

ORDINANCE NO. 86-22

AN ORDINANCE AUTHORIZING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS TO FINANCE CERTAIN INDUSTRIAL FACILITIES; AUTHORIZING THE LEASING OF SUCH FACILITIES TO FM FT. SMITH LLC; AUTHORIZING A TRUST INDENTURE SECURING THE BONDS; AUTHORIZING THE SALE OF THE BONDS; 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 Title 14, Chapter 164, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Act"), to issue revenue bonds and to expend the proceeds thereof to finance land, buildings or facilities which can be used in securing or developing industry; and

WHEREAS, the Board of Directors of the City has heretofore adopted Resolution No. R-155-20 stating the City's intention to issue revenue bonds under the Act for the purpose of financing new manufacturing and warehouse facilities (collectively, the "Projects") for use by Owens Corning Composite Materials, LLC, a Delaware limited liability company ("Owens Corning"); and

WHEREAS, the Projects include the construction of an approximately 420,000 square foot warehouse to be located at 5101 Excelsior Drive, Fort Smith, Arkansas 72916 (the "Warehouse Project"); and

WHEREAS, pursuant to and in accordance with applicable provisions of Arkansas law, a public hearing was held on the date hereof before the Board of Directors on the question of the issuance of such revenue bonds under the Act; and

WHEREAS, after due consideration the City has determined to proceed with financing the Warehouse Project and to issue and sell its revenue bonds under the provisions of the Act in the aggregate principal amount of not to exceed \$23,000,000 (the "Bonds"), and in connection therewith to enter into a Trust Indenture (the "Indenture"), between the City and Regions Bank, Little Rock, Arkansas, as Trustee (the "Trustee"), to secure the Bonds; and

WHEREAS, the Warehouse Project will be owned by the City and leased to FM Ft. Smith LLC, an Arkansas limited liability company (the "Company"), pursuant to the provisions of a Lease Agreement (the "Lease Agreement") between the City and the Company; and

WHEREAS, the Warehouse Project will be initially subleased to and operated by Owens Corning; and

WHEREAS, the Company will enter into an Agreement for Payments in Lieu of Taxes (the "PILOT Agreement") with the City as hereinafter provided; and

WHEREAS, forms of the Indenture, the Lease Agreement, and the PILOT Agreement have been presented to and are before this meeting;

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

Section 1. The Board of Directors hereby finds that the accomplishment of the Projects, and the issuance of bonds to finance the same, will provide substantial employment and payrolls and will thereby secure and develop industry within and near the City.

Section 2. The issuance of the Bonds in the aggregate principal amount of \$23,000,000, or such lesser amount as shall be requested by the Company, is hereby authorized. The Bonds shall be designated "City of Fort Smith, Arkansas Taxable Industrial Development Revenue Bonds (Owens Corning Project), Series 2022." The Bonds shall bear interest at the rate of 5% per annum, payable as set forth in the Indenture, and shall mature in the year 2032, which terms are recommended by the Company. The Bonds shall be in the forms and denominations, shall be numbered, shall be dated, and shall be subject to redemption prior to maturity all upon the terms and conditions recommended by the Company and set forth in the Indenture.

Section 3. The Bonds shall be sold to the Company or its designee for the purchase price of 100% of par, which price is recommended by the Company.

Section 4. To prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor and City Clerk are hereby authorized and directed to execute, acknowledge and deliver the Indenture for and on behalf of the City. The Indenture is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee and others in order to complete the Indenture in substantially the form submitted to this meeting with such changes as shall be approved by him, his execution to constitute conclusive evidence of such approval.

Section 5. There is hereby authorized the execution and delivery of the Lease Agreement, and the Mayor and 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 is hereby authorized to confer with the Company and others in order to complete the Lease Agreement in substantially the form submitted to this meeting with such changes as shall be approved by him, his execution to constitute conclusive evidence of such approval.

Section 6. There is hereby authorized 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 is hereby authorized to confer with the Company and others in order to complete the PILOT Agreement in substantially the form submitted to this meeting with such changes as shall be approved by him, his execution to constitute conclusive evidence of such approval.

Section 7. The construction of the Project and the issuance and sale of the Bonds are exceptional situations in which the City has no responsibility for payment of the costs and expenses thereof, all of which are payable by the Company, and the Company's recommendations with respect thereto are acceptable to the City. Therefore, pursuant to applicable laws of the State of Arkansas, including the Act, competitive bidding is hereby waived.

Section 8. 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 documents herein authorized and the performance of all obligations of the City thereunder, the issuance, execution, sale and delivery of the Bonds, and the performance of all acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and 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 9. 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 at which this Ordinance is adopted, for inspection by any interested person copies of the Indenture, the Lease Agreement, and the PILOT Agreement, and such documents shall be on file for inspection by any interested person.

Section 10. The provisions of this 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. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 12. There is hereby found and declared to be an immediate need for the securing and developing of industry in order to provide substantial employment and payrolls, thereby alleviating unemployment and otherwise benefitting the public health, safety and welfare of the City and the inhabitants thereof, and the issuance of the Bonds authorized hereby and the taking of the other action authorized hereby are immediately necessary for the accomplishing of these public benefits and purposes. It is, therefore, declared that an emergency exists and this Ordinance being necessary for the preservation of the public peace, health and safety shall be in force and effect immediately upon and after its passage.

PASSED: October 4, 2022.

APPROVED:

ATTEST:



City Clerk



Mayor



CERTIFICATE

The undersigned, City Clerk of the City of Fort Smith, Arkansas, hereby certifies that the foregoing pages are a true and perfect copy of Ordinance No. 86-22, adopted at a regular session of the Board of Directors of the City of Fort Smith, Arkansas, held at the regular meeting place of the City at 6:00 o'clock p.m., on the 4th day of October, 2022, and that the Ordinance is of record in Ordinance Record Book No. , at page , now in my possession.

GIVEN under my hand and seal on this 4th day of October, 2022.



Shirley Ford
City Clerk