

ORDINANCE NO. 2578

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 PURPOSE OF FINANCING CERTAIN IMPROVEMENTS TO GARDNER GOLF COURSE.

WHEREAS, on April 16, 2018, the Governing Body of the City of Gardner, Kansas (the “City”), approved that certain Operating Agreement dated as of April 16, 2018 (the “Operating Agreement”), by and between JPM Enterprises, LLC (the “Company”), and the City, for the management and operation of Gardner Golf Course (the “Golf Course”);

WHEREAS, pursuant to the Operating Agreement, the City is obligated to make certain improvements to the Golf Course as more particularly set forth therein (the “Improvements”);

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 has determined it necessary and desirable to enter into certain lease-purchase documents as described in this Ordinance for the purpose of financing the Improvements;

WHEREAS, it has been determined to be in the best interest of the City for the City to enter into a Base Lease (the “Base Lease”) with [Bank], [location], (the “Bank”), whereby the City leases the Golf Course to the Bank in consideration for a lump sum rental payment of \$[_____]; 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 Golf Course back to the City in consideration of certain rental payments (the “Rental Payments”) that 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 Governing Body of the City hereby ratifies and approves all action previously taken by the City Finance Director, the City Attorney, Ehlers & Associates, Inc., the City’s Municipal Advisor, and Kutak Rock LLP, the City’s Bond Counsel, to facilitate the request for proposals for financing the Improvements.

Section 2. 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 documents on behalf of the City.

Section 3. 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 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 Internal Revenue Code of 1986, as amended (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. The obligations authorized by this Ordinance are authorized to reimburse expenditures made by the City 60 days before and during the time after the date of this Ordinance in accordance with United States Treasury Regulation 1.150-2.

Section 6. This Ordinance shall be in full force and effect from and after its passage by the Governing Body and publication once in the official City newspaper.

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PASSED by the Governing Body of the City of Gardner, Kansas, and approved by the Mayor on May 7, 2018.

CITY OF GARDNER, KANSAS

/s/

Steve Shute, Mayor

(Seal)

ATTEST:

/s/

Amy Puc, City Clerk

APPROVED AS TO FORM:

/s/

Ryan Denk, City Attorney