

Sponsor: Ellis # / Bopp.

ORDINANCE NO. 33-24

**AN ORDINANCE OF THE LEGISLATIVE AUTHORITY OF THE CITY OF JACKSON, OHIO TO AUTHORIZE THE MAYOR TO EXECUTE AN ENTERPRISE ZONE AGREEMENT WITH HERR FOODS INCORPORATED AND DECLARING AN EMERGENCY.**

WHEREAS, HERR FOODS INCORPORATED, the owner of the business known as Herr's Foods, desires to invest in its property, located in an enterprise zone, for renovations to its State Route 93 property and requires an abatement of a percentage of real estate taxes on the improvement; and

WHEREAS, the expected renovation and construction is beneficial to the economy and is necessary for the preservation of the public health, safety and welfare of the City and its citizens and immediate passage of this ordinance constitutes an emergency as delay in passage may delay or jeopardize the construction project.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:

**Section 1.** The legislative authority of the City of Jackson hereby authorizes the Mayor to execute, together with HERR FOODS INCORPORATED, the Ohio Enterprise Zone Agreement as attached hereto.

**Section 2.** This matter is hereby declared to be an emergency necessary for the immediate preservation of the public peace, health or safety of the City of Jackson, Ohio for the reasons set forth above. Therefore, this Ordinance shall go into effect upon passage and as provided in Ohio Revised Code Section 731.30.

**Section 3.** In the event this Ordinance receives a majority vote for passage but fails to receive the required number of votes to pass as an emergency, then this Ordinance shall be deemed to have passed but with no emergency clause and shall take effect at the earliest time permitted by law.

It is hereby found and determined that all formal acts of this council concerning and relating to adoption of this Ordinance were adopted in an open meeting of this council and that the deliberations of the council and any of its committees resulted in such formal action, wherein meeting open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

PASSED AND ADOPTED by the Legislative Authority of the Political Subdivision on this 10<sup>th</sup> day of June, 2024.

  
\_\_\_\_\_  
President of Council

ATTEST:

Cindi Kuhn

Clerk of the Legislative Authority

Approved this 10<sup>th</sup> day of June, 2024.

RANDY HAYES  
Mayor

## **OHIO ENTERPRISE ZONE AGREEMENT**

THIS AGREEMENT made and entered into by and between the **City of Jackson, Ohio**, a municipality, with its main offices located at 145 Broadway St., Jackson, Ohio (hereinafter referred to as the City of Jackson, Ohio, and **HERR FOODS INCORPORATED.**, a Pennsylvania corporation registered to do business in Ohio, with its main offices located at 20 Herr Drive, Nottingham, Pennsylvania, (hereinafter referred to as "Enterprise"), WITNESSETH;

WHEREAS, the **City of Jackson, Ohio** has encouraged the development of real property and the acquisition of personal property located in the area designated as an Enterprise Zone; and

WHEREAS, **HERR FOODS** is desirous to complete the construction of a new 150,000 square foot manufacturing facility within the boundaries of the aforementioned Enterprise Zone, provided that the appropriate development incentives are available to support the economic viability of said relocation (hereinafter referred to as "Project"); and

WHEREAS, the Council of the **City of Jackson, Ohio**, by Ordinance No. 40-91 adopted June 6, 1991, designated the area as an "Enterprise Zone" pursuant Chapter 5709 of the Ohio Revised Code; and

WHEREAS, effective July 6, 1991, the Director of Development of the State of Ohio determined that the aforementioned area designated in said Resolution No. 3091, contains the characteristics set forth in Section 5709.61(A) of the Ohio Revised Code and certified said area as an Enterprise Zone under said Chapter 5709; and

WHEREAS, the **City of Jackson, Ohio**, having the appropriate authority for the stated type of project is desirous of providing **HERR FOODS INCORPORATED.** with incentives available for the development of the **PROJECT** in said Enterprise Zone under Chapter 5709 of the Ohio Revised Code; and

**WHEREAS, HERR FOODS INCORPORATED.** has submitted a proposed agreement application (herein attached as Exhibit A) to the **City of Jackson, Ohio**, said application (hereinafter referred to as "APPLICATION"); and

**WHEREAS, HERR FOODS INCORPORATED.** has remitted the required state application fee of \$750.00 made payable to the Ohio Development Services Agency with the application to be forwarded with the final agreement; and

**WHEREAS,** the Mayor of the **City of Jackson, Ohio** has investigated the application of **HERR FOODS INCORPORATED,** and has recommended the same to the Council of the City of Jackson, Ohio, on the basis that **HERR FOODS INCORPORATED.** is qualified by financial responsibility and business experience to create and preserve employment opportunities in said Enterprise Zone and improve the economic climate of the **City of Jackson, Ohio**; and

**WHEREAS,** the project site as proposed by **HERR FOODS INCORPORATED** is located in the Jackson\_City School District and the Gallia-Jackson-Vinton Joint Vocational School District and the Board of Education of each have been notified in accordance with Section 5709.83 and been given a copy of the APPLICATION; and

**WHEREAS,** pursuant to Section 5709.62(C), 5709.63(A) or 5709.632 and in conformance with the format required under Section 5709.631 of the Ohio Revised Code, the parties hereto desire to set forth their agreement with respect to matters hereinafter contained;

**NOW, THEREFORE,** in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. **HERR FOODS INCORPORATED** shall undertake and complete renovation of a 50,000 square foot manufacturing facility that will house up to three production lines on property located within the City of Jackson on State Route 93 so that the property, when construction is completed, will be increased in value by more than 50% of its current value of \$1,250,000. The tax incentive will allow HERR FOODS to establish operations in the City of Jackson and construct the manufacturing facility.

The parcels affected are Parcel Nos. H140010106100 and H140010106104

The PROJECT will begin in 2024, and be completed by Spring of 2025, provided a tax exemption is provided

The PROJECT will represent an estimated significant new investment of an amount between \$21,750,000.00 and \$31,250,000.00.

2. **HERR FOODS INCORPORATED.** shall create within a time period not exceeding thirty-six months after commencement of construction of the aforesaid facility, 75 full-time employees.

This increase in the number of employees will result in approximately \$2,750,440.00 of annual payroll for **HERR FOODS INCORPORATED** in the City of Jackson, Ohio.

**HERR FOODS INCORPORATED** currently has 0 full-time permanent employees at the project site.

3. **HERR FOODS INCORPORATED.** shall provide to the proper Tax Incentive Review Council any information reasonably required by the council to evaluate the enterprise's compliance with the agreement, including returns filed pursuant to section 5711.02 of the Ohio Revised Code if requested by the council.
4. **City of Jackson, Ohio** hereby grants a tax exemption pursuant Section 5709.62, 5709.63 or 5709.632 for eligible new tangible personal property including inventory (if applicable) acquired in conjunction with the PROJECT and will only apply to the limits expressed in the project description as defined in Sections 1 and 4 of this agreement.

60% on all furniture and fixtures, machinery, equipment and inventory acquired as part of PROJECT as defined in Section 1 of this agreement. Each identified project improvement will receive a ten-year exemption period.

The minimum investment for tangible personal property to qualify for the exemption is: \$1,250,000 to acquire buildings; \$0.00 for additions and new construction; \$8,000,000 for improvements to existing buildings; \$12,000,000 to purchase machinery and equipment first used in business at the facility as a result of the project; \$500,000 to purchase furniture and fixtures and other noninventory personal property first used in business at the facility as a result of the project; and \$0 for new inventory. The maximum investment tangible personal property to qualify for exemption is: \$1,250,000 to acquire buildings; \$0.00 for additions and new construction; \$10,000,000 for improvements to existing buildings; \$15,000,000 to purchase machinery and equipment first used in business at the facility as a result of the project; \$2,500,000 to purchase furniture and fixtures and other non-inventory personal property first used in business at the facility as a result of the project; and \$2,500,000 for new inventory. The exemption commences the first year for which the tangible personal property would first be taxed were that property not exempted from taxation. No exemption shall commence after tax year 2022 nor extend beyond tax return year 2034. In no instance shall any tangible personal property be exempted from taxation for more than ten return years.

No exemption shall be allowed for any type of tangible personal property if the total investment is less than the minimum dollar amount specified for that type of property. If there are no minimum or maximum investment dollar amounts specified for a type

of tangible personal property in the above statement or the dollar amounts are designated in the statement as not applicable, the exemption shall apply only as specified in the project as defined in Section 1 of this agreement.

5. **City of Jackson, Ohio** hereby grants **HERR FOODS INCORPORATED.** a tax exemption for real property improvements and personal property including inventory described herein as made to the PROJECT site pursuant to Section 5709.62, 5709.63 or 5709.632 of the Ohio Revised Code and shall be in the following amounts:

The exemption commences the first year for which the real property would first be taxable were that property not exempted from taxation. No exemption shall commence after 2024 nor extend beyond 2034.

<u>Year of Tax Exemption</u>	<u>Tax Exemption Amount</u>
<u>YR 1</u>	<u>60%</u>
<u>YR 2</u>	<u>60%</u>
<u>YR 3</u>	<u>60%</u>
<u>YR 4</u>	<u>60%</u>
<u>YR 5</u>	<u>60%</u>
<u>YR 6</u>	<u>60%</u>
<u>YR 7</u>	<u>60%</u>
<u>YR 8</u>	<u>60%</u>
<u>YR 9</u>	<u>60%</u>
<u>YR 10</u>	<u>60%</u>

**HERR FOODS INCORPORATED** must file the appropriate tax forms (DTE 23) with the County Auditor and (#913) with the State Department of Taxation to effect and maintain the exemptions covered in the agreement. The #913 Ohio tax form must be filed annually.

6. **HERR FOODS INCORPORATED.** shall pay an annual fee equal to the greater of one percent of the dollar value of incentives offered under the agreement or five hundred dollars: provided, however, that if the value of the incentives exceeds two hundred fifty thousand dollars, the fee shall not exceed two thousand five hundred dollars.

The fee shall be made payable to the **Jackson County Economic Development Partnership** once per year for each year the agreement is effective on the days and in the following form: check or certified check. This fee shall be deposited in a special fund created for such purpose and shall be used exclusively for the purpose of complying with section 5709.68 of the revised code and by the tax incentive review council created under section 5709.85 of the revised code exclusively for the purposes of performing the duties prescribed under that section.

7. **HERR FOODS INCORPORATED.** shall pay such real and tangible personal property taxes as are not exempted under this agreement and are charged against such property and shall file all tax reports and returns as required by law. **HERR FOODS INCORPORATED.** fails to pay such taxes or file such returns and reports, all incentives granted under this agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.

8. The **City of Jackson, Ohio**, shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

9. If for any reason the Enterprise Zone designation expires, the Director of the Ohio Development Services Agency revokes certification of the zone, or City of Jackson, Ohio, revokes the designation of the zone, entitlements granted under this agreement shall continue for the number of years specified under this agreement, unless **HERR FOODS INCORPORATED.** materially fails to fulfill its obligations under this agreement and **City of Jackson, Ohio**, terminates or modifies the exemptions from taxation granted under this agreement.

10. If **HERR FOODS INCORPORATED.** materially fails to fulfill its obligations under this agreement, or if the **City of Jackson, Ohio** determines that the certification as to delinquent taxes required by this agreement is fraudulent, the **City of Jackson, Ohio** may terminate or modify the exemptions from taxation granted under this agreement.

11. **HERR FOODS INCORPORATED.** hereby certifies that at the time this agreement is executed, **HERR FOODS INCORPORATED.** does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio and does not owe delinquent taxes for which **HERR FOODS INCORPORATED.** is liable under Chapter 5733., 5735., 5739., 5741., 5743., 5747., or 5753. of the Revised Code, or, if such delinquent taxes are owed, **HERR FOODS INCORPORATED.** currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against **HERR FOODS INCORPORATED.** For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes.

12. **HERR FOODS INCORPORATED.** affirmatively covenants that it does not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State; (2) any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State; and (3) any other moneys to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.

13. **HERR FOODS INCORPORATED.** and the **City of Jackson, Ohio** acknowledge that this agreement must be approved by formal action of the legislative authority of the **City of Jackson, Ohio**, as a condition for the agreement to take effect. This agreement takes effect upon such approval.

14. The **City of Jackson, Ohio** has developed a policy to ensure recipients of Enterprise Zone tax benefits practice non-discriminating hiring in its operations. By executing this agreement, **HERR FOODS INCORPORATED.** is committing to following non-discriminating hiring practices acknowledging that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.

15. Exemptions from taxation granted under this agreement shall be revoked if it is determined that **HERR FOODS INCORPORATED.**, any successor enterprise, or any related member (as those terms are defined in Section 5709.61 of the Ohio Revised Code) has violated the prohibition against entering into this agreement under Division (E) of Section 3735.671 or Section 5709.62, 5709.63, or 5709.632 of the Ohio Revised Code prior to the time prescribed by that division or either of those sections.

16. **HERR FOODS INCORPORATED.** affirmatively covenants that it has made no false statements to the State or local political subdivision in the process of obtaining approval for the Enterprise Zone incentives. If any representative of **HERR FOODS INCORPORATED.** has knowingly made a false statement to the State or local political subdivision to obtain the Enterprise Zone incentives, **HERR FOODS INCORPORATED.** shall be required to immediately return all benefits received under the Enterprise Zone Agreement pursuant to ORC Section 9.66 (C)(2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to ORC Section 9.66(C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to ORC 2921.13(D)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.

17. This agreement is not transferrable or assignable without the express, written approval of the **City of Jackson, Ohio.**

IN WITNESS WHEREOF, the **City of Jackson, Ohio**, by Randy Heath, its Mayor, and pursuant to Ordinance No. 33-24 has caused this instrument to be executed this 10<sup>th</sup> day of June, 2024, and **HERR FOODS INCORPORATED.** by Jeremiah Thomas, its Senior Vice-President of Manufacturing, has caused this instrument to be executed on this day of June 10, 2024.

The City of Jackson, Ohio

By Randy Evans  
Randy Evans, Mayor

HERR FOODS INCORPORATED

By \_\_\_\_\_  
Jeremiah Thomas, Senior Vice-President

Approved as to form:

Joseph D. Kirby  
Core, Kirby & Associates, LLC

By: Joseph D. Kirby  
Attorneys for the City of Jackson