

ORDINANCE NO. 2488

AN ORDINANCE AUTHORIZING THE ISSUANCE AND DELIVERY OF \$3,945,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION REFUNDING BONDS, SERIES 2015A, 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”); and

WHEREAS, the City has previously entered into a Loan Agreement with the Kansas Department of Health and Environment acting on behalf of the State of Kansas (“KDHE”), effective as of November 30, 2005, as amended by that certain First Amendment to the Loan Agreement effective as of March 20, 2006, that certain Second Amendment to the Loan Agreement effective as of July 14, 2008, and that certain Third Amendment to the Loan Agreement effective as of February 27, 2009, for a project designated by KDHE as project number KPWSLF 2446 (the “Loan”) to provide financing for certain improvements to the public water supply system operated by the City consisting of the expansion and modification of the existing water treatment plant with new or upgraded equipment including pumps, basins, a clearwell, a rapid mix/chemical feed system, filters and all related appurtenances (the “Improvements”); and

WHEREAS, in order to achieve interest cost savings through the prepayment of the Loan and to provide an orderly plan of finance for the City, the Governing Body of the City has determined it is in the best interest of the City and its inhabitants to prepay the Loan; and

WHEREAS, the City has provided notice to KDHE of its intent to prepay the Loan on August 1, 2015, using the proceeds of tax-exempt general obligation bonds of the City; and

WHEREAS, pursuant to K.S.A. 65-163d through 65-163u, all as amended, and other provisions of the laws of the State applicable thereto, by proceedings had, the Governing Body of the City has authorized general obligation bonds to be issued to pay the cost of the Improvements; and

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 (including interest on the Loan and issuance costs of the Bonds) and related expenses are at least \$3,945,000; and

WHEREAS, the Governing Body of the City has advertised the sale of its general obligation bonds in accordance with the law and at a meeting held in the City on this date, awarded 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 \$3,945,000 to provide permanent financing for the Improvements through the prepayment of the Loan and pay the costs of issuance of such bonds;

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

Section 1. Definitions of Words and Terms.

“Bond and Interest Fund” means the Bond and Interest Fund of the City for its General Obligation Bonds.

“Bonds” means the City’s General Obligation Refunding Bonds, Series 2015A, authorized by the Ordinance in the aggregate principal amount of \$3,945,000, and dated July 15, 2015.

“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.

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

“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

\$3,945,000, for the purpose of providing funds to pay the cost of the Improvements, including the cost of any interim financing for the Improvements and the cost of issuing the Bonds.

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

Section 3. Terms, Details and Conditions of the Bonds. The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such form, shall be subject to redemption and payment prior to the 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 June 15, 2015.

APPROVED by the Mayor on June 15, 2015.

CITY OF GARDNER, KANSAS

(SEAL)

/s/ Chris Morrow
Chris Morrow, Mayor

Attest:

/s/ Jeanne Koontz
Jeanne Koontz, City Clerk