

Ms. Woodward replied major facilities would provide services in a more regional way such as electrical facilities, primary substations, water and wastewater treatments plants and natural gas. She said it was somewhat subjective and allowed staff to look at what was being planned to determine if it should be processed as a major or minor utility. Most of the utilities in Gardner are locally operated but considered major because they provide access to a broader area.

### **PUBLIC HEARING**

No comments from the audience.

**Motion made by Meder to close the Public Hearing and seconded by Hansen.**

**Motion passed 6-0.**

### **COMMISSION DISCUSSION:**

Chairman Boden asked what types of transitions or buffers would be built for the utility facilities in the agricultural district and if they would be installed when the facility was constructed or at a later time and how would you provide for a buffer if the surrounding property is undeveloped.

Ms. Leininger explained that staff would look at the city's Comprehensive Plan to determine future anticipated uses. Then, because it was a conditional use permit, everything would be taken into consideration, including the need for more or less landscape or setback.

Ms. Woodward responded the transitions would be landscape buffers and would be installed when the facility was developed. The specific use standards for the public utility facility-major use provide that they are subject to level 4 buffer requirements just like an industrial facility.

The commissioners discussed the conditional permit process.

**Motion made by the Planning Commission to recommend that the Governing Body approve text amendment TA-20-01 to the *Gardner Land Development Code*, revising the use provisions for Communications and Utilities to permit Public Utility Facility – Major as a Conditional Use subject to specific use standards in the additional zoning district of A (Agriculture) District as presented in the January 28, 2020 staff report.**

**Motion made by Hansen and seconded by Meder.**

**Motion passed 6-0.**

**PROJECT NUMBER / TITLE:** Consider proposed text amendment TA-20-01 to the *Gardner Land Development Code* pertaining to Public Utility Facility – Major uses

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### **REQUESTED ACTION**

Hold a public hearing and consider text amendment TA-20-01 to the *Gardner Land Development Code* (LDC) pertaining to Public Utility Facilities – Major uses.

### **BACKGROUND / HISTORY**

On August 21, 2017, the Governing Body adopted Ordinance 2550 amending the *Gardner Land Development Code* (LDC) to implement specific use standards for public utility and airport uses, as these uses were not specifically provided for in the LDC when it was adopted in 2016. Utility uses were classified as either minor or major utility uses. Currently, minor public utility uses are conditional uses in all agriculture and residential districts, and permitted uses in all commercial and industrial districts. **Major public utility uses** are conditional uses ONLY in the commercial and industrial districts.

Public Utility Facility – Major is described as “Utility services of a regional nature, including generating plants, electrical switching facilities and primary substations, water and wastewater treatment plants, and similar facilities to provide the general public with electricity, natural gas, steam, water, sewage collection, or other similar service. May include General Office or Large Office where those uses are permitted as indicated in Table 5-2.”

On January 6, 2020, the Governing Body initiated this potential text amendment to the LDC, directing the Planning Commission to consider revising the use provisions for Communications and Utilities to permit Public Utility Facility – Major as a Conditional Use subject to additional standards in additional zoning districts (including the agriculture district). The reason is that as the community grows, there is a need to provide public utility services to outlying areas. Based on a comparison of the adopted utility plans and future land use maps, it may be advisable that some major public utility facilities be developed on sites planned for agriculture or residential zoning.

Currently, new major public utility facilities would have to be built on land that is rezoned to a commercial or industrial district, even though the facilities would perhaps be located adjacent to agriculture or residential uses. Then, if the facility were ever decommissioned or redeveloped, the site would potentially be opened up to various commercial and industrial uses that may not be compatible with the adjacent land uses unless the property was rezoned before redevelopment.

Of additional concern, the LDC provides that nonconforming uses (that were legally initiated prior to the adoption or amendment of this Code, but would not meet the terms of the current code) may continue to exist, but may not be expanded beyond the existing area of the lot. The City’s wastewater treatment plant is located on a site zoned Agriculture District near Celebration Park along W. 159<sup>th</sup> Street. Without the amendment, this facility would have to be rezoned to be expanded.

As another illustration of these implications, the Hillsdale Lake Water Treatment facility (see photo below), is surrounded by a rural residential district in Miami County. If this facility, which was originally permitted as a conditional use in the Agriculture district of Miami County, was annexed into the City of Gardner in the future, and given the equivalent zoning designation of Agriculture, it would become a nonconforming use in the City (because these facilities are currently not permitted in the Agriculture District). Expansion could then only be accommodated by rezoning to a commercial or industrial district (and approval of a conditional use permit). Maintaining the agriculture zoning designation for this facility would be more consistent with the land use intent of surrounding Miami County and ensure continued compatibility with the adjacent land uses. If the LDC were amended to permit major public utility facilities in the A (Agriculture) district, future expansions to this facility could be accommodated without the need to rezone. The plant is currently being expanded while under the jurisdiction of Miami County. Additional expansions are planned around 2027.



A new electric substation is planned south of I-35 near projected commercial areas, and could be accommodated in a commercial zoning district without an amendment to the LDC. However, this property is currently zoned A (Agriculture) District, and the contemplated amendment would allow this facility to be developed without a rezoning.

A new wastewater treatment plant is planned to be located somewhere south of I-35 and 191<sup>st</sup> street near Cedar Niles in the future, and it is anticipated that the most appropriate zoning district for that facility, considering the adjacent uses, would be the A (Agriculture) District.

Conditional uses, and their expansions, entail a public hearing and recommendation of the Planning Commission, with final approval of the Governing Body. There are ten review criteria for conditional uses which pertain to the furthering the intent of the zoning district and adjacent





Solar Collector – Ground Mounted	C*																
Public Utility Facility - Minor	C*	P*															
Public Utility Facility - Major	C*								C*								
Aviation Facilities	C*																

**Staff Comment:**

*In the previous Code, public utility uses were not specifically defined, but may have been permitted as follows:*

- Permitted use (public buildings) in the less intense **commercial** districts
- Permitted use (public and private utility facilities and governmental maintenance facilities) in the **industrial** districts
- Conditional use (other publicly owned buildings and uses not specifically listed elsewhere) in the **agricultural** district
- Conditional use (any public building or land used by any department of the City, County, state or federal government) in most **residential** districts
- Conditional use (public utility, telephone exchanges, electric substations, water, sewer or storm sewer facilities, and natural, piped gas operating under government franchise and contract) in two **commercial** districts

*The above underlined text would seem to indicate that public utilities were not permitted in the Agricultural District per the previous Code since that use is specifically listed only as being permitted in other districts. However, the previous Code did not necessarily address the need or plan for utility infrastructure expansion in rural annexed areas near Gardner or in areas at the edge of the Gardner City limits.*

*At this time, there is no anticipated need to permit Public Utility Facility – Major uses in residential zoning districts, as no such facilities are planned in the residential future land use areas. Future revisions of the Comprehensive Plan or utility master plans may result in further recommendations for amendments in the future. However, at this time, staff recommends adding only the A (Agriculture) District as an additional opportunity area for these major utility uses as a conditional use.*

**ATTACHMENTS**

- I. Future Land Use Map

**ACTIONS**

The Planning Commission shall hold a public hearing on all proposed amendments. Upon conclusion of the public hearing, the Planning Commission shall prepare and adopt its recommendations in the form of a proposed development regulation and submit it with a record of the hearing to the Governing Body.

**EFFECT OF DECISION**

Per State Statute, the governing body either may: (1) Approve such recommendations by the adoption of an ordinance; (2) override the planning commission's recommendations by a 2/3 majority vote of the membership of the governing body; or (3) may return the item to the planning

commission for further consideration, together with a statement specifying the basis for the governing body's failure to approve or disapprove. If the governing body returns the planning commission's recommendations, the planning commission, after consideration, may resubmit its original recommendations with their reasoning, or submit new and amended recommendations. Upon the receipt of such recommendations, the governing body, by a simple majority, may adopt or may revise or amend and adopt such recommendations by ordinance, or the governing body need take no further action on the item. If the planning commission fails to deliver its recommendations to the governing body following the planning commission's next regular meeting after receipt of the governing body's report, the governing body shall consider that inaction on the part of the planning commission as a resubmission of the original recommendations and proceed accordingly. The proposed amendment shall become effective upon publication of the adopting ordinance.

### **RECOMMENDATION**

Staff recommends approval of TA-20-01 as presented in the January 28, 2020 staff report.

#### **Recommended Motion for TA-20-01:**

The Planning Commission recommends that the Governing Body approve text amendment TA-20-01 to the *Gardner Land Development Code*, revising the use provisions for Communications and Utilities to permit Public Utility Facility – Major as a Conditional Use subject to specific use standards in the additional zoning district of A (Agriculture) District as presented in the January 28, 2020 staff report.

## COUNCIL ACTION FORM

## NEW BUSINESS ITEM NO. 1

**MEETING DATE:** FEBRUARY 17, 2020

**STAFF CONTACT:** MATTHEW WOLFF, FINANCE DIRECTOR

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**Agenda Item:** Consider adopting a resolution authorizing the City of Gardner, Kansas, execute a special warranty deed, a release of real estate and other release documents and to take certain other actions to effect the option to purchase the project pursuant to the lease agreement in connection with the City's not to exceed \$52,000,000 industrial revenue bonds (taxable under federal law), Series 2009 (US Industrial REIT II).

**Strategic Priority:** Economic Development

**Department:** Finance

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### **Staff Recommendation:**

Staff recommends adopting a resolution authorizing the City of Gardner, Kansas, to execute a special warranty deed, a release of real estate, and other release documents and to take certain other actions to effect the option to purchase the project pursuant to the lease agreement in connection with the City's not to exceed \$52,000,000 industrial revenue bonds (taxable under federal law, Series 2009 (US Industrial REIT II)).

### **Background/Description of Item:**

On November 16, 2009, the City passed Ordinance No. 2332 authorizing the issuance of Industrial Revenue Bonds in the aggregate amount not to exceed \$52,000,000 to finance the acquisition, construction and improvement of a commercial facility located within the City, including real state, buildings, and improvements. The City leased the project to US Industrial REIT II (the Original Tenant), and the Original Tenant subleased the project to The Coleman Company. On August 16, 2012, US Industrial REIT II assigned its interest in the lease to RT Midwest Commerce I, LLC.

As a part of the project, the City approved a 50% property tax abatement for 10 years. The property tax abatement period ended on December 31, 2019. During the property tax abatement period the City took ownership of the property and leased it back to the original property owner (the Original Tenant or whoever has the assigned interest in the lease). Now that the property tax abatement period is over, the City needs to convey the property back to the entity that has the assigned interest in the lease (RT Midwest Commerce I, LLC).

### **Financial Impact:**

The 50% property tax abatement for the property ended on December 31, 2019. When property taxes are levied again in November 2020, the property will be taxed at the full amount. This will lead to an increase of approximately \$108,000 in property taxes for the City of Gardner for the 2021 Budget.

**Attachments:**

- Resolution No. 2048
- Special Warranty Deed
- Release of Real Estate

**Suggested Motion:**

Adopt Resolution No. 2048, a resolution authorizing the City of Gardner, Kansas, to execute a special warranty deed, a release of real estate, and other release documents and to take certain other actions to effect the option to purchase the project pursuant to the lease agreement in connection with the City's not to exceed \$52,000,000 industrial revenue bonds (taxable under federal law), Series 2009 (US Industrial REIT II).

## **RESOLUTION NO. 2048**

**A RESOLUTION AUTHORIZING THE CITY OF GARDNER, KANSAS, TO EXECUTE A SPECIAL WARRANTY DEED, A RELEASE OF REAL ESTATE AND OTHER RELEASE DOCUMENTS AND TO TAKE CERTAIN OTHER ACTIONS TO EFFECT THE OPTION TO PURCHASE THE PROJECT PURSUANT TO THE LEASE AGREEMENT IN CONNECTION WITH THE CITY'S NOT TO EXCEED \$52,000,000 INDUSTRIAL REVENUE BONDS (TAXABLE UNDER FEDERAL LAW), SERIES 2009 (US INDUSTRIAL REIT II).**

**WHEREAS**, the City of Gardner, Kansas (the "City"), is authorized pursuant to the provisions of K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the "Act"), to acquire, purchase, construct and equip certain facilities (as defined in the Act), and to issue industrial revenue bonds for the purpose of paying the cost of such facilities, and to lease such facilities to private persons, firms or corporations;

**WHEREAS**, the City passed Ordinance No. 2332 on November 16, 2009, authorizing the issuance of its Industrial Revenue Bonds (Taxable Under Federal Law), Series 2009 (US Industrial REIT II), in the aggregate principal amount not to exceed \$52,000,000 (the "Bonds"), pursuant to a Trust Indenture dated as of November 1, 2009 (the "Indenture"), by and between the City and Wells Fargo Bank, National Association, as trustee (the "Trustee"), for the purpose of providing funds to finance the acquisition, construction and improvement of a commercial facility located within the City, including real estate, buildings and improvements (the "Project");

**WHEREAS**, the City leased the Project to US Industrial REIT II, a Texas real estate investment trust (the "Original Tenant"), pursuant to the terms of a Lease dated as of November 1, 2009 (the "Lease"), between the City and the Original Tenant, and the Original Tenant subleased the Project to The Coleman Company, Inc., or an affiliate, pursuant to a separate sublease;

**WHEREAS**, the Original Tenant assigned its interest in the Lease to RT Midwest Commerce I, LLC, a Delaware limited liability company (the "Tenant"), pursuant to a Master Leasehold Assignment and Assumption of Lease effective as of August 16, 2012;

**WHEREAS**, the Trustee and Company have represented that the Bonds have been paid and that there are no Bonds currently outstanding;

**WHEREAS**, the Tenant has delivered notice to the City on or prior to the date hereof, and pursuant to Section 17.1 of the Lease, indicating the exercise of the Tenant's right and option to purchase the Project, requesting the specific date that such option is to be exercised (the "Closing Date") and further requesting a waiver of the 30-day notice preceding the Closing Date required under the Lease;

**WHEREAS**, pursuant to the Lease, the City is required to convey the Project to the Tenant once all obligations and duties of the Tenant under the Lease have been performed and satisfied;

**WHEREAS**, the City is willing to waive the notice specified in the Lease, and the Trustee has indicated it is also willing to waive such notice; and

**WHEREAS**, the Governing Body of the City finds and determines that it is necessary and desirable for the City to enter into certain documents and take certain other actions and approve the execution of certain other documents as herein provided to convey to the Tenant the Project once all requirements of the Lease relating to the exercise of the purchase option have been satisfied;

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

**SECTION 1. Acknowledgment and Approval.** The City hereby acknowledges and approves the Tenant’s request to exercise its option to purchase the Project pursuant to the Lease, and agrees to waive the notice provisions of Section 17.1 of the Lease and to set the Closing Date at such date as agreed by the parties.

**SECTION 2. Conveyance.** The City hereby approves the sale and conveyance of the Project, as provided in the Lease; provided, however, that prior to such sale and conveyance, the City shall have received the \$1,000 purchase price and shall have confirmed satisfaction of all obligations of the Tenant under the Lease.

**SECTION 3. Authorization and Execution of Documents.** The Mayor is hereby authorized and directed to execute and deliver a Special Warranty Deed, a Release of Real Estate and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution (the “Release Documents”) (copies of said documents shall be filed in the records of the City) for and on behalf of and as the act and deed of the City, subject to the confirmation by Kutak Rock LLP, the City’s Bond Counsel, that the conditions set forth herein have been satisfied, including, but not limited to, payment of any fees and expenses of the City’s Bond Counsel in connection with the transaction. The City Clerk is hereby authorized and directed to attest to and affix the seal of the City to the Release Documents.

**SECTION 4. Further Authority.** The City shall, and the officers and agents of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution and to carry out, comply with and perform the duties of the City with respect to the Release Documents.

**SECTION 5. 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 left blank intentionally]*

**ADOPTED** by the Governing Body of the City of Gardner, Kansas, on February 17, 2020.

**CITY OF GARDNER, KANSAS**

(Seal)

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

When Recorded Return To:  
Tyler Ellsworth  
Kutak Rock LLP  
2300 Main Street, Suite 800  
Kansas City, MO 64108-2416

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*(Space above reserved for the Register of Deeds' recording information)*

Title of Document: SPECIAL WARRANTY DEED

Date of Document: FEBRUARY \_\_, 2020

Grantor(s): CITY OF GARDNER, KANSAS

Grantee(s): RT MIDWEST COMMERCE I, LLC

Grantee Address: 90 PARK AVENUE, 32<sup>ND</sup> FLOOR  
NEW YORK, NEW YORK 10016

Legal Description: See **Exhibit A** Attached Hereto

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**PURSUANT TO K.S.A. 79-1437(c), A REAL ESTATE SALES VALIDATION  
QUESTIONNAIRE IS NOT REQUIRED DUE TO EXCEPTION #2**

**SPECIAL WARRANTY DEED**

**THIS SPECIAL WARRANTY DEED**, made on February \_\_, 2020, by and between the CITY OF GARDNER, KANSAS, a second class city duly organized and existing under the laws of the State of Kansas (the “Grantor”), and RT MIDWEST COMMERCE I, LLC, a Delaware limited liability company (the “Grantee”), whose mailing address is 90 Park Avenue, 32<sup>nd</sup> Floor, New York, New York 10016, as successor to US Industrial REIT II, a Texas real estate trust;

WITNESSETH, that Grantor, in consideration of the sum TEN DOLLARS (\$10.00) and other good and valuable consideration, to it in hand paid by Grantee (the receipt of which is hereby acknowledged), does by these presents, sell and convey and confirm unto Grantee, its successors and assigns, the following described lots, tracts or parcels of land, lying, being and situated in the County of Johnson and the State of Kansas, to-wit:

All that real estate described on **Exhibit A** attached hereto and incorporated herein by this reference as though fully set forth.

SUBJECT TO: (a) liens and encumbrances, if any, to which title to the property was subject when conveyed to the Grantor; (b) liens and encumbrances created by the Grantee or to the creation or suffering of which the Grantee consented; (c) liens and encumbrances resulting from the failure of the Grantee to perform or observe any of the agreements on its part contained in the Lease Agreement dated as of November 1, 2009, between the Grantor and US Industrial REIT II, and applicable to the Grantee, as successor to US Industrial REIT II; (d) easements, restrictions and reservations now of record; and (e) taxes and assessments, general and special, not now due or payable.

Grantor, for Grantor and Grantor’s heirs and personal representatives, covenants that Grantor is lawfully seized of Grantor's interest in the property and has good right to convey Grantor’s interest in the property and guarantees the quiet possession of the property against the claims of those claiming any right, interest or title through Grantor, except as may be described above, and further covenants that the property is free from all encumbrances created by Grantor, except as may be described above, and Grantor will warrant and defend the property against all lawful claims of those claiming any right, interest or title through Grantor, except as may be described above; but Grantor does not warrant title against those claiming a right, interest or title that arose prior to, or separate from, Grantor’s interest in the property.

*[Remainder of Page Intentionally Left Blank]*

**THIS SPECIAL WARRANTY DEED** is executed as of the date first hereinabove written.

**CITY OF GARDNER, KANSAS**

By: \_\_\_\_\_  
Steve Shute  
Mayor

(SEAL)

ATTEST:

\_\_\_\_\_  
Sharon Rose  
City Clerk

**ACKNOWLEDGMENT**

STATE OF KANSAS        )  
  ) SS.  
COUNTY OF JOHNSON    )

BE IT REMEMBERED, that on this February \_\_, 2020, before me, the undersigned, a Notary Public in and for said County and State, came Steve Shute, Mayor of the City of Gardner, Kansas, a legally constituted municipal corporation and city of the first class duly organized and existing under the laws of the State of Kansas, and Sharon Rose, City Clerk of said City, who are personally known to me to be the same persons who executed the foregoing instrument as such officers, and said Steve Shute, as Mayor, duly acknowledged the execution of the same to be the act of the City; and Sharon Rose, as City Clerk, duly acknowledged the attestation of the same for and on behalf of the City, and affixed thereto the seal of the City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

## EXHIBIT A

The following described real estate in Johnson County, Kansas:

### PARCEL 1 (FUTURE LOT 1)

A TRACT OF LAND LYING IN A PORTION OF THE NORTHWEST QUARTER AND IN THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 14 SOUTH, RANGE 23 EAST OF THE 6TH PM, IN JOHNSON COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER; THENCE ON JOHNSON COUNTY CONTROL NETWORK BEARINGS, SOUTH 88°04'00" WEST, COINCIDENT WITH THE NORTH LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 1141.22 FEET; THENCE SOUTH 01°42'44" EAST, 929.06 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 01°42'44" EAST, 1682.82 FEET; THENCE ALONG A CURVE TO THE LEFT, 254.46 FEET, SAID CURVE HAS A RADIUS OF 390.00 FEET AND A CHORD BEARING SOUTH 20°24'13" EAST, 249.97 FEET; THENCE SOUTH 39°05'42" EAST, 33.38 FEET; THENCE SOUTH 05°10'39" EAST, 113.43 FEET; THENCE ALONG A NONTANGENT CURVE TO THE RIGHT, 470.72 FEET, SAID CURVE HAS A RADIUS OF 5,565.00 FEET AND A CHORD BEARING SOUTH 54°24'24" WEST, 470.58 FEET; THENCE SOUTH 88°19'51" WEST, 614.31 FEET; THENCE ALONG A CURVE TO THE LEFT, 103.06 FEET, SAID CURVE HAS A RADIUS OF 60.00 FEET AND A CHORD BEARING SOUTH 39°07'31" WEST, 90.85 FEET; THENCE ALONG A CURVE TO THE LEFT, 136.32 FEET, SAID CURVE HAS A RADIUS OF 485.00 FEET AND A CHORD BEARING SOUTH 18°07'56" EAST, 135.87 FEET; THENCE SOUTH 26°11'04" EAST, 123.71 FEET; THENCE ALONG A NONTANGENT CURVE TO THE RIGHT, 48.00 FEET, SAID CURVE HAS A RADIUS OF 5,565.00 FEET, AND A CHORD BEARING SOUTH 63°53'41" WEST, 48.00 FEET; THENCE NORTH 26°11'04" WEST, 84.15 FEET; THENCE ALONG A CURVE TO THE RIGHT, 285.68 FEET, SAID CURVE HAS A RADIUS OF 515.00 FEET AND A CHORD BEARING NORTH 10°17'34" WEST, 282.03 FEET; THENCE ALONG A CURVE TO THE RIGHT, 18.47 FEET, SAID CURVE HAS A RADIUS OF 100.50 FEET AND A CHORD BEARING NORTH 10°51'46" EAST, 18.44 FEET; THENCE NORTH 16°07'36" EAST, 77.20 FEET; THENCE NORTH 01°40'51" WEST, 2180.47 FEET; THENCE NORTH 88°19'09" EAST, 893.42 FEET; THENCE NORTH 66°55'11" EAST, 70.74 FEET TO THE POINT OF BEGINNING, CONTAINING 2,220,356 SQUARE FEET OR 50.972 ACRES, MORE OR LESS.

### EASEMENT FOR INGRESS AND EGRESS OVER COMMON AREA

THE NON-EXCLUSIVE EASEMENTS INGRESS AND EGRESS OVER COMMON AREA BENEFITING PARCEL 1 CREATED UNDER THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTION AND EASEMENTS FOR MIDWEST COMMERCE CENTER IN GARDNER, KANSAS RECORDED IN VOLUME 200901, PAGE 001569 OF OFFICIAL RECORDS OF JOHNSON COUNTY, KANSAS.

When Recorded Return To:  
Tyler Ellsworth  
Kutak Rock LLP  
2300 Main Street, Suite 800  
Kansas City, MO 64108-2416

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*(Space above reserved for the Register of Deeds' recording information)*

Title of Document:                   RELEASE OF REAL ESTATE

Date of Document:                   FEBRUARY \_\_, 2020

Grantor:                               CITY OF GARDNER, KANSAS

Grantee:                               RT MIDWEST COMMERCE I, LLC

Grantee Address:                   90 PARK AVENUE, 32<sup>ND</sup> FLOOR  
NEW YORK, NY 10016

Legal Description:                   SEE **EXHIBIT A** ATTACHED HERETO

Reference Book and Page No.:     BOOK 200912, PAGE 004538  
BOOK 200912, PAGE 004540  
BOOK 200912, PAGE 004541

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## RELEASE OF REAL ESTATE

**FOR VALUE RECEIVED**, the CITY OF GARDNER, KANSAS (the “Issuer”), RT MIDWEST COMMERCE I, LLC, a Delaware limited liability company (the “Company”), as successor to US INDUSTRIAL REIT II, a Texas real estate trust (“US Industrial REIT II”), and WELLS FARGO BANK, NATIONAL ASSOCIATION (the “Trustee”), as trustee under that certain Trust Indenture dated as of November 1, 2009 (the “Indenture”), hereby release and discharge the property attached hereto as **Exhibit A** from the following documents, including all liens described thereon, all recorded in the office of the Register of Deeds of Johnson County, Kansas:

1. Lease dated as of November 1, 2009, as memorialized by a Memorandum of Lease dated as of November 1, 2009 (the “Memorandum of Lease”), by and between the Issuer and US Industrial REIT II and recorded in Book 200912, at Page 004538, as Document No. 20091215-00004538, on December 15, 2009;
2. Assignment of Lease dated as of November 1, 2009 (the “Assignment of Lease”), by and between the Issuer and the Trustee and recorded in Book 200912, at Page 004540, as Document No. 20091215-00004540, on December 15, 2009;
3. UCC Financing Statement in favor of the Issuer filed on December 15, 2009 (the “UCC Financing Statement”), recorded in Book 200912, at Page 004541, as Document No. 20091215-0004541 on December 15, 2009.

The Memorandum of Lease, the Assignment of Lease, and the UCC Financing Statement are referred to as the Released Documents.

The Released Documents are terminated effective as of the date of this document.

This Release of Real Estate is dated this February \_\_\_, 2020.

*[Remainder of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, the City of Gardner, Kansas, has hereunto caused this Release of Real Estate to be signed on its behalf as of the date first above written.

**CITY OF GARDNER, KANSAS**

By: \_\_\_\_\_  
Steve Shute  
Mayor

(SEAL)

ATTEST:

\_\_\_\_\_  
Sharon Rose  
City Clerk

**ACKNOWLEDGMENT**

STATE OF KANSAS        )  
  ) SS.  
COUNTY OF JOHNSON    )

BE IT REMEMBERED, that on this February\_\_\_\_, 2020, before me, the undersigned, a Notary Public in and for said County and State, came Steve Shute, Mayor of the City of Gardner, Kansas, a legally constituted municipal corporation and city of the first class duly organized and existing under the laws of the State of Kansas, and Sharon Rose, City Clerk of said City, who are personally known to me to be the same persons who executed the foregoing instrument of writing as such officers, and said Steve Shute, as Mayor, duly acknowledged the execution of the same to be the act of the City; and Sharon Rose, as City Clerk, duly acknowledged the attestation of the same for and on behalf of the City, and affixed thereto the seal of the City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_





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## COUNCIL ACTION FORM

## NEW BUSINESS ITEM No. 2

**MEETING DATE:** FEBRUARY 17, 2020

**STAFF CONTACT:** LARRY POWELL, BUSINESS & ECO DEV DIRECTOR

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**Agenda Item:** Consider accepting a voluntary annexation with landowner consent

**Strategic Priority:** Promote Economic Development

**Department:** Business and Economic Development

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### Staff Recommendation

Staff recommends the City Council adopt an ordinance for a voluntary annexation of a parcel of land as described below, annexing 33095 W. 183<sup>rd</sup> Street and adjacent parcel.

### Background/Description of Item:

A request to voluntary annex Exhibit A, an unplatted tract, was received by the City. The properties adjoin land already in the City of Gardner and can be annexed upon receipt of a voluntary annexation request from the property owners.

The attached Voluntary Consent Annexation Agreement outlines the terms agreed upon by the City and the property owners as conditions for this consent annexation. The terms are consistent with the direction of the governing body regarding annexation of rural properties in the City's planning and growth area. Consent annexations are not subject to resolution, notice, public hearing, and extension of services plan requirements that may apply to other annexations.

All that part of the Northeast ¼ of Section 33, Township 14, Range 22, and the Northwest ¼ of Section 34, Township 14, Range 22, Johnson County, Kansas, described as follows: Beginning at the Northwest corner of the Northeast ¼ of Section 33, thence North 89° 18'53" East, along the North line of said Section, a distance of 2670.60 feet, to the Northwest corner of the Northwest ¼ of Section 34, Township 14, Range 22, Johnson County, Kansas; thence North 89° 26'33" East, along the North line of the Northwest ¼ of Section 34, a distance of 957.41 feet, to the Westerly right-of-way line of 56 Highway; thence South 47° 45'26" West, along the Westerly right-of-way line of 56 Highway; a distance of 1261.40 feet to the East line of Northeast ¼ of Section 33, Township 14, Range 22, Johnson County, Kansas; thence continuing South 47° 45'33" West, along the Westerly right-of-way line of 56 Highway, a distance of 945.26 feet, thence South 89° 28'26" West, along the Westerly right-of-way line of 56 Highway, a distance of 15.03 feet thence South 47° 45'33" West, along the Westerly right-of-way line of 56 Highway, a distance of 880 feet, thence North 89° 28'26" East, along the Westerly right-of-way line of 56 Highway, a distance of 15.03 feet, thence South 47° 45'33" West, along the Westerly right-of-way line of 56 Highway, a distance of 929.20 feet, to the South line of the Northeast ¼ of Section 33, thence South 89° 28'26" West, along the South line of Northeast ¼, a distance of 567.06 feet, to the Southwest corner of the Northeast ¼ of Section 33; thence North 01° 53'08" West, along the West line of the Northeast

¼ of Section 33, a distance of 2665.05 feet, to the point of beginning. Containing 127.83 acres more or less. EXCEPT the following tract deeded to the State of Kansas on September 9, 1955 by the deed recorded in Book of Deeds 370, Page 538 in the Office of the Register of Deeds of Johnson County, Kansas, to wit: Beginning at the intersection of the Northwesterly right-of-way line of the present highway and the North line of the Northwest ¼ of Section 34; thence Southwesterly along said right-of-way line 645 feet; thence Northeasterly to a point on said North line 327.5 feet West of the place of beginning; thence East along said North line to the place of beginning, including the oil, gas, and other minerals in, under, and that may be produced therefrom.

The property is located adjacent to the city limits of Gardner Kansas in Johnson County, Kansas; at the north and east ends of the property.

**Financial Impact:**

The city will experience normal growth in its utilities structure as the property is constructed.

**Attachments included:**

- Voluntary Consent Annexation Agreement and Consent Annexation
- Ordinance No. 2651

**Suggested Motion:**

Accept the Voluntary Consent Annexation request of Heartland Family Farms LLC, and adopt Ordinance No. 2651, an ordinance annexing land to the City of Gardner, Kansas.



Business & Economic Development  
 Planning Division  
 120 E. Main St. Gardner, KS 66030  
 P: 913.856.0913 | F: 913.856.4562  
[www.gardnerkansas.gov](http://www.gardnerkansas.gov)

**OWNER AFFIDAVIT**

I/WE, Heartland Family Farms, LLC hereby referred to as the "Undersigned", being of lawful age, do hereby on this 5<sup>th</sup> day of February, 2020, make the following statements to wit:

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

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

2. I/We the undersigned, have previously authorized and hereby authorize Dentons US LLP (Herein referred to as "Applicant"), to act on my/our behalf for the purpose of making application with the City of Gardner, regarding Parcels 4F221433-3301 and 2F221434-1001 located on Route 56, Gardner, Kansas (common address), the subject property, or portion thereof. Such authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process. I/We further attest that I/We agree to be legally bound by the application made on our behalf by applicant and the resultant action upon such application by the City of Gardner.
3. It is understood that in the event the Undersigned is a corporation or partnership then the individual whose signature appears below for and on behalf of the corporation or partnership has in fact the authority to so bind the corporation or partnership to the terms and statements contained within this instrument.

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

HEARTLAND FAMILY FARMS, LLC

By: [Signature]  
 Name: ZANE BELDEN  
 Title: Manager

STATE OF Arizona

COUNTY OF Maricopa

The foregoing instrument was acknowledged before me on this 5<sup>th</sup> day of February 2020, by Zane Belden

My Commission Expires: 5-29-2021

[Signature]  
 Notary Public

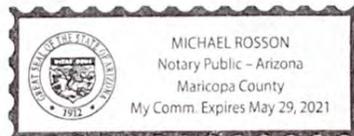


Exhibit A  
Legal Description

All that part of the Northeast  $\frac{1}{4}$  of Section 33, Township 14, Range 22, and the Northwest  $\frac{1}{4}$  of Section 34, Township 14, Range 22, Johnson County, Kansas, described as follows: Beginning at the Northwest corner of the Northeast  $\frac{1}{4}$  of Section 33, thence North  $89^{\circ} 18' 53''$  East, along the North line of said Section, a distance of 2670.60 feet, to the Northwest corner of the Northwest  $\frac{1}{4}$  of Section 34, Township 14, Range 22, Johnson County, Kansas; thence North  $89^{\circ} 26' 33''$  East, along the North line of the Northwest  $\frac{1}{4}$  of Section 34, a distance of 957.41 feet, to the Westerly right-of-way line of 56 Highway; thence South  $47^{\circ} 45' 26''$  West, along the Westerly right-of-way line of 56 Highway; a distance of 1261.40 feet to the East line of Northeast  $\frac{1}{4}$  of Section 33, Township 14, Range 22, Johnson County, Kansas; thence continuing South  $47^{\circ} 45' 33''$  West, along the Westerly right-of-way line of 56 Highway, a distance of 945.26 feet, thence South  $89^{\circ} 28' 26''$  West, along the Westerly right-of-way line of 56 Highway, a distance of 15.03 feet thence South  $47^{\circ} 45' 33''$  West, along the Westerly right-of-way line of 56 Highway, a distance of 880 feet, thence North  $89^{\circ} 28' 26''$  East, along the Westerly right-of-way line of 56 Highway, a distance of 15.03 feet, thence South  $47^{\circ} 45' 33''$  West, along the Westerly right-of-way line of 56 Highway, a distance of 929.20 feet, to the South line of the Northeast  $\frac{1}{4}$  of Section 33, thence South  $89^{\circ} 28' 26''$  West, along the South line of Northeast  $\frac{1}{4}$ , a distance of 567.06 feet, to the Southwest corner of the Northeast  $\frac{1}{4}$  of Section 33; thence North  $01^{\circ} 53' 08''$  West, along the West line of the Northeast  $\frac{1}{4}$  of Section 33, a distance of 2665.05 feet, to the point of beginning. Containing 127.83 acres more or less. EXCEPT the following tract deeded to the State of Kansas on September 9, 1955 by the deed recorded in Book of Deeds 370, Page 538 in the Office of the Register of Deeds of Johnson County, Kansas, to wit: Beginning at the intersection of the Northwesterly right-of-way line of the present highway and the North line of the Northwest  $\frac{1}{4}$  of Section 34; thence Southwesterly along said right-of-way line 645 feet; thence Northeasterly to a point on said North line 327.5 feet West of the place of beginning; thence East along said North line to the place of beginning, including the oil, gas, and other minerals in, under, and that may be produced therefrom.

**CONSENT FOR ANNEXATION**

(Adjoining property by request)

To: The Governing Body of the City of Gardner, Kansas.

The undersigned owners of record of the following described land hereby petition the Governing Body of the City of Gardner, Kansas to annex such land to the city. The land to be annexed is described as follows:

All that part of the Northeast  $\frac{1}{4}$  of Section 33, Township 14, Range 22, and the Northwest  $\frac{1}{4}$  of Section 34, Township 14, Range 22, Johnson County, Kansas, described as follows: Beginning at the Northwest corner of the Northeast  $\frac{1}{4}$  of Section 33, thence North  $89^{\circ} 18' 53''$  East, along the North line of said Section, a distance of 2670.60 feet, to the Northwest corner of the Northwest  $\frac{1}{4}$  of Section 34, Township 14, Range 22, Johnson County, Kansas; thence North  $89^{\circ} 26' 33''$  East, along the North line of the Northwest  $\frac{1}{4}$  of Section 34, a distance of 957.41 feet, to the Westerly right-of-way line of 56 Highway; thence South  $47^{\circ} 45' 26''$  West, along the Westerly right-of-way line of 56 Highway; a distance of 1261.40 feet to the East line of Northeast  $\frac{1}{4}$  of Section 33, Township 14, Range 22, Johnson County, Kansas; thence continuing South  $47^{\circ} 45' 33''$  West, along the Westerly right-of-way line of 56 Highway, a distance of 945.26 feet, thence South  $89^{\circ} 28' 26''$  West, along the Westerly right-of-way line of 56 Highway, a distance of 15.03 feet thence South  $47^{\circ} 45' 33''$  West, along the Westerly right-of-way line of 56 Highway, a distance of 880 feet, thence North  $89^{\circ} 28' 26''$  East, along the Westerly right-of-way line of 56 Highway, a distance of 15.03 feet, thence South  $47^{\circ} 45' 33''$  West, along the Westerly right-of-way line of 56 Highway, a distance of 929.20 feet, to the South line of the Northeast  $\frac{1}{4}$  of Section 33, thence South  $89^{\circ} 28' 26''$  West, along the South line of Northeast  $\frac{1}{4}$ , a distance of 567.06 feet, to the Southwest corner of the Northeast  $\frac{1}{4}$  of Section 33; thence North  $01^{\circ} 53' 08''$  West, along the West line of the Northeast

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Such land lies upon or touches the city boundary line.

The undersigned further warrant and guarantee that they are the only owners of record of the land. Signed this 5<sup>th</sup> day of February, 2020.

Owner:

HEARTLAND FAMILY FARMS, LLC

By:   
Name: ZANE BELDEN  
Title: Manager

## VOLUNTARY CONSENT ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT is made and entered into this 5<sup>th</sup> day of February 2020, between the City of Gardner, Kansas, a municipal corporation, (the City) and HEARTLAND FAMILY FARMS, LLC (Property owner(s) or applicant).

### RECITALS

- A. The undersigned are the Owners of Record of the following described real property located in unincorporated areas of Johnson County, Kansas adjacent to or near the City of Gardner, Kansas.

#### Legal Description:

All that part of the Northeast  $\frac{1}{4}$  of Section 33, Township 14, Range 22, and the Northwest  $\frac{1}{4}$  of Section 34, Township 14, Range 22, Johnson County, Kansas, described as follows: Beginning at the Northwest corner of the Northeast  $\frac{1}{4}$  of Section 33, thence North  $89^{\circ} 18' 53''$  East, along the North line of said Section, a distance of 2670.60 feet, to the Northwest corner of the Northwest  $\frac{1}{4}$  of Section 34, Township 14, Range 22, Johnson County, Kansas; thence North  $89^{\circ} 26' 33''$  East, along the North line of the Northwest  $\frac{1}{4}$  of Section 34, a distance of 957.41 feet, to the Westerly right-of-way line of 56 Highway; thence South  $47^{\circ} 45' 26''$  West, along the Westerly right-of-way line of 56 Highway; a distance of 1261.40 feet to the East line of Northeast  $\frac{1}{4}$  of Section 33, Township 14, Range 22, Johnson County, Kansas; thence continuing South  $47^{\circ} 45' 33''$  West, along the Westerly right-of-way line of 56 Highway, a distance of 945.26 feet, thence South  $89^{\circ} 28' 26''$  West, along the Westerly right-of-way line of 56 Highway, a distance of 15.03 feet thence South  $47^{\circ} 45' 33''$  West, along the Westerly right-of-way line of 56 Highway, a distance of 880 feet, thence North  $89^{\circ} 28' 26''$  East, along the Westerly right-of-way line of 56 Highway, a distance of 15.03 feet, thence South  $47^{\circ} 45' 33''$  West, along the Westerly right-of-way line of 56 Highway, a distance of 929.20 feet, to the South line of the Northeast  $\frac{1}{4}$  of Section 33, thence South  $89^{\circ} 28' 26''$  West, along the South line of Northeast  $\frac{1}{4}$ , a distance of 567.06 feet, to the Southwest corner of the Northeast  $\frac{1}{4}$  of Section 33; thence North  $01^{\circ} 53' 08''$  West, along the West line of the Northeast

$\frac{1}{4}$  of Section 33, a distance of 2665.05 feet, to the point of beginning. Containing 127.83 acres more or less. EXCEPT the following tract deeded to the State of Kansas on September 9, 1955 by the deed recorded in Book of Deeds 370, Page 538 in the Office of the Register of Deeds of Johnson County, Kansas, to wit: Beginning at the intersection of the Northwesterly right-of-way line of the present highway and the North line of the Northwest  $\frac{1}{4}$  of Section 34; thence Southwesterly along said right-of-way line 645 feet; thence Northeasterly to a point on said North line 327.5 feet West of the place of beginning; thence East along said North line to the place of beginning, including the oil, gas, and other minerals in, under, and that may be produced therefrom.

- B. The Applicants respectfully request that the City consider voluntary consent annexation as outlined in this Agreement under the following conditions:
1. Prior to the Key Development Point, for a period not to exceed twenty (20) years of the assessment of the City's portion of the Property Owner's ad valorem taxes on the Property, the City agrees to rebate the City's portion of the Property Owner's ad valorem taxes on the Property to the Property Owner. For purposes of this paragraph the Key Development Point is defined as the earlier of: (1) rezoning of the property to a use other than AG (Agricultural) or RLD (Residential Low Density); or (2) sale of the property to subsequent property owner who commits the use of the property to a use other than an agricultural residential low density use. City also agrees that Property Owner shall not be required to make other payments for City services that Property Owner does not use.
  2. Such City property taxes shall be reimbursed by the City within thirty (30) days following receipt by the City from the property owner(s) of a copy of the applicable annual tax statement showing the annual property tax paid in full said copy from the Johnson County Records and Tax Administration Department. The tax statement can be either hand delivered to City Hall 120 E. Main Street in Gardner KS or mailed to the City Administrator - care of the City Hall at 120 E. Main Street, Gardner, Kansas 66030. The city shall not be responsible for failure of delivery.
  3. Public Infrastructure will not be improved until such time when the Governing Body shall determine that such improvements are prudent and feasible for the betterment of the City. If and when improvements are approved for construction a Plan for Services will be created and will marked Exhibit A and attached to this document. Nothing in this agreement however shall require the Governing Body to approve or establish any benefit district for the financing of public infrastructure except where required by Law.
  4. The property owners of the area described above may at any time voluntarily petition the City to form a benefit district to finance public improvements subject to K.S.A. 12-6a01 et seq.
  5. Once the property is annexed it will be rezoned to the closest city zoning that equals the current County Zoning that the property retains. The property owners may request that the property be rezoned to a different classification by filing a rezoning request.
  6. Property Owner(s) agree to dedicate to the City rights of way and or utility or pedestrian easements that are necessary for the efficient provision of public services.

7. The property owners of the above mentioned property will be entitled to all of the rights and responsibilities of citizenship within the City of Gardner, Kansas.
8. The annexation will not become effective until after the City Council formally approves and adopts the necessary Annexation Ordinance as required by Kansas Statutes and said ordinance is published once in the official City newspaper.
9. If the City of Gardner receives written notice from applicant that Heartland Family Farms, LLC has not closed on the following transaction: the sale of land to a certain purchaser as more particularly described in that certain Agreement for Purchase and Sale of Commercial Property dated October 16, 2019; then the City of Gardner shall immediately initiate proceedings to de-annex the property pursuant to K.S.A. 12-504 and 12-505.
10. This Agreement shall not provide for any property tax abatement or other incentives without the authorized approval of the City Council. The reimbursed City property taxes shall in no way be considered to be a tax abatement under the requirements of state law. Any incentives additional provisions agreed to by the City will be listed in Exhibit B.
11. This document shall constitute the entire Agreement between the undersigned landowner(s) and the City of Gardner, Kansas.

Now, therefore, in consideration of the City of Gardner's agreeing to the above conditions for the above described property, the undersigned does give full and complete consent to the City of Gardner to annex the above described property in accordance with the laws of the state of Kansas at any time after the date of this agreement.  
This agreement shall run with the land described and shall be binding upon the heirs, grantees successors and assigns of the undersigned.

ADOPTED BY THE CITY COUNCIL AND SIGNED BY THE MAYOR OF GARDNER, KANSAS ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

CITY OF GARDNER, KANSAS

BY: \_\_\_\_\_  
Steve Shute, Mayor

ATTEST:

\_\_\_\_\_  
Sharon Rose, City Clerk

Approved as to form:  
\_\_\_\_\_

Ryan Denk, City Attorney

In Witness thereof, the undersigned have caused this agreement to be executed on \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Owners of Record:

HEARTLAND FAMILY FARMS, LLC

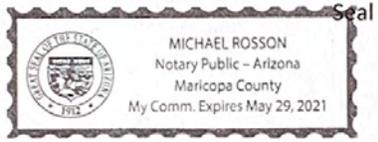
By: *Zane Belden*  
Name: ZANE BELDEN  
Title: Manager

State of ~~Kansas~~ Arizona  
County of ~~Johnson~~ Maricopa

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of February,  
2020 by Zane Belden

who is (are) personally known to me: Michael Rosson *Michael Rosson*

Notary Public



**ORDINANCE NO. 2651**

AN ORDINANCE ANNEXING LAND TO THE CITY OF GARDNER, KANSAS.

WHEREAS, the following described land is located in Johnson County, Kansas;

WHEREAS, written petitions and/or consents for annexation of the following described land, signed by all of the owners thereof, have been filed with the City of Gardner, Kansas pursuant to K.S.A. 12-520(a)(7), as amended; and

WHEREAS, the governing body of the City of Gardner, Kansas, finds it advisable to annex such land.

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

Section 1. That the following described land is hereby annexed and made a part of the City of Gardner, Kansas:

SEE EXHIBIT A ATTACHED HERETO.

Section 2. That this ordinance shall be effective from and after its passage, approval and publication in the official city newspaper.

PASSED AND APPROVED by the Governing Body of the City of Gardner, Kansas this \_\_\_\_ day of \_\_\_\_\_, 2020.

(SEAL)

\_\_\_\_\_  
Steve Shute, Mayor

ATTEST:

\_\_\_\_\_  
Sharon Rose, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ryan B. Denk, City Attorney

Exhibit A  
Legal Description

All that part of the Northeast  $\frac{1}{4}$  of Section 33, Township 14, Range 22, and the Northwest  $\frac{1}{4}$  of Section 34, Township 14, Range 22, Johnson County, Kansas, described as follows: Beginning at the Northwest corner of the Northeast  $\frac{1}{4}$  of Section 33, thence North  $89^{\circ} 18' 53''$  East, along the North line of said Section, a distance of 2670.60 feet, to the Northwest corner of the Northwest  $\frac{1}{4}$  of Section 34, Township 14, Range 22, Johnson County, Kansas; thence North  $89^{\circ} 26' 33''$  East, along the North line of the Northwest  $\frac{1}{4}$  of Section 34, a distance of 957.41 feet, to the Westerly right-of-way line of 56 Highway; thence South  $47^{\circ} 45' 26''$  West, along the Westerly right-of-way line of 56 Highway; a distance of 1261.40 feet to the East line of Northeast  $\frac{1}{4}$  of Section 33, Township 14, Range 22, Johnson County, Kansas; thence continuing South  $47^{\circ} 45' 33''$  West, along the Westerly right-of-way line of 56 Highway, a distance of 945.26 feet, thence South  $89^{\circ} 28' 26''$  West, along the Westerly right-of-way line of 56 Highway, a distance of 15.03 feet thence South  $47^{\circ} 45' 33''$  West, along the Westerly right-of-way line of 56 Highway, a distance of 880 feet, thence North  $89^{\circ} 28' 26''$  East, along the Westerly right-of-way line of 56 Highway, a distance of 15.03 feet, thence South  $47^{\circ} 45' 33''$  West, along the Westerly right-of-way line of 56 Highway, a distance of 929.20 feet, to the South line of the Northeast  $\frac{1}{4}$  of Section 33, thence South  $89^{\circ} 28' 26''$  West, along the South line of Northeast  $\frac{1}{4}$ , a distance of 567.06 feet, to the Southwest corner of the Northeast  $\frac{1}{4}$  of Section 33; thence North  $01^{\circ} 53' 08''$  West, along the West line of the Northeast  $\frac{1}{4}$  of Section 33, a distance of 2665.05 feet, to the point of beginning. Containing 127.83 acres more or less. EXCEPT the following tract deeded to the State of Kansas on September 9, 1955 by the deed recorded in Book of Deeds 370, Page 538 in the Office of the Register of Deeds of Johnson County, Kansas, to wit: Beginning at the intersection of the Northwesterly right-of-way line of the present highway and the North line of the Northwest  $\frac{1}{4}$  of Section 34; thence Southwesterly along said right-of-way line 645 feet; thence Northeasterly to a point on said North line 327.5 feet West of the place of beginning; thence East along said North line to the place of beginning, including the oil, gas, and other minerals in, under, and that may be produced therefrom.