

RESOLUTION NO. R-77-20

**A RESOLUTION OF INTENT OF THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS REGARDING THE ISSUANCE OF BONDS FOR THE PURPOSE OF ASSISTING IN THE FINANCING OF AN INDUSTRIAL FACILITY EXPANSION TO BE LOCATED WITHIN THE CITY**

**WHEREAS**, the City of Fort Smith, Arkansas (the "City") has been informed by officials of **Gerber Products Company**, a Michigan corporation, together with any of its designated subsidiaries or affiliates (the "Company"), that the Company proposes the installation of manufacturing equipment required to add a product line increase the output capacity of the Company's facility in Fort Smith, Arkansas, including the acquisition and installation of **food processing** equipment and associated machinery and infrastructure improvements all located at **4301 Harriet Lane** in Fort Smith, Arkansas (the "Project"), and that the availability of revenue bond financing is an important factor under consideration by the Company in determining the feasibility of the proposed Project from a financial standpoint; and

**WHEREAS**, it is estimated by the Company that the planning, design, acquisition, construction, installation and carrying out of the proposed Project will require expenditures currently estimated at not to exceed **\$30 million**; and

**WHEREAS**, after careful study and investigation of the nature of the proposed Project, the City has determined that it is authorized under the provisions of Act No. 9 of the First Extraordinary Session of the General Assembly of the State of Arkansas for the year 1960, as amended, to own, acquire construct, reconstruct, improve, equip and lease facilities to secure and develop industry and to assist in the financing thereof by the issuance of bonds payable from the revenue derived from such facilities; and

**WHEREAS**, the most feasible method of financing the proposed Project is for the City to issue its revenue bonds for that purpose and for it (1) to plan, design, acquire, construct and carry out the proposed Project and to lease or sell the proposed Project to the Company, or to a wholly-owned subsidiary or affiliate thereof or to a designee thereof satisfactory to the City, for specified periodic rental or purchase price payments sufficient to pay the principal of, and the redemption premium (if any) and the interest on, said revenue bonds as the same become due and payable or (2) to lend the proceeds from the sale of said revenue bonds to the Company, or to a wholly-owned subsidiary or affiliate thereof or to a designee thereof satisfactory to the City, to enable it to plan, design, acquire, construct and carry out the proposed Project and to repay the loan in installments which will be sufficient and timely to pay the principal of, and the redemption premium (if any) and the interest on, said revenue bonds; and

**WHEREAS**, the Company has requested that the City indicate its willingness to issue revenue bonds to finance all or a portion of the proposed Project, and its official intent to reimburse expenditures heretofore or hereafter made by or on behalf of the Company in

connection with the Project (within the meaning of and to the extent permitted or required by Section 1.150-2 of the Income Tax Regulations) so that said planning, design, acquisition, construction and carrying out of the proposed Project may move forward; and

**WHEREAS,** the City acknowledges that the Company retains the right to proceed with the acquisition, construction and installation of the Project at the time of its choosing or to abandon the Project as it determines in its sole discretion without any obligation to the City; and

**WHEREAS,** the City will have no financial responsibility for the Project, the bonds or the costs thereto, and the bonds will constitute special obligations of the City and shall never constitute a general obligation, indebtedness, or pledge of the credit of the City within the meaning of any constitutional or statutory provision and shall not be paid out of any funds raised or to be raised by taxation or any other revenues or funds of the City except those derived from or in connection with the sale or lease of the Project, or from the loan of the bond proceeds to the Company; and

**WHEREAS,** the City has determined that it is in the best interest of the inhabitants of the area served by the City that the planning, design, acquisition, construction and carrying out of the proposed Project move forward without delay;

**NOW, THEREFORE, BE IT RESOLVED by THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS that:**

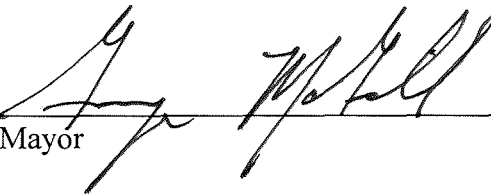
SECTION 1: It is the City's present intention to assist the Company in the financing of the proposed Project through the issuance of industrial development revenue bonds under the authority of the Act. It is presently estimated by the Company that bonds in the aggregate principal amount of approximately **\$30 million** would be required for this purpose. However, the City's intent is to issue the bonds from time to time, pursuant to the terms of the Act, in such amount as shall be requested by the Company for accomplishing all or any part of the Project, whether or not such amount is more or less than the above estimate and whether or not the facilities and improvements finally acquired, constructed and equipped are identical to or different from the facilities presently expected to constitute the Project. Based upon representations of the Company to the effect that the Company presently intends to proceed with the Project, and if it does proceed, intends to apply all or a portion of the proceeds of said proposed revenue Bonds to reimburse itself for all or a portion of the costs of the Project paid prior to the date of issuance of said revenue bonds, the City hereby declares its official intent to apply all or a portion of the proceeds of said proposed revenue bonds to reimburse such expenditures within the meaning of and to the extent permitted or required by Section 1.150-2 of the Income Tax Regulations.

SECTION 2: In conjunction with any issuance of bonds to assist in the financing of the Project, the City states its intention to enter into an agreement with the Company providing for annual payments by the Company in lieu of ad valorem taxes in an amount equal to **thirty-five percent (35%)** of the aggregate amount of ad valorem taxes that would otherwise be due with respect to the Project facilities but for the City's issuance of the bonds. It is the City's present

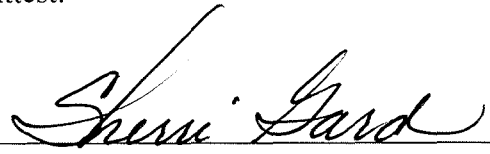
intention that the bond financing and the agreement for payments in lieu of ad valorem taxes would have a term of approximately **Fifteen (15)** years. Any payment made in lieu of ad valorem taxes would be distributed to the political subdivisions which would have received ad valorem tax payments with respect to the Project facilities in the proportion that the millage levied by each affected political subdivision bears to the total millage levied by all affected political subdivisions.

SECTION 3: This Resolution shall be in full force and effect from and after its adoption.

ADOPTED this 7<sup>th</sup> day of July, 2020.

By:   
Mayor

Attest:

  
City Clerk

[Official Seal]



*Approved as to form  
ISC  
No publication required*