

ORDINANCE NO. 116-21**AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF INDUSTRIAL DEVELOPMENT REVENUE BOND FOR THE PURPOSE OF PROVIDING FINANCING FOR INDUSTRIAL FACILITIES; AUTHORIZING A PLEDGE SECURING THE BOND; AUTHORIZING A LEASE AGREEMENT BETWEEN THE CITY OF FORT SMITH, ARKANSAS, AS LESSOR, AND MARS PETCARE U.S., INC., AS LESSEE; AUTHORIZING AND PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND DECLARING AN EMERGENCY**

WHEREAS, the City of Fort Smith, Arkansas (the "City") is authorized and empowered under the provisions of Act No. 9 of the First Extraordinary Session of the Sixty-Second General Assembly of the State of Arkansas, approved January 21, 1960, as amended, and the Economic and Industrial Revenue Bond Law of 1985, Arkansas Code Annotated § 14-164-201, *et seq.* and Arkansas Code Annotated § 14-164-501, *et seq.* (as each may be amended from time to time, collectively, the "Act"), to issue revenue bonds and to expend the proceeds thereof to finance the acquisition, construction, and equipment of lands, buildings, or facilities which could be used in securing or developing industry; and

WHEREAS, it is proposed that the City provide financing, through the issuance of revenue bonds under the Act, for the purpose of financing the cost of acquiring, constructing, and equipping buildings, improvements, machinery, equipment, and facilities constituting a pet food manufacturing facility (the "Project"), and that the City lease the Project to Mars Petcare U.S., Inc. (the "Company") to be operated by the Company within the City; and

WHEREAS, pursuant to and in accordance with the provisions of the Act, the City is now prepared to proceed with financing the Project and to issue and sell up to \$145,000,000 in principal amount of its Taxable Industrial Development Revenue Bond (Mars Petcare Blue Moon Phase I Project) Series 2021 (the "Bond"), to provide such financing; and

WHEREAS, copies of the Bond and the hereinafter described Pledge, Lease Agreement, and Payment in Lieu of Taxes Agreement have been presented to and are before this meeting; and

WHEREAS, the Bond is to be sold and delivered in one or more series, in an aggregate principal amount of up to \$145,000,000, dated, bearing interest, maturing, and subject to redemption as hereinafter set forth in the Bond authorized by the Ordinance.

NOW, THEREFORE, BE IT ORDAINED, by the Board of Directors of the City of Fort Smith, Arkansas:

Section 1. That the issuance of the Bond is hereby authorized. The Bond shall be issued in the form and denomination, shall be dated, shall be numbered, shall mature, shall bear interest (at a rate or rates not to exceed the maximum lawful rate per annum on the date of issuance), and shall be subject to redemption prior to maturity all upon the terms and conditions recommended by the Company and set forth in the Bond.

Section 2. That the Bond will be issued and sold to the purchaser named in the Investment Letter (the "Purchaser"), and upon the terms and conditions set forth in the Pledge (hereinafter authorized) securing the Bond.

Section 3. To prescribe the terms and conditions upon which the Bond are to be executed, authenticated, issued, accepted, held, and secured, the Mayor is hereby authorized and directed to execute and acknowledge a Pledge by and between the City and the Purchaser (the "Pledge"), and the City Clerk is hereby authorized and directed to execute and acknowledge the Pledge and to affix the Seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Pledge to be executed and delivered to the Purchaser. The Pledge is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Purchaser and the Company in order to complete the Pledge 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.

Section 4. That there be and is hereby authorized the execution and delivery of a Lease Agreement by and between the City, as Lessor, and the Company, as Lessee (the "Lease Agreement"), and the Mayor and City Clerk are hereby authorized and directed 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 is hereby authorized to confer with the Purchaser and the Company 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.

Section 5. That there be and is hereby authorized the execution and delivery of an Agreement for Payment In Lieu of Taxes by and between the City and the Company (the “Payment In Lieu of Taxes Agreement”), and the Mayor and City Clerk are hereby authorized and directed to execute, acknowledge, and deliver the Payment In Lieu of Taxes Agreement for and on behalf of the City. The Payment In Lieu of Taxes Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Purchaser and the Company in order to complete the Payment In Lieu of Taxes 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.

Section 6. That the Mayor and the City Clerk, for and on behalf of the City, be, and they hereby are, authorized and directed to do any and all things necessary to affect the execution and delivery of the Lease Agreement; the performance of all obligations of the City under the Lease Agreement; the execution and delivery of the Pledge; the performance of all obligations of the City under and pursuant to the Pledge; the performance of all obligations of the City under the Payment In Lieu of Taxes Agreement; the issuance, execution, sale, and delivery of the Bond; and the performance of all acts of whatever nature necessary to affect and carry out the authority conferred by this Ordinance. That the Mayor and the City Clerk be, and they hereby are, 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 7. That the City is hereby involved with the acquiring, constructing, and equipping of industrial facilities, and pursuant to the applicable laws of the State of Arkansas, including particularly the Act, competitive bidding is waived.

Section 8. That the City Clerk is hereby authorized and directed to file in the office of the City Clerk, as a part of the minutes of the meeting in which this Ordinance is adopted for inspection by any interested

persons, a copy of the Pledge and Lease Agreement, and such documents shall be on file for inspection by any interested person.

Section 9. That the Mayor is hereby authorized to pay (if not otherwise paid), the necessary expenses incidental to the issuance of the Series 2021 Bond including, but not limited to, fees of Bond Counsel and printing and publication costs, but solely from the proceeds of the Series 2021 Bond available for payment of such costs of issuance.


Section 10. That the provisions of the Ordinance are hereby declared to be separable, 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, and provisions.


Section 11. That all Ordinances, resolutions, and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 12. That the time for taking any action pursuant to Amendment 7 to the Constitution of the State of Arkansas, or otherwise appealing this Ordinance, is hereby fixed as thirty (30) days following the date of publication of this Ordinance.

Section 13. It is hereby ascertained and declared that there is an immediate need to issue the Bond to achieve valuable benefits to construct and equip new capital improvements for jobs for citizens of the City and to promote the health, safety, and welfare of the City and its inhabitants and that such need can best be accomplished through the issuance of the Bond. It is, therefore, declared that an emergency exists and this Ordinance being necessary for the immediate preservation of public peace, health, and safety shall be in force and take effect immediately from and after its passage.

ENTERED as an Ordinance of the Board of Directors of the City of Fort Smith, Arkansas, this 2nd day of December, 2021.

APPROVED:

George McGill, Mayor

ATTEST:

City Clerk

CERTIFICATE

The undersigned, City Clerk of the City of Fort Smith, Arkansas, hereby certifies that the foregoing is a true and perfect copy of an Ordinance adopted by the Board of Directors on the 2nd day of December, 2021, which now appears on file and of record in the City Records of Fort Smith, Arkansas

IN WITNESS WHEREOF, I have hereunto set my hand and the seal this 2nd day of December, 2021.



Sherril Gard
Sherri Gard, City Clerk