

**ORDINANCE NO. 2535**

**AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS BY THE CITY OF GARDNER, KANSAS, IN CONNECTION WITH A LEASE-PURCHASE TRANSACTION FOR THE ACQUISITION OF LAND.**

**WHEREAS**, pursuant to Article 12, Section 5, of the Constitution of the State of Kansas and K.S.A. 12-101, cities are authorized to enter into lease-purchase agreements provided such agreements comply with the provisions of K.S.A. 10-1116b and 10-1116c;

**WHEREAS**, the Governing Body of the City of Gardner, Kansas (the “City”), has determined it necessary and desirable to enter into certain lease-purchase documents as described in this Ordinance for the purpose of financing the acquisition of a site (the “Project”), which site will be owned by the City and which will be the location of a public building or buildings to be constructed by the City at a future date;

**WHEREAS**, it has been determined to be in the best interest of the City for the City to enter into a Base Lease with First Option Bank, Osawatomie, Kansas (the “Bank”), whereby the City leases the Project to the Bank in consideration for a lump sum rental payment of \$678,000; and

**WHEREAS**, it has further been determined to be in the best interest of the City for the City to enter into a Lease-Purchase Agreement with the Bank (the “Agreement”), whereby the Bank leases the Project back to the City in consideration of certain rental payments (the “Rental Payments”), which Rental Payments shall be subject to annual appropriation by the City and shall not constitute a general obligation or debt of the City;

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

**Section 1.** The Base Lease and the Agreement, substantially in the forms presented to the City on this date, are authorized and approved with such additions, revisions and corrections as may be approved by the Mayor, such approval to be conclusively evidenced by his execution of such document on behalf of the City.

**Section 2.** The Mayor and City Clerk are authorized to execute the Base Lease and the Agreement on behalf of the City, and the Mayor, City Clerk, City Finance Director and other City officials are further authorized to execute such ancillary certificates and documents necessary to accomplish the purposes set forth in this Ordinance, the Base Lease and the Agreement.

**Section 3.** The City designates the Agreement as a “qualified tax-exempt obligation” as such term is defined in Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the “Code”).

**Section 4.** The City covenants and agrees that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest portion of the Rental Payments under the Agreement under

Section 103 of the Code. The City covenants and agrees that it will use the rent received under the Base Lease as soon as practicable and with all reasonable dispatch for the purpose for which such payment is intended as hereinbefore set forth, and that it will not directly or indirectly use or permit the use of any rent under the Base Lease or any other funds of the City, or take or omit to take any action, that would cause the Rental Payments under the Agreement to be an “arbitrage bond” within the meaning of Section 148(a) of the Code.

**Section 5.** This Ordinance shall be in full force and effect from and after its adoption by the Governing Body and publication once in the official City newspaper.

**PASSED** by the Governing Body of the City of Gardner, Kansas and approved by the Mayor on December 5, 2016.

**CITY OF GARDNER, KANSAS**

(SEAL)

/s/ Chris Morrow  
Chris Morrow, Mayor

Attest:

/s/ Jeanne Koontz  
Jeanne Koontz, City Clerk