

RESOLUTION NO. 2022

A RESOLUTION AUTHORIZING THE ISSUANCE AND DELIVERY OF \$3,725,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION TEMPORARY NOTES, SERIES 2019A, OF THE CITY OF GARDNER, KANSAS, FOR THE PURPOSE OF TEMPORARILY FINANCING THE COST OF CERTAIN INTERNAL IMPROVEMENTS OF THE CITY.

WHEREAS, pursuant to K.S.A. 12-6a01 *et seq.*, as amended, and all other provisions of the laws of the State of Kansas (the “State”), by proceedings and other actions legally taken, the City of Gardner, Kansas (the “City”) is proceeding with constructing the following water, sewer, storm water, street and related improvements (the “Improvements”), at a total estimated cost of not to exceed \$3,945,000;

- (a) Tuscan Farm Phase I Infrastructure Special Benefit District improvements; and
- (b) Tuscan Farm Sanitary Lift Station Special Benefit District improvements;

WHEREAS, the cost of the Improvements is authorized to be paid in whole or in part by the issuance of general obligation bonds of the City in the manner provided by law; and

WHEREAS, it is necessary for the City to provide interim financing for the Improvements until the construction is completed and general obligation bonds can be issued to permanently finance the cost of the Improvements, and it is desirable and in the interest of the City that such funds be raised by the issuance of temporary notes of the City, the notes to be issued by the City pursuant to K.S.A. 10-123;

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

ARTICLE I DEFINITIONS

Section 101. Definitions of Words and Terms.

“**Act**” means the Constitution and statutes of the State including, but not limited to, K.S.A. 10-123 and K.S.A. 12-6a01 *et seq.*, all as amended or supplemented.

“**Authorized Costs**” means the amount of expenditures for an improvement, which may include capitalized interest and interest during construction, which has been authorized to be paid by the City by an ordinance or resolution of the City, including expenditures made to redeem outstanding general obligation bonds and outstanding notes issued to pay for such improvement and Costs of Issuance of the Notes, less (a) the amount of any notes or bonds of the City which are currently outstanding and available to pay such Authorized Costs and (b) any Authorized Costs which have been previously paid by the City or by any eligible source of funds unless such amounts are entitled to be reimbursed under State and federal law.

“**Authorized Denominations**” means the denomination of \$5,000 or any integral multiple thereof.

“**Authorized Investments**” means those investments permitted by K.S.A. 10-131, as amended from time to time, or as otherwise permitted under the laws of the State.

“**Beneficial Owner**” means any Person who (a) has the power directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any book-entry note (including persons holding book-entry notes through nominees, depositories or other intermediaries), or (b) is treated as owner of any book-entry note for federal income tax purposes

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

“**Bond Counsel**” means the firm of Kutak Rock LLP, or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the City.

“**Capitalized Interest Deposit**” means the amount set forth on *Exhibit B* to be deposited into the Principal and Interest Account.

“**Cede & Co.**” means Cede & Co., as nominee of The Depository Trust Company, New York, New York.

“**City**” means the City of Gardner, Kansas.

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

“**City Treasurer**” means the appointed and acting City Treasurer of the City 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.

“**Costs of Issuance**” means all costs of issuing the Notes, including, but not limited to, all publication, preparation, signing and mailing expenses, registration fees, all legal fees and expenses of Bond Counsel and other legal counsel, all fees and expenses of the municipal advisor, all fees of the Attorney General of the State, and any fees in connection with receiving municipal bond insurance or ratings on the Notes.

“**Final Official Statement**” means the final official statement prepared by the City or its representatives in connection with the sale of the Notes and delivered to the Original Purchaser within seven business days after the sale of the Notes in accordance with the SEC Rule. The Final Official Statement includes the information in the Preliminary Official Statement as supplemented or amended.

“**Improvement Fund**” means the fund by that name created in Section 401.

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

“**Interest Payment Dates**” means April 1 and October 1 in each year, commencing October 1, 2019, and ending on the maturity date of the Notes, or such other time as the Notes are paid or provision for the payment is made.

“**Letter of Instructions**” means the arbitrage letter of instructions (dated as of the date of issuance of the Notes) relating to certain matters within the scope of Section 148 of the Code, as the same may be amended or supplemented in accordance with its terms.

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

“**Note Registrar**” means the State Treasurer and its successors and assigns.

“**Notes**” means the General Obligation Temporary Notes, Series 2019A, authorized by this Resolution in the aggregate principal amount of \$3,725,000, and dated June 12, 2019.

“**Original Purchaser**” means the original purchaser of the Notes described on *Exhibit B* to this Resolution.

“**Outstanding**” means all Notes issued, authenticated and delivered under the provisions of this Resolution, except:

- (a) Notes canceled by the Paying Agent or delivered to the Paying Agent for cancellation pursuant to this Resolution;
- (b) Notes for the payment or redemption of which monies or investments have been deposited in accordance with this Resolution; and
- (c) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Resolution.

“**Owner**” when used with respect to any Note means the Person in whose name such Note is registered on the registration books of the City as maintained by the Note Registrar.

“**Participants**” means those financial institutions for whom the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

“**Paying Agent**” means the State Treasurer, Topeka, Kansas, and any successors and assigns

“**Person**” means any natural person, corporation, partnership, joint venture, association, firm, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision or other public body.

“**Preliminary Official Statement**” means the Preliminary Official Statement which was prepared by the City and its advisors in connection with the sale of the Notes and distributed to potential purchasers of the Notes before the Final Official Statement, as described in the SEC Rule, was made available.

“**Principal and Interest Account**” means the account by that name created in Section 401.

“**Principal Payment Date**” means October 1, 2021, or until such time as the aggregate principal amount of the Notes has been paid or provision is made for payment.

“**Purchase Price**” means the original purchase price of the Notes described on *Exhibit B* to this Resolution.

“**Rebate Fund**” means the fund by that name created in Section 401.

“**Record Dates**” means the fifteenth day of each month (whether or not a business day) preceding the Interest Payment Dates of each year the Notes are Outstanding.

“**Replacement Notes**” means Notes issued to the Beneficial Owners of the Notes in accordance with Section 204 of this Resolution.

“**Resolution**” means this Resolution authorizing the issuance of the Notes.

“**SEC Rule**” means the Securities and Exchange Commission Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (17 C.F.R. § 240.15c2-12).

“**Securities Depository**” means, initially, The Depository Trust Company, New York, New York, and its successors and assigns.

“**State**” means the State of Kansas.

“**State Treasurer**” means the elected Treasurer of the State or, in the Treasurer’s absence, the acting Treasurer of the State.

“**Substitute Improvement**” means any improvement or addition in the City which has been authorized by a resolution or ordinance of the City in accordance with Section 504 of this Resolution to be in place of or in addition to the Improvements set forth in the recitals to this Resolution.

ARTICLE II AUTHORIZATION OF THE NOTES

Section 201. Authorization of and Security for the Notes. The Notes are authorized and directed to be issued pursuant to this Resolution for the purpose of providing funds to pay the Authorized Costs of the Improvements.

The Notes shall be general obligations of the City payable as to both principal and interest from general obligation bonds of the City, from special assessments levied upon the property

benefited by the construction of the Improvements and from current revenues of the City authorized for such purpose. If not so paid, the principal of and interest on the Notes shall be 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 Notes as the same become due.

Section 202. Description of the Notes. The Notes shall consist of fully registered notes in Authorized Denominations, and shall be numbered in such manner as the Note Registrar determines. The Notes will be dated June 12, 2019, bear interest from that date at the interest rate set forth on *Exhibit B* to this Resolution until paid and become due on the Principal Payment Date.

Interest on the Notes at the rate set forth on *Exhibit B* to this Resolution (computed on the basis of a 360-day year of twelve 30-day months) shall be payable on the Interest Payment Dates to the Owners of the Notes whose names appear on the books maintained by the Note Registrar at the close of business on the Record Dates.

Section 203. Designation of Paying Agent and Note Registrar. The State Treasurer is designated as the Paying Agent and Note Registrar for the Notes. The Mayor and City Clerk of the City are authorized and empowered to execute on behalf of the City an agreement with the Note Registrar and Paying Agent for the Notes. The City reserves the right to appoint a successor Paying Agent or Note Registrar. No resignation or removal of the Paying Agent or Note Registrar shall become effective until a successor has been appointed and has accepted the duties of paying agent or note registrar. Every Paying Agent or Note Registrar appointed by the City shall at all times meet the requirements of State law and the City will at all times maintain a Paying Agent and Note Registrar meeting the requirements of State law.

Section 204. Initial Registration with Securities Depository. The Notes shall be registered on note registration books maintained by the Note Registrar to Cede & Co., the nominee for the Securities Depository, and no Beneficial Owner will receive certificates representing their respective interests in the Notes, except in the event the City issues Replacement Notes as provided in this Section. It is anticipated that during the term of the Notes, the Securities Depository will make book-entry transfers among its Participants and receive and transmit payment of principal of, and interest on, the Notes until and unless the City authenticates and delivers Replacement Notes to the Beneficial Owners in the manner described in this Section.

If the City determines (a) that the Securities Depository is unable to properly discharge its responsibilities, (b) that the Securities Depository is no longer qualified to act as a securities depository and registered clearing agency under the Securities Exchange Act of 1934, as amended, (c) that the continuation of a book-entry only system to the exclusion of any Notes being issued to any Owner other than Cede & Co., is no longer in the best interest of the Beneficial Owners of the Notes, or if the City receives written notice from Participants having interests in not less than 50% of the Notes, as shown on the records of the Securities Depository, that the continuation of a book-entry only system to the exclusion of Notes being issued to any Owner other than Cede & Co., is no longer in the best interest of the Beneficial Owners of the Notes, or if the Securities Depository determines to discontinue providing book-entry services, then the City shall notify the Owners of the Notes of such determination or such notice and of the availability of certificates to Owners

who request certificates, and the City shall authenticate and deliver Replacement Notes to the Beneficial Owners or their nominees in principal amounts representing the interest of each, making such adjustments as it may find necessary or appropriate as to accrued interest and previous calls for redemption. In such event, all references to the Securities Depository in this Resolution shall relate to the period of time when the Securities Depository has possession of at least one certificate. Upon the issuance of Replacement Notes, all references in this Resolution to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the City, to the extent such provisions are consistent with and applicable to Replacement Notes. If the Securities Depository resigns and the City or Owners are unable to locate a qualified successor of the Securities Depository, then the City shall authenticate and deliver Replacement Notes to the Participants for the benefit of the Owners.

Section 205. Method and Place of Payment of the Notes. The principal of, premium, if any, and interest on the Notes shall be payable in any coin or currency which, on the respective dates of payment, is legal tender for the payment of debts due the United States of America.

The principal of and any premium on the Notes shall be paid to the Owner of each Note upon presentation of the Note at the maturity or redemption date to the Paying Agent for cancellation. The interest payable on the Notes on any Interest Payment Date shall be paid by the Paying Agent to the Owner of each Note at the Owner's address as it appears on the registration books of the City maintained by the Note Registrar at the close of business on the Record Date for such interest:

(a) by check or draft mailed by the Paying Agent to the address of such Owner shown on the Note Register;

(b) at such other address as is furnished to the Paying Agent in writing by such Owner;
or

(c) in the case of an interest payment to any Owner that is a securities depository, by wire transfer to such Owner upon written notice given to the Note Registrar by such Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank (which shall be in the continental United States), address, ABA routing number and account number to which such Owner wishes to have such wire directed. The Paying Agent will keep in its offices a record of payment of principal of, premium, if any, and interest on all Notes.

Section 206. Method of Execution and Authentication of the Notes. The Notes shall be executed for and on behalf of the City by the manual or facsimile signature of the Mayor, attested by the manual or facsimile signature of the City Clerk and the seal of the City shall be affixed to or imprinted on the Notes. The Notes will be registered in the office of the City Clerk, which registration shall be evidenced by the manual or facsimile signature of the City Clerk with the seal of the City affixed thereto or imprinted thereon. The Notes shall also be registered in the office of the State Treasurer, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer with the seal of the State Treasurer affixed thereto or imprinted thereon. In the event that any of the previously mentioned officers shall cease to hold such offices before the Notes are issued and delivered, the Notes may be issued and transferred to other Owners

as though the officers had not ceased to hold office, and such signatures appearing on the Notes shall be valid and sufficient for all purposes as if they had remained in office until such issuance or transfer.

The Notes shall not be valid obligations under the provisions of this Resolution until authenticated by the Note Registrar or an authorized representative of the Note Registrar by execution of the Certificate of Authentication appearing on each Note. It shall not be necessary that the same representative of the Note Registrar execute the Certificate of Authentication on all of the Notes.

Section 207. Registration, Transfer and Exchange of Notes. As long as the Notes remain Outstanding, the City will instruct the Note Registrar to keep the books for the registration and transfer of the Notes as provided in this Resolution.

Upon presentation of the necessary documents as described below, the Note Registrar shall transfer or exchange any Note(s) for new Note(s) in an Authorized Denomination of the same maturity and for the same aggregate principal amount as the Note(s) which was presented for transfer or exchange.

All Notes presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Note Registrar, executed by the Owner of the Notes or by the Owner's authorized agent. In addition, all Notes presented for transfer or exchange shall be surrendered to the Note Registrar for cancellation.

Prior to delivery of the new Note(s) to the transferee, the Note Registrar shall register the same in the registration books and shall authenticate each Note.

The City shall pay out of the proceeds of the Notes the fees of the Note Registrar for registration and transfer of the Notes and the cost of preparing a reasonable supply of registered note blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the Note Registrar, are the responsibility of the Owners. The City and the Securities Depository shall be paid directly by the Note Owner for any tax or other governmental charge required to be paid with respect to a transfer.

The City and the Note Registrar shall not be required to issue, register, transfer or exchange any Notes during a period beginning on the day following the Record Date preceding any Interest Payment Date and ending at the close of business on the Interest Payment Date, or within 30 days of a date on which Notes are redeemed after notice of such redemption has been given in accordance with Article III of this Resolution.

New Notes delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt as the Notes surrendered, shall be secured by this Resolution and shall be entitled to all of the security and benefits to the same extent as the Notes surrendered.

The City, Note Registrar and Paying Agent may deem and treat the person in whose name any Note is registered as the absolute Owner of the Note, whether the Note is overdue or not, for the purpose of receiving payment of, or on account of, the principal of, redemption premium, if

any, and interest on the Note and for all other purposes, and all such payment so made to any such Owner or upon the Owner's order shall be valid and effectual to the extent of the sum or sums so paid, and neither the City, Note Registrar nor Paying Agent shall be affected by any notice to the contrary.

Section 208. Surrender and Cancellation of Notes. Whenever any Outstanding Notes are delivered to the Note Registrar for cancellation pursuant to this Resolution, upon payment of the principal amount of and interest on the Note or replacement pursuant to this Resolution, the Note shall be canceled by the Note Registrar and returned to the City Clerk.

Section 209. Mutilated, Lost, Stolen or Destroyed Notes. In the event any Note is mutilated, lost, stolen or destroyed, the City may execute and the Note Registrar may authenticate a new Note of like date, maturity, denomination and interest rate; provided, that in the case of any mutilated Note, the mutilated Note shall first be surrendered to the City or the Note Registrar, and, in the case of any lost, stolen or destroyed Note there will first be furnished to the Note Registrar's and the City's satisfaction evidence of such loss, theft or destruction together with an indemnity. In the event any such Note shall have matured, instead of issuing a duplicate Note, the City and Note Registrar may pay the same without surrender of the Note. The City and Note Registrar may charge to the Owner of such Note their reasonable fees and expenses in connection with replacing any Note or Notes mutilated, stolen, lost or destroyed.

Section 210. Execution and Delivery of the Notes. The Mayor and City Clerk are authorized and directed to prepare and execute the Notes in the manner specified above, and to cause the Notes to be registered in the offices of the City Clerk and the State Treasurer as provided by law, and, when executed and registered, to deliver the Notes to the Original Purchaser, upon receipt by the City of the Purchase Price.

Section 211. Form of the Notes. The Notes shall be printed in accordance with the format required by the Attorney General of the State and shall contain information substantially in the form set forth on *Exhibit A* to this Resolution or as may be required by the Attorney General pursuant to the Notice of Systems of Registration for Kansas Municipal Bonds, 2 Kan. Reg. 921 (1983), in accordance with the Kansas Bond Registration Law, K.S.A. 10-620 to 10-632, inclusive.

ARTICLE III REDEMPTION OF THE NOTES

Section 301. Optional Redemption. At the option of the City, Notes may be called for redemption and payment prior to maturity on or after October 1, 2020, in whole or in part (selection of Notes to be designated by the City in such equitable manner as it may determine), at the redemption price of 100% (expressed as a percentage of the principal amount), plus interest accrued thereon to the date of redemption.

Section 302. Selection of Notes to be Redeemed. The Notes are to be redeemed only in Authorized Denominations. When less than all of the Notes are to be redeemed and paid prior to maturity, the Notes will be redeemed in the manner as the City determines.

In the case of a partial redemption of Notes by lot when Notes of denominations greater than an Authorized Denomination are Outstanding, each minimum Authorized Denomination of

face value will be treated as if it were a separate Note in such denomination. If it is determined that one or more, but not all, of the face value represented by any Note is selected for redemption, then upon notice of intention to redeem an Authorized Denomination, the Owner or the Owner's authorized agent shall present and surrender the Note to the Note Registrar: (i) for payment of the redemption price (including the redemption premium, if any, and interest to the date fixed for redemption) of the Authorized Denomination of face value called for redemption; and (ii) for exchange, without charge to the Owner of the Note(s), for a new Note(s) of the aggregate principal amount of the unredeemed portion of the principal amount of such Note. If the Owner of any Note of a denomination greater than the minimum Authorized Denomination fails to present the Note as described above, the Note will, nevertheless, become due and payable on the redemption date to the extent of the amount called for redemption.

Notwithstanding the provisions of the preceding paragraph, in the event of a partial redemption of the Notes, the Securities Depository may, at its option, in lieu of surrendering such Note, make an appropriate notation on the Note certificate indicating the date and amounts of the reduction in the principal amount of such Note (except in the case of the final maturity of such Note, where the Note certificate shall be presented to the City prior to payment).

Section 303. Notice of Redemption. Unless waived by any Owner of Notes to be redeemed, if the City calls any Notes for redemption and payment prior to the maturity of the Notes, the City shall instruct the Note Registrar to give written notice of its intention to call and pay the Notes on a specified date, the same being described by maturity, the notice to be mailed by United States first class mail addressed to the Owners of the Notes, each of the notices to be mailed not less than 30 days prior to the date fixed for redemption. The City will also give any additional notice as may be required by State law or regulation of the Securities and Exchange Commission in effect as of the date of the notice.

All official notices of redemption will be dated and state: (1) the redemption date; (2) the redemption price; (3) if less than all of the Outstanding Notes are being redeemed, the identification (and, in the case of a partial redemption, the respective principal amounts) of the Notes being redeemed; (4) on the redemption date the redemption price will become due and payable on each Note or portion of the Note called for redemption, and interest on the Note shall cease to accrue from and after such date; and (5) the place where the Notes are to be surrendered for payment of the redemption price, which is the principal office of the Paying Agent.

During the time the Notes are registered in the name of Cede & Co., the notice described in the immediately preceding paragraphs shall be delivered to the Securities Depository. The Securities Depository shall, in turn, notify its Participants. It is expected that the Participants, in turn, will notify or cause to be notified the Beneficial Owners of the Notes. Any failure on the part of the Securities Depository, or failure on the part of a nominee of a Beneficial Owner of a Note (having received notice from the City, a Participant or otherwise) to notify the Beneficial Owner of the Notes so affected, shall not affect the validity of the redemption of such Notes.

On or prior to any redemption date, the City will deposit with the Paying Agent an amount of money sufficient to pay the redemption price of all the Notes or portions of Notes which are to be redeemed on that date. In accordance with the notice, once the Notes are surrendered to the Paying Agent, the redemption price will be paid to the Owner. Installments of any interest due on

or prior to the redemption date shall be payable as provided in this Resolution. Upon surrender of any partially redeemed Note, a new Note or Notes of the same maturity in the amount of the unpaid principal will be prepared for the Owner. All Notes which have been redeemed will not be reissued. They will be cancelled and destroyed by the Paying Agent.

Section 304. Effect of Call for Redemption. Whenever any Note is called for redemption and payment as provided in this Article, all interest on the Note shall cease from and after the date the call is made, provided funds are available for its payment at the price previously specified.

ARTICLE IV ESTABLISHMENT OF FUNDS AND ACCOUNTS

Section 401. Creation of Funds and Accounts. Simultaneously with the issuance of the Notes, the following funds and accounts will be created within the Treasury of the City:

- A. Improvement Fund for the City of Gardner, Kansas, General Obligation Temporary Notes, Series 2019A;
- B. Principal and Interest Account for the City of Gardner, Kansas, General Obligation Temporary Notes, Series 2019A; and
- C. Rebate Fund for the City of Gardner, Kansas, General Obligation Temporary Notes, Series 2019A.

Section 402. Administration of Funds and Accounts. The funds and accounts established in this Resolution shall be administered in accordance with the provisions of this Resolution as long as the Notes are Outstanding.

ARTICLE V APPLICATION OF NOTE PROCEEDS

Section 501. Disposition of Note Proceeds. Upon issuance and delivery of the Notes, the proceeds shall be deposited as follows:

- A. In the Principal and Interest Account, (i) a sum equal to the accrued interest, if any, (ii) any premium set forth on the attached *Exhibit B* and (iii) the Capitalized Interest Deposit set forth on the attached *Exhibit B*. Moneys in the Principal and Interest Account will be used exclusively for the payment of the principal of, premium, if any, and interest on the Notes, including capitalized interest, and for the payment of Paying Agent fees.
- B. The City will deposit the balance of the proceeds of the Notes immediately upon receipt into the Improvement Fund, which will be used solely for the purpose of paying the Authorized Costs of the Improvements. The City covenants that in the construction of the Improvements, it has or will perform all duties and obligations relative to such Improvements as are now or may be imposed by the Act and the provisions of this Resolution.

Section 502. Withdrawals from the Improvement Fund. The City Treasurer shall make withdrawals from the Improvement Fund solely for the purpose of paying the Authorized Costs of the Improvements, including Costs of Issuance.

Section 503. Surplus in the Improvement Fund. All moneys remaining in the Improvement Fund after the completion of the Improvements shall be transferred immediately to the Principal and Interest Account and applied to the payment of principal and interest due on the Notes.

Section 504. Substitution of Improvements. If the City is prevented, hindered or delayed from proceeding with the construction of the Improvements described in Section 101 of this Resolution, the City may elect to substitute or add other improvements pursuant to this Section (the "Substitute Improvements") provided the following conditions are met: (1) the Substitute Improvements and the issuance of general obligation bonds to pay the cost of the Substitute Improvements has been duly authorized by the Governing Body of the City in accordance with the laws of the State; (2) a resolution or ordinance authorizing the use of the Substitute Improvements has been duly adopted by the Governing Body of the City; (3) the Attorney General of the State has approved the amendment to the transcript of proceedings for the Notes to include the Substitute Improvements; and (4) the City has received an opinion of Bond Counsel to the effect that the use of the proceeds of the Notes to pay the Authorized Costs of the Substitute Improvement will not adversely affect the tax-exempt status of the Notes under State or federal law and the Substitute Improvements have been duly authorized pursuant to this Section and the laws of the State.

ARTICLE VI PAYMENT OF THE NOTES

Section 601. Application of Moneys in the Principal and Interest Account. All amounts paid and credited to the Principal and Interest Account will be expended and used by the City for the sole purpose of paying the principal of, premium, if any, and interest on the Notes as and when the same become due, including the payment of capitalized interest, and paying the usual and customary fees and expenses of the Paying Agent.

Section 602. Transfer of Funds to Paying Agent. The City Treasurer is authorized and directed to withdraw from the Principal and Interest Account and forward to the Paying Agent sums sufficient to pay both principal of, premium, if any, and interest on the Notes when they become due, and also to pay the charges made by the Paying Agent for acting in such capacity. Charges over and above the amount of the principal of, premium, if any, and interest on the Notes shall be forwarded to the Paying Agent. If, through the lapse of time, or otherwise, the Owners of Notes are no longer entitled to enforce payment of their obligations, it will be the duty of the Paying Agent to return the funds to the City. All moneys deposited with the Paying Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

Section 603. Surplus in Principal and Interest Account. Any moneys or investments remaining in the Principal and Interest Account after the retirement of the indebtedness for which the Notes were issued and all other indebtedness of the City shall be transferred and paid into the Bond and Interest Fund of the City.

**ARTICLE VII
DEPOSITS AND INVESTMENT OF FUNDS**

Section 701. Deposits. Cash moneys in each of the funds and accounts created and established by this Resolution will be deposited in a bank or banks or federal or state chartered savings and loan association(s) and shall be secured in accordance with State law.

Section 702. Investments. Moneys held in the funds and accounts created or established by this Resolution in conjunction with the issuance of the Notes may be invested by the City in Authorized Investments, or in other investments allowed by State law, in the amounts and maturing at the times as shall reasonably provide for moneys to be available when required in the accounts or funds; provided, however, that no investment shall be made for a period extending longer than to the date when the moneys invested may be needed for the purpose the fund or account was created. All interest on any Authorized Investment held in any fund or account shall (except amounts required to be deposited into the Rebate Fund in accordance with the Letter of Instructions) accrue to and become a part of the fund or account. In determining the amount held in any fund or account under the provisions of this Resolution, Authorized Investments shall be valued at their principal par value or at their then redemption value, whichever is lower.

Section 703. Deposits into and Application of Moneys in the Rebate Fund.

A. Amounts will be deposited in the Rebate Fund as required by the Letter of Instructions. Subject to the transfer provisions provided in subsection D below, all money at any time deposited in the Rebate Fund shall be held in trust, to the extent required to pay rebatable arbitrage to the federal government of the United States of America, and neither the City nor the Owner of any Notes shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section, by the preceding Section and by the Letter of Instructions (which is incorporated herein by reference).

B. Pursuant to the Letter of Instructions, an amount shall be deposited to the Rebate Fund from moneys contributed by the City or from available investment earnings on amounts held in the Principal and Interest Account or the Improvement Fund, if and to the extent required, so the balance in the Rebate Fund will be sufficient to pay the rebatable arbitrage due on each Computation Date and the Final Computation Date (as the terms are defined in the Letter of Instructions). Computations of the rebatable arbitrage shall be performed by or on behalf of the City in accordance with the Letter of Instructions.

C. Pursuant to the Letter of Instructions, the City will remit rebate installments and the final rebate payments to the United States. Any moneys remaining in the Rebate Fund after the redemption and payment of all of the Notes and after the payment and satisfaction of, or the provision for, any rebatable arbitrage will be withdrawn and released to the City.

D. Notwithstanding any other provision of this Resolution, including in particular this Article, the obligation to remit rebatable arbitrage to the United States and to comply with all other requirements of this Section, the preceding Section and the Letter of Instructions shall survive the defeasance or payment in full of the Notes.

**ARTICLE VIII
DEFAULT AND REMEDIES**

Section 801. Remedies. The provisions of this Resolution, including the covenants and agreements herein, shall constitute a contract between the City and the Owners of the Notes. The Owner or Owners of any of the Notes at the time Outstanding have the right for the equal benefit and protection of all Owners of Notes similarly situated:

A. By mandamus or other suit, action or proceedings at law or in equity to enforce the rights of such Owner or Owners against the City and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of this Resolution or by the Constitution and laws of the State;

B. By suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

C. By suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Owners of the Notes.

Section 802. Limitation on Rights of Owners. The covenants and agreements of the City contained in this Resolution and in the Notes shall be for the equal benefit, protection, and security of the Owners of any or all of the Notes, all of the Notes shall be of equal rank and without preference or priority of one Note over any other Note in the application of the funds pledged by this Resolution to the payment of the principal of and interest on the Notes, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Resolution. No one or more Owners secured shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security granted and provided for in this Resolution, or to enforce any right described below, except in the manner provided by this Resolution, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of such Outstanding Notes.

Section 803. Remedies Cumulative. No remedy conferred upon the Owners is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred in this Resolution. No waiver of any default or breach of duty or contract by the Owner of any Note shall extend to or affect any subsequent default or breach of duty or contract or impair any rights or remedies on the Note. No delay or omission of any Note Owner to exercise any right or power accruing upon any default shall impair any right or power or be construed to be a waiver of any such default or acquiescence. Every substantive right and every remedy conferred upon the Owners of the Notes by this Resolution may be enforced and exercised from time to time and as often as may be deemed expedient. In case any suit, action or proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy is discontinued or abandoned for any reason, or is determined adversely to the Owner, then, and in every such case, the City and the Owners of the Notes will be restored to their former positions and rights under this Resolution, respectively, and all rights, remedies, powers and duties of the Owners shall continue as if no such suit, action or other proceedings had been brought or taken.

ARTICLE IX AMENDMENTS

Section 901. Amendments. The City may from time to time, without the consent of or notice to any of the Owners, provide for amendment to the Notes or this Resolution, for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Resolution or the Notes or to make any other change not prejudicial to the Owners;
- (b) To grant to or confer upon the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners;
- (c) To more precisely identify the Improvements;
- (d) To provide for the issuance of bearer notes and the exchange of fully registered Notes for bearer notes upon the terms and conditions as the City determines provided, however, that no such amendments become effective unless and until the City has received an opinion of Bond Counsel in the form and substance satisfactory to the City, to the effect that the issuance of such bearer notes or the exchange of Notes for such bearer notes will not cause the interest on the Notes to be includable in the gross income of the recipients of the Notes under the provisions of applicable federal law; or
- (e) To conform this Resolution or the Notes to the Code or future applicable federal law concerning tax-exempt obligations.

The following modifications or amendments to the Notes or this Resolution shall require the consent of 100% of the Owners of the Notes:

- (a) The extension of the maturity of the principal of any of the Notes, or the extension of the maturity of any interest on any of the Notes;
- (b) A reduction in the principal amount of any of the Notes or the rate of interest on the Notes; or
- (c) A reduction in the aggregate principal amount of the Notes.

Amendments or modifications of the Notes and this Resolution not listed above may be made at any time by the City with the written consent of the Owners of not less than two-thirds (66.66%) in aggregate principal amount of the Notes at the time Outstanding.

Section 902. Written Evidence of Amendments. Every amendment or modification of a provision of the Notes or of this Resolution to which the written consent of the Owners is given as above provided shall be expressed in a resolution of the City amending or supplementing the provisions of this Resolution and shall be deemed to be a part of this Resolution. It shall not be necessary to note on any of the Outstanding Notes any reference to such amendment or modification, if any. A certified copy of every such amendatory or supplemental resolution, if any, and a certified copy of this Resolution will always be kept on file in the Office of the City

Clerk and made available for inspection by the Owners of any Note or prospective purchaser or Owners of any Note authorized by this Resolution, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental resolution or of this Resolution will be sent by the City Clerk to any such Owner or prospective Owner.

ARTICLE X CONTINUING DISCLOSURE

Section 1001. Preliminary Official Statement and Final Official Statement. The City ratifies and confirms its prior approval of the form and content of the Preliminary Official Statement. The Preliminary Official Statement is “deemed final” by the City except for the omission of certain terms or provisions to be specified in a competitive bid, ratings, other terms of the Notes depending on such matters, and the identity of the underwriters. The City approves the form and content of any addenda, supplement, or amendment thereto utilized to prepare the Final Official Statement. The use of the Final Official Statement in the reoffering of the Notes by the Original Purchaser is approved and authorized. The proper officials of the City are authorized to execute and deliver a certificate pertaining to the accuracy and adequacy of the information in the Preliminary Official Statement and the Final Official Statement.

Section 1002. Continuing Disclosure. The City covenants and agrees to provide continuing disclosure as required by the SEC Rule and as set forth in the Continuing Disclosure Letter of Instructions attached to the Preliminary Official Statement and made a part hereof.

ARTICLE XI MISCELLANEOUS PROVISIONS

Section 1101. Designation of Notes as Qualified Tax-Exempt Obligations. The City designates the Notes as “qualified tax-exempt obligations” as the term is defined in Section 265(b)(3) of the Code. In addition, the City represents that:

- A. the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds) which will be issued by the City during the calendar year that the Notes are issued does not exceed \$10,000,000; and
- B. the aggregate principal amount of obligations designated by the City as “qualified tax-exempt obligations” during the calendar year that the Notes are issued, including the Notes, does not exceed \$10,000,000.

Section 1102. Succession of a Securities Depository. In the event the Securities Depository resigns or is no longer qualified to act as a securities depository and registered clearing agency under the Securities Exchange Act of 1934, as amended, the City may appoint a successor Securities Depository provided the City receives written evidence, satisfactory to the City, with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository which is a registered clearing agency under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation. The City, upon receipt of a book-entry Note for cancellation shall cause the authorization and delivery of a book-entry Note to the successor Securities Depository in

appropriate denominations and form as provided in this Resolution. If the City makes the determinations or receives the notice described in Section 204 of this Resolution, the City shall cause the notices described in Section 204 to be delivered and issue Notes as described in that Section.

Section 1103. Tax Covenants. 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 on the Notes under Section 103 of the Code. The City covenants and agrees that it will use the proceeds of the Notes as soon as practicable and with all reasonable dispatch for the purpose for which the Notes are issued as set forth above, and that it will not directly or indirectly use or permit the use of any proceeds of the Notes or any other funds of the City, or take or omit to take any action that would cause the Notes to be “arbitrage bonds” within the meaning of Section 148(a) of the Code. To that end, the City will comply with all requirements of Section 148 of the Code to the extent applicable to the Notes. In the event that at any time the City is of the opinion that for purposes of this Section it is necessary to restrict or limit the yield on the investment of any moneys held by the City under this Resolution, the City shall take such action as may be necessary.

Without limiting the generality of the above, the City agrees that there will be paid from time to time all amounts required to be rebated to the United States pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the Notes. This covenant shall survive payment in full or defeasance of the Notes. The City specifically covenants to pay or cause to be paid to the United States, at the times and in the amounts determined under this Resolution, the Rebate Amounts as described in the Letter of Instructions.

Section 1104. Severability. In case any one or more of the provisions of this Resolution or of the Notes issued under this Resolution is for any reason found to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution, or of the Notes relating to this Resolution, but this Resolution and the Notes will be construed and enforced as if the illegal or invalid provision had not been contained in this Resolution. In case any covenant, stipulation, obligation or agreement contained in the Notes or in this Resolution is for any reason found to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

Section 1105. Further Authority. The Mayor, City Clerk and other officials are further authorized and directed to execute any and all documents and to take actions they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution. They may make and approve alterations, changes or additions in the above-mentioned agreements, statements, instruments and other documents approved, authorized and confirmed by this Resolution, and the execution or taking such action shall be conclusive evidence of the necessity or advisability thereof.

Section 1106. Governing Law. This Resolution and the Notes will be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 1107. Effective Date. This Resolution is to 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 on May 20, 2019.

Signed by the Mayor on May 20, 2019.

CITY OF GARDNER, KANSAS

By _____
Mayor

(Seal)

Attest:

Interim City Clerk

**EXHIBIT A
FORM OF NOTE**

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation, (“DTC”), to City or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the Registered Owner hereof, Cede & Co., has an interest herein.

REGISTERED
NUMBER R-_____

REGISTERED
\$_____

UNITED STATES OF AMERICA
STATE OF KANSAS
COUNTY OF JOHNSON
CITY OF GARDNER
GENERAL OBLIGATION TEMPORARY NOTE
SERIES 2019A

Interest	Maturity	Dated	CUSIP:
Rate: _____%	Date: October 1, 2021	Date: June 12, 2019	

REGISTERED OWNER: Cede & Co. Tax Identification No. 132555119-0

PRINCIPAL AMOUNT:

KNOW ALL PERSONS BY THESE PRESENTS: That the City of Gardner, in the County of Johnson, State of Kansas (the “City”), for value received, acknowledges itself to be indebted and promises to pay to the Registered Owner identified above, or registered assigns (collectively, the “Owner”), as of the Record Dates as provided on the Maturity Date identified above, the Principal Amount identified above, and in like manner to pay interest on such Principal Amount from this date at the rate of interest per annum set forth above (computed on the basis of a 360-day year of twelve 30-day months), semiannually on April 1 and October 1 of each year, commencing October 1, 2019 (the “Interest Payment Dates”), until the Principal Amount is paid, unless this Note shall have been previously called for redemption and payment as hereinafter set forth.

The principal or redemption price of this Note shall be paid at maturity or upon earlier redemption to the person in whose name this Note is registered at the maturity or redemption date, upon presentation and surrender of this Note at the office of the Treasurer of the State of Kansas, Topeka, Kansas (the “Paying Agent” and “Note Registrar”). The interest payable on this Note on any Interest Payment Date shall be paid to the person in whose name this Note is registered on the registration books maintained by the Note Registrar at the close of business on the record date for

such interest, which shall be the 15th day (whether or not a business day) of the calendar month next preceding the Interest Payment Date (the “Record Dates”). Such interest shall be payable (a) by check or draft mailed by the Paying Agent to the address of the Owner shown on the Note Register, (b) at such other address as is furnished to the Paying Agent in writing by the Owner or, (c) in the case of an interest payment to any Owner that is a securities depository, by electronic transfer to such Owner upon written notice given to the Paying Agent by such Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instruction including the bank (which shall be in the continental United States), address, ABA routing number and account number to which such Owner wishes to have such wire directed. The principal, premium, if any, and interest on the Notes shall be payable in any coin or currency which, on the respective dates of payment, is legal tender for the payment of debts due the United States of America. The Notes constitute general obligations of the City payable as to both principal and interest from general obligation bonds of the City, from special assessments levied upon the property benefited by the construction of certain Improvements as said term is defined in the Resolution (as defined in this Note), or from current revenues of the City authorized for such purpose. If not so paid, the principal of and interest on the Notes shall be 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 pledged for the payment of the principal of and interest on this Note and the issue of which it is a part as the same respectively become due.

This Note is one of an authorized series of Notes of the City designated “General Obligation Temporary Notes, Series 2019A” in an aggregate principal amount of \$3,725,000 (the “Notes”) issued for the purposes set forth in the resolution of the City authorizing the Notes (the “Resolution”). The Notes are issued by the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution and laws of the State of Kansas, including, but not limited to K.S.A. 10-123 and K.S.A. 12-6a01 *et seq.*, all as amended or supplemented, and all other applicable provisions of the laws of the State of Kansas.

At the option of the City, the Notes may be called for redemption and payment prior to maturity in whole or in part (selection of notes to be designated by the City in such equitable manner as it may determine) on October 1, 2020, or on any date thereafter, at the redemption price of 100% (expressed as a percentage of the principal amount), plus accrued interest to the date of redemption.

If any Notes are called for redemption and payment prior to maturity, the City shall instruct the Note Registrar to give written notice of its intention to call and pay such Notes on a specified date, the same being described by maturity, said notice to be mailed by United States first class mail addressed to the Paying Agent, to the State Treasurer of Kansas and to the Owners of said Notes, each of said notices to be mailed not less than 30 days prior to the date fixed for redemption. All Notes so called for redemption and payment shall cease to bear interest from and after the date for which such call is made, provided funds are available for the payment of such Notes at the price specified.

The Notes are issued in fully registered form in the denomination of \$5,000 or any integral multiple thereof. The Notes may be exchanged at the office of the Note Registrar for a like

aggregate principal amount of Notes of the same maturity of other authorized denominations upon the terms provided in the Resolution.

The City and the Note Registrar may deem and treat the Registered Owner as the absolute owner for purposes of receiving payment of or on account of principal and interest due and for all other purposes and neither the City nor the Note Registrar shall be affected by any notice to the contrary.

This Note is transferable by the Registered Owner in person or by the Registered Owner's agent duly authorized in writing, at the office of the Note Registrar, but only in the manner, subject to the limitations and upon payment of the charges provided in the Resolution and upon surrender and cancellation of this Note. The City shall pay out of the proceeds of the Notes all costs incurred in connection with the issuance, payment and initial registration of the Notes and the cost of a reasonable supply of note blanks. Neither the City nor the Note Registrar shall be required to transfer or exchange any Notes during a period beginning on the day following the Record Date preceding any Interest Payment Date and ending on the Interest Payment Date or to transfer or exchange any Notes called for redemption.

IT IS DECLARED AND CERTIFIED that all acts, conditions, and things required to be done and to exist precedent to and in the issuance of this Note have been properly done and performed and do exist in due and regular form and manner as required by the Constitution and laws of the State of Kansas, and that the total indebtedness of the City, including this series of Notes, does not exceed any constitutional or statutory limitation.

This Note shall not be valid or become obligatory for any purpose until the Certificate of Authentication and Registration shall have been lawfully executed by the Note Registrar.

IN WITNESS WHEREOF, the City has caused this Note to be executed by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk, and its corporate seal to be affixed to or imprinted on, and this Note to be dated the Dated Date shown herein.

(Seal)

CITY OF GARDNER, KANSAS

Mayor

ATTEST:

By _____
City Clerk

This Note shall not be negotiable unless and until countersigned below by the City Clerk following registration by the Treasurer of the State of Kansas.

(Seal)

City Clerk

=====

CERTIFICATE OF CITY CLERK

STATE OF KANSAS)
) SS.
COUNTY OF JOHNSON)

I, the City Clerk of the City of Gardner, Kansas, certify that the within Note has been registered in my office according to law as of May 20, 2019.

WITNESS my hand and official seal.

(Seal)

City Clerk

=====

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Note is one of a series of General Obligation Temporary Notes, Series 2019A, of the City of Gardner, Kansas, described in the within-mentioned Resolution.

Registration Date _____

Office of the State Treasurer
Topeka, Kansas
as Note Registrar and Paying Agent

By _____

Registration Number _____

=====

CERTIFICATE OF STATE TREASURER

I, JAKE LATURNER, Treasurer of the State of Kansas, do certify that a transcript of the proceedings leading up to the issuance of this Note has been filed in my office, and that this Note was registered in my office according to law on _____.

WITNESS my hand and official seal.

(Seal)

JAKE LATURNER
Treasurer of the State of Kansas

=====

=====

NOTE ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Print or Type Name, Address and Social Security Number
or other Taxpayer Identification Number of Transferee

the within Note to which this assignment is affixed in the outstanding principal amount of \$_____ standing in the name of the undersigned on the books of the Note Registrar. The undersigned do(es) irrevocably constitute and appoint _____ as agent to transfer said Note on the books of said Note Registrar with full power of substitution in the premises.

Dated _____.

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Temporary Note in every particular.

Signature Guaranteed By:

(Name of Eligible Guarantor Institution)

By _____
Title _____

=====

EXHIBIT B
ADDITIONAL TERMS OF THE NOTES

Definitions. The following terms defined in this Resolution shall have the meanings ascribed below:

“**Capitalized Interest Deposit**” means the amount of \$145,823.40 to be deposited in the Principal and Interest Account.

“**Original Purchaser**” means Country Club Bank, Prairie Village, Kansas.

“**Purchase Price**” for the Notes means the par value of the Notes plus accrued interest, if any, to the date of delivery, less an underwriting discount of \$10,616.25.

Interest Rate. The Notes shall bear interest at the rate of 1.70% per annum.

Premium. The amount of premium on the Notes to be deposited in the Principal and Interest Account is \$0.