

ORDINANCE NO. 97-20

AN ORDINANCE AUTHORIZING THE ISSUANCE OF TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS UNDER THE AUTHORITY OF ACT NO. 9 OF 1960, AS AMENDED, FOR THE PURPOSE OF SECURING AND DEVELOPING INDUSTRY WITHIN THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT BETWEEN THE CITY, AS LESSOR, AND GERBER PRODUCTS COMPANY, AS LESSEE; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT FOR PAYMENTS IN LIEU OF TAXES; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS RELATING TO THE ISSUANCE OF THE BONDS AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Fort Smith, Arkansas (the “City”) is authorized under the provisions of the Municipalities and Counties Industrial Development Revenue Bond Law, Arkansas Code Annotated (1998 Repl. & 2019 Supp.) Sections 14-164-201 *et seq.* (the “Act”), 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 revenues derived from such facilities; and

WHEREAS, pursuant to the authority of the Act, the City has previously issued (i) its not to exceed \$65,000,000 Taxable Industrial Development Revenue Bonds (Gerber Products Company Project), Series 2004, and (ii) its not to exceed \$150,000,000 Taxable Industrial Development Revenue Bonds (Gerber Products Company Project), Series 2013, in order to assist Gerber Products Company, a Michigan corporation (the “Company”), in the financing of substantial industrial projects located within the corporate boundaries of the City; and

WHEREAS, pursuant to Resolution No. R-77-20 adopted on July 7, 2020, the City has previously expressed its intent to issue additional industrial development revenue bonds under the Act for the purposes hereinafter described for the benefit of the Company, such bonds to be issued as described below; and

WHEREAS, the necessary arrangements have been made with the Company for the financing of an additional industrial project consisting of the acquisition and installation of certain equipment to assist the Company in implementing internal transformation related to technology and optimization of its fixed cost structure, pricing and headcount (the “Project”), which Project will be located at the site of the Company’s existing facilities at 4301 Harriet Lane within the corporate boundaries of the City; and

WHEREAS, permanent financing of the Project costs, necessary costs and expenditures incidental thereto and the cost of the issuance of bonds is being furnished by the City pursuant to

the Act through the issuance of its Taxable Industrial Development Revenue Bonds, Series 2020, in the principal amount of not to exceed Thirty Million Dollars (\$30,000,000) (the “Bonds”); and

WHEREAS, an open public hearing on the question of the issuance of the Bonds was held before the City Board of Directors on November 10, 2020, following publication of notice thereof in the *Southwest Times Record* on October 29, 2020; and

WHEREAS, the Bonds will be issued pursuant to the terms and provisions of a Trust Indenture to be dated as of the date of issuance of the Bonds (the “Indenture”), by and between the City and The Bank of New York Mellon, as trustee (the “Trustee”); and

WHEREAS, the necessary arrangements have been made by the City to lease the Project to the Company pursuant to the terms of a Lease Agreement to be dated as of the date of issuance of the Bonds (the “Lease Agreement”);

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

Section 1. The Board of Directors makes the following findings and determinations:

(a) Based on information compiled and released by the Arkansas Division of Workforce Services, unemployment in the Fort Smith Metropolitan Statistical Area (MSA) during July of 2020 averaged 7.1%. Completion of the Project is expected to ensure the retention of existing employment and the creation of additional employment and other benefits to residents of the City.

(b) The Company currently intends to utilize the Project in its infant and toddler foods manufacturing and packaging business.

(c) The Company’s continued presence within the City is expected to be an important factor in the economic well-being and employment base for the City and its inhabitants.

(d) The Bonds shall not constitute general obligations of the City within the meaning of any constitutional or statutory limitation, but shall be special limited obligations of the City as provided in the Act, the principal and interest on which shall be payable solely from the revenues or other receipts, funds, monies and property pledged therefor under the Indenture.

Section 2. There is hereby authorized and directed the issuance from time to time of the Bonds and the sale thereof to Nestle Capital Corporation or another affiliate of the Company (the “Purchaser”) pursuant to the terms and provisions of a Bond Purchase Agreement to be dated as of the date of delivery of the Bonds (the “Bond Purchase Agreement”), which Bond Purchase Agreement is specifically approved in Section 3 hereof. The Bonds shall be sold at the purchase price of par plus accrued interest, if any, and shall be issued and delivered according to the terms and provisions of the Bond Purchase Agreement. The Bonds shall be issued in the original aggregate principal amount of not to exceed Thirty Million Dollars (\$30,000,000), shall be dated as of the date of their delivery, shall have a final maturity of December 1, 2035, shall bear interest at the rate of 1.00% per annum, shall be in the form, and shall be issued upon the terms and conditions recommended by the Company, all as more particularly set forth in the Trust Indenture approved in Section 4 hereof. The Mayor is hereby authorized and directed to execute and deliver the Bonds

from time to time as requested by the Company, and the City Clerk is hereby authorized and directed to execute and deliver the Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Bonds to be authenticated by the Trustee.

Section 3. To prescribe the terms and conditions upon which the Bonds are to be sold to the Purchaser, the Mayor is hereby authorized and directed to execute at the request of the Company the Bond Purchase Agreement on behalf of the City, by and between the City and the Purchaser, and approved by the Company. The Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor, with the counsel of the City Attorney, is hereby authorized to confer with the Purchaser, the Company and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete the Bond Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Bond Purchase Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 4. To prescribe the terms and conditions upon which the Bonds are to be secured, executed, authenticated, issued, accepted and held, the Mayor and the City Clerk are hereby authorized and directed to execute, acknowledge and deliver the Trust Indenture, by and between the City and the Trustee, and the Mayor and City Clerk are hereby authorized and directed to cause the Trust Indenture to be accepted, executed and acknowledged by the Trustee. The Trust Indenture is hereby approved in substantially the form submitted to this meeting, and the Mayor, with the counsel of the City Attorney, is hereby authorized to confer with the Trustee, the Company, the Purchaser and Bond Counsel in order to complete the Trust Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Trust Indenture in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 5. There is hereby authorized and directed the execution and delivery of the Lease Agreement by and between the City, as lessor, and the Company, as lessee, and the Mayor and the City Clerk are hereby authorized to execute, acknowledge and deliver the Lease Agreement for and on behalf of the City. The Lease Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor, with the counsel of the City Attorney, is hereby authorized to confer with the Company, the Trustee, the Purchaser and Bond Counsel in order to complete the Lease Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Lease Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 6. The City and the Company recognize that under Article 16, Section 5, of the Constitution of the State of Arkansas, as interpreted under past decisions of the Supreme Court of the State of Arkansas applicable to facilities financed pursuant to the Act, including particularly the case of Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 663 (1960), the Project will be exempt from *ad valorem* taxation. Although the City makes no representation as to the continued precedential value of such past decisions, the Company has agreed to enter into an Agreement for Payments in Lieu of Taxes to be dated as of the date of its execution (the "PILOT Agreement") requiring the Company to make certain payments in lieu of all *ad valorem* taxes which would otherwise be levied on the Project real and personal property by local public bodies with taxing power. In order to provide for such payments, there is hereby authorized and directed the execution and delivery of the PILOT Agreement, and the Mayor is hereby authorized to execute and deliver the PILOT Agreement for and on behalf of the City. The PILOT Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor, with the counsel of the City Attorney, is hereby authorized to confer with the Company and Bond Counsel in order to complete the PILOT Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the PILOT Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 7. The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Bonds, the Bond Purchase Agreement, the Trust Indenture, the Lease Agreement and the PILOT Agreement, and to perform all of the City's obligations under and pursuant thereto. The Mayor and the City Clerk are hereby further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

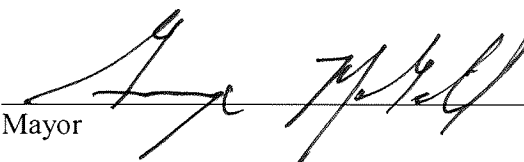
Section 8. Because the City is here involved with the expansion, renovation and equipping of a complex industrial project requiring highly specialized work and specialized types of machinery and equipment, it has been and is hereby determined by the Board of Directors that competitive bidding be, and the same is hereby, waived as to this particular industrial project. This action is taken by the City pursuant to applicable laws of the State of Arkansas, including particularly the Act.

Section 9. Kutak Rock LLP, Little Rock, Arkansas, is hereby appointed as Bond Counsel with respect to the issuance of the Bonds, the fees and expenses of which firm shall be costs of the Project and paid from the proceeds of the Bonds or by the Company.

Section 10. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions.

Section 11. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict

ADOPTED: November 10, 2020.



Mayor

ATTEST:



City Clerk

(SEAL)

