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NANCY EASTHAM

FAULKNER COUNTY CIRCUIT CLERK

BY: SHAWN MIX, D.C.

**ORDINANCE**



**ORDINANCE NO. O-23-86**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF A TAXABLE INDUSTRIAL DEVELOPMENT REVENUE IMPROVEMENT AND REFUNDING BOND 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 BOND; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE BOND; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT BETWEEN THE CITY, AS LESSOR, AND WESTROCK BEVERAGE COMPANY, LLC, AS LESSEE; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED AGREEMENT FOR PAYMENTS IN LIEU OF TAXES; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS RELATING TO THE ISSUANCE OF THE BOND; AND PRESCRIBING OTHER MATTERS RELATING THERETO.**

**WHEREAS**, the City of Conway, Arkansas (the “City”) is authorized under the provisions of Amendment 65 to the Constitution of the State of Arkansas (“Amendment 65”) and the Municipalities and Counties Industrial Development Revenue Bond Law, Arkansas Code Annotated 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**, as defined in the Act, “industry” includes manufacturing facilities, warehouses, distribution facilities, repair and maintenance facilities, and corporate and management offices for industry; and

**WHEREAS**, Westrock Beverage Company, LLC, an Arkansas limited liability corporation engaged in the production and sale of coffee, tea, liquid extracts and allied products (the “Company”), has acquired, and is in the process of renovating, rehabilitating and equipping, a production facility (the “Project”) located on approximately 44 acres at 480 Exchange Avenue within the corporate boundaries of the City;

**WHEREAS**, in accordance with the Act, by the adoption of Ordinance No. O-21-125 on December 27, 2021, the City Council has previously authorized and there has previously been issued the City’s Not to Exceed \$160,000,000 Taxable Industrial Development Revenue Bond (Westrock Beverage Company, LLC Project), Series 2021 (the “Series 2021 Bond”), for the purpose of financing acquisition, renovation, rehabilitation and equipment costs associated with the Project; and

**WHEREAS**, because the scope of the Project has expanded beyond the Company’s expectations at the time of issuance of the Series 2021 Bond, the Company has requested the City’s assistance in financing and refinancing the total costs of the Project through the issuance of a revenue bond under the authority of Amendment 65 and the Act; and

**WHEREAS**, in order to secure and develop industry within the City in accordance with the provisions of Amendment 65 and the Act, the City desires to assist the Company in the financing of the total costs of the Project and the refunding of the Series 2021 Bond through the issuance of the City's Not to Exceed \$300,000,000 Taxable Industrial Development Revenue Improvement and Refunding Bond (Westrock Beverage Company, LLC Project), Series 2023 (the "Series 2023 Bond");

**WHEREAS**, an open public hearing on the question of the issuance of the Series 2023 Bond was held before the City Council on October 24, 2023, following publication of notice in *The Log Cabin Democrat* on October 14, 2023; and

**WHEREAS**, the Bond will be issued pursuant to the terms and provisions of a Trust Indenture to be dated as of the date of delivery of the Bond (the "Indenture"), by and between the City and First Security Bank, Searcy, Arkansas, as trustee (the "Trustee"); and

**WHEREAS**, the necessary arrangements have been made by the City to lease the financed and refinanced property constituting the Project to the Company pursuant to the terms of a Lease Agreement to be dated as of the date of delivery of the Bond (the "Lease Agreement");

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS, THAT:**

Section 1. The City Council makes the following findings and determinations:

(a) Based on information compiled and released by the Arkansas Division of Workforce Services, unemployment in Faulkner County during August of 2023 averaged 2.9%. Completion of the Project is expected to provide additional employment and other benefits to residents of the City.

(b) The Company currently intends to utilize the Project in its coffee, tea, liquid extracts and allied products business.

(c) The Company's 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 Series 2023 Bond shall not constitute a general obligation of the City within the meaning of any constitutional or statutory limitation, but shall be a special limited obligation 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 Series 2023 Bond and the sale thereof to Westrock Beverage Solutions, LLC, an Arkansas limited liability company and an 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 Series 2023 Bond (the "Bond Purchase Agreement"), which Bond Purchase Agreement is specifically approved in Section 3 hereof. The Series 2023 Bond 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 Series 2023 Bond shall be issued in the original aggregate principal



amount of not to exceed Three Hundred Million Dollars (\$300,000,000), shall be dated as of the date of its delivery, shall have a final maturity of December 1, 2053, shall bear interest at the rate of 5.50% 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 Series 2023 Bond at such time as requested by the Company, and the City Clerk is hereby authorized and directed to execute and deliver the Series 2023 Bond and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Series 2023 Bond to be authenticated by the Trustee.

Section 3. To prescribe the terms and conditions upon which the Series 2023 Bond is 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 Series 2023 Bond is 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 Amended and Restated 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 Series 2023 Bond, 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 acquisition 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 City Council 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 Series 2023 Bond, the fees and expenses of which




firm shall be costs of the Project and paid from the proceeds of the Series 2023 Bond 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: \_\_\_\_\_, 2023.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

(S E A L)

**CERTIFICATE**

**STATE OF ARKANSAS  
COUNTY OF FAULKNER  
CITY OF CONWAY**

I, Michael Garrett, the duly elected, qualified, and acting: Clerk-Treasurer of the City of Conway, Arkansas, do hereby certify that the attached and foregoing is a true and correct copy of an ordinance presented to the City Council of the City of Conway, Arkansas, at a meeting of that body held on the 24<sup>th</sup> day of October, 2023 same is duly recorded in the minutes of meeting of said Council.

Witness, my hand, and seal of the City of Conway, Arkansas this 2<sup>nd</sup> day of November, 2023.

  
**CITY CLERK-TREASURER**

