

ORDINANCE NO. 2737

AN ORDINANCE AUTHORIZING THE ISSUANCE AND DELIVERY OF \$11,425,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION BONDS, SERIES 2022A, OF THE CITY OF GARDNER, KANSAS; AND PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON THE BONDS AS THEY BECOME DUE.

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

WHEREAS, pursuant to K.S.A. 10-123 and K.S.A. 12-6a01 *et seq.*, the City has previously issued its General Obligation Temporary Notes, Series 2020C, in the original principal amount of \$5,205,000 (the “Existing Notes”), to finance certain sanitary sewer, street, and water line improvements, including improvements to serve the Tuscan Farm Areawide Infrastructure Special Benefit District, authorized by Resolution No. 2012 adopted February 18, 2019, as amended by Ordinance No. 2733 passed on June 6, 2022, and the Tuscan Farm Phase 1a Infrastructure Special Benefit District, authorized by Resolution No. 2013 adopted February 18, 2019, as amended by Ordinance No. 2732 passed on June 6, 2022 (collectively, the “Tuscan Farm SBDs Improvements”);

WHEREAS, pursuant to K.S.A. 12-617 and 12-618, and other provisions of the laws of the State applicable thereto, by proceedings had, the Governing Body of the City has authorized certain sewer system improvements to serve the New Trails/Prairie Trace development to be made in the City (the “Prairie Trace Sewer Improvements”);

WHEREAS, pursuant to Article 12, Section 5, of the Constitution of the State of Kansas, Charter Ordinance No. 28 of the City, all as amended or supplemented, and other provisions of the laws of the State applicable thereto, by proceedings had, the Governing Body of the City has caused certain water system improvements to serve the New Trails/Prairie Trace development to be made in the City (the “Prairie Trace Waterline Improvements”);

WHEREAS, pursuant to K.S.A. 12-685 *et seq.*, as amended or supplemented, and other provisions of the laws of the State applicable thereto, by proceedings had, the Governing Body of the City has authorized the issuance of general obligation bonds to finance certain improvements to Waverly Road and to Main Street (Highway 56) (the “Main Trafficway Improvements”; together with the Tuscan Farm SBDs Improvements, the Prairie Trace Sewer Improvements, and the Prairie Trace Waterline Improvements, collectively, the “Improvements”);

WHEREAS, all legal requirements pertaining to the Improvements have been complied with, and the Governing Body of the City now finds and determines that the total cost of the Improvements and related expenses, excluding prepaid special assessments, if any, is at least \$11,425,000;

WHEREAS, pursuant to K.S.A. 12-617 and 12-618, K.S.A. 12-685 *et seq.*, K.S.A. 12-6a01 *et seq.*, Article 12, Section 5, of the Constitution of the State of Kansas, and Charter Ordinance No. 28 of the City, all as amended or supplemented, the Governing Body of the

City is authorized to issue general obligation bonds of the City to pay the costs of the Improvements and the costs of redeeming the Existing Notes;

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

WHEREAS, the Governing Body of the City finds and determines that it is necessary for the City to authorize the issuance and delivery of its general obligation bonds in the principal amount of \$11,425,000 to pay the costs of the Improvements and the costs of redeeming the Existing Notes, including the costs of issuance of the Bonds (as herein defined);

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

Section 1. Definitions of Words and Terms.

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

“Bonds” means the City’s General Obligation Bonds, Series 2022A, authorized by this Ordinance in the aggregate principal amount of \$11,425,000, and dated August 10, 2022.

“City” means the City of Gardner, Kansas.

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

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

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

“Existing Notes” means the Existing Notes as described in the recitals to this Ordinance.

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

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

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

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

“State” means the State of Kansas.

Section 2. Authorization of and Security for the Bonds. There shall be issued and are authorized and directed to be issued the Bonds of the City, in the principal amount of \$11,425,000, for the purpose of providing funds to pay the costs of the Improvements and to redeem a portion of the Existing Notes, including payment of the costs of issuance of the Bonds.

The Bonds shall be general obligations of the City payable as to both principal and interest in part from special assessments levied upon the property benefited by the construction of certain improvements and, if not so paid, from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City. The balance of the principal and interest on the Bonds is payable from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City. The full faith, credit and resources of the City are irrevocably pledged for the prompt payment of the principal of and interest on the Bonds as the same become due.

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

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

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

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

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

from gross income of the interest on the Bonds. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

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

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

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

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

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PASSED by the Governing Body of the City on July 18, 2022.

APPROVED by the Mayor on July 18, 2022.

CITY OF GARDNER, KANSAS

By _____ /s/
Mayor

(Seal)

Attest:

_____/s/
City Clerk