

RESOLUTION NO. 2151

A RESOLUTION DECLARING THE INTENT OF THE CITY OF GARDNER, KANSAS, TO ISSUE INDUSTRIAL REVENUE BONDS (TAXABLE UNDER FEDERAL LAW) IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$2,800,000 FOR THE PURPOSE OF FINANCING A PORTION OF THE ACQUISITION, CONSTRUCTION, AND EQUIPPING OF AN EXPANSION TO A COMMERCIAL FACILITY WITHIN THE CITY (OLATHE FORD RV, PHASE I).

WHEREAS, the City of Gardner, Kansas (the “City”), is authorized and empowered pursuant to the provisions of K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the “Act”), to acquire, purchase, construct, improve, remodel, furnish, and equip certain facilities (as defined in the Act) for the stated statutory purposes, to enter into leases or lease-purchase agreements with any person, firm, or corporation for said facilities, and to issue revenue bonds for the purpose of paying the cost of such facilities;

WHEREAS, M & M Investments, LLC, a Kansas limited liability company (together with its permitted assigns, the “Company”), has requested the City to issue its industrial revenue bonds (taxable under federal law) in the principal amount not to exceed \$2,800,000, to finance a portion of the costs of acquiring, constructing, and equipping the first phase of an expansion to a commercial facility, consisting of a service facility and body shop, and including buildings, improvements, and equipment (the “Project,” as described and depicted on the Final Development Plan and related documents submitted for consideration at the March 27, 2023, Planning Commission meeting), generally located at the southwest corner of Interstate 35 and Gardner Road within the City, and to lease such Project to the Company, in order to promote, stimulate, and develop the general economic welfare and prosperity of the City and its environs and the health of the citizens thereof, and thereby to further promote, stimulate, and develop the general economic welfare and prosperity of the State of Kansas and the health of the citizens thereof;

WHEREAS, subject to the provisions of **Section 3** of this Resolution, the City desires to finance a portion of the cost of acquiring, constructing, and equipping the Project by the issuance of industrial revenue bonds (taxable under federal law) pursuant to the Act, said bonds to be payable solely out of the rentals, revenues, and receipts derived from the lease of the Project to the Company; and

WHEREAS, the issuance of industrial revenue bonds will allow the Company to obtain an exemption from sales taxes levied by Kansas governmental entities for the purchase of construction materials related to the Project with proceeds of the bonds;

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

SECTION 1. Subject to the provisions of **Section 3** of this Resolution, it is hereby found and declared that the issuance of industrial revenue bonds (taxable under federal law) in the principal amount not to exceed \$2,800,000 (the “Bonds”) by the City for the purpose of financing a portion of the cost of the proposed Project, to be leased by the City to the Company, will promote, stimulate, and develop the general economic welfare and prosperity of the City and its environs and the health of the citizens thereof as well as further promoting, stimulating, and

developing the general economic welfare and prosperity of the State of Kansas and the health of the citizens thereof.

SECTION 2. Subject to the provisions of **Section 3** of this Resolution, the Governing Body of the City hereby intends to authorize the issuance of the Bonds pursuant to the Act and all necessary regulatory approvals and upon the conditions more fully set forth in **Section 3** hereof.

SECTION 3. Notwithstanding this Resolution of Intent of the City to issue the Bonds, the issuance of the Bonds is expressly subject to presentation, completion, and final approval by the Governing Body of the City of each of the following conditions:

- (a) Satisfactory negotiation and approval of a base lease, lease agreement, trust indenture, bond ordinance, and other documents necessary for the issuance of the Bonds;
- (b) Obtaining all necessary permits and compliance with all necessary regulatory approvals and with the City ordinances;
- (c) Successful private placement of the Bonds or other purchase method approved by the City;
- (d) Approval of the Bonds by the City's Bond Counsel, Kutak Rock LLP, and approval of certain legal matters pertaining to the Bonds by counsel to the Company;
- (e) Adequate security for the payment of the Bonds;
- (f) The Company constructing the Project as described and depicted on the Final Development Plan and related documents submitted for consideration at the March 27, 2023, Planning Commission meeting; and
- (g) The Company's agreement that the sales tax exemption provided through the issuance of the Bonds, and the definition of the Project pursuant to this Resolution, not extend to any expenditure for the Project incurred by or on behalf of the Company prior to the date the Kansas Department of Revenue has issued a project exemption certificate for the Project following application therefor as set forth in **Section 5** below.

The City hereby reserves the right to rescind this Resolution of Intent if the conditions specified in this **Section 3** hereof are not, in the sole judgment of the City, satisfied, or upon change of federal or state law or regulations affecting the City's issuing authority.

If the Bonds are not issued for any reason, including noncompliance with the conditions of this **Section 3**, the City shall not be subject to any liability, whatsoever, to the Company.

SECTION 4. Subject to the provisions of **Section 3** of this Resolution, the Company is hereby authorized to proceed with all matters necessary to accomplish the purposes set forth in this Resolution.

SECTION 5. Subject to the provisions of **Section 3** of this Resolution, the Mayor, City Administrator, Community Development Director, Finance Director, City Clerk, Bond Counsel, and City Attorney are hereby directed to take such action as they deem necessary in cooperation with all persons involved with the financing of the Project in order to present the necessary documents to the Governing Body of the City for final action. Such officers and agents are authorized and directed to execute and file with the Kansas Department of Revenue an application for an exemption from sales tax for materials purchased for the Project with the proceeds of the Bonds.

SECTION 6. The City and the Company expect to incur expenses in connection with the acquisition, construction, and equipping of the Project prior to the issuance of the Bonds. The City and the Company reasonably expect to reimburse such expenditures in connection with the Project from the proceeds of the Bonds.

SECTION 7. This Resolution shall take effect and be in full force on the date it is adopted by the Governing Body of the City and signed by the Mayor. This Resolution shall be of no effect and shall be null and void on April 1, 2025, in the event the Bonds have not been issued by such date.

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ADOPTED by the Governing Body of the City of Gardner, Kansas, on September 3, 2024.

CITY OF GARDNER, KANSAS

(Seal)

/s/

Mayor

ATTEST:

/s/

City Clerk