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NANCY EASTHAM

FAULKNER COUNTY CIRCUIT CLERK

BY: SHAWN MIX, D.C.

**ORDINANCE**



**ORDINANCE NO. O-23-87**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF A TAXABLE INDUSTRIAL DEVELOPMENT REVENUE 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 TEMPUS CONWAY DC, LLC, 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 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**, the necessary arrangements have been made with Tempus Conway DC, LLC, an Arkansas limited liability company (the “Company”), to provide for the financing of an industrial project consisting of the acquisition, construction and equipping of distribution facilities of approximately 540,000 square feet (the “Project”) to be located on approximately 30.85 acres at 1430 William J. Clark Drive within the corporate boundaries of the City; 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 Project costs through the issuance of the City’s Not to Exceed \$85,000,000 Taxable Industrial Development Revenue Bond (Tempus Conway DC, LLC Project), Series 2023 (the “Bond”); and

**WHEREAS**, an open public hearing on the question of the issuance of the 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 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”); and

**WHEREAS**, the Company’s leasehold interest in the property constituting the Project will be subleased by the Company to Westrock Beverage Company, LLC, an Arkansas limited liability company (“Westrock”), to be utilized by Westrock in the distribution and sale of its coffee, tea, liquid extracts and allied products; and

**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 intends to sublease the Project to Westrock for use in the distribution and sale of Westrock’s coffee, tea, liquid extracts and allied products.

(c) The Company’s and Westrock’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 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 Bond and the sale thereof to the Company or an affiliate thereof (the “Purchaser”), pursuant to the terms and provisions of a Bond Purchase Agreement to be dated as of the date of delivery of the Bond (the “Bond Purchase Agreement”), which Bond Purchase Agreement is specifically approved in Section 3 hereof. The 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 Bond shall be issued in the original aggregate principal amount of not to exceed Eighty-Five Million Dollars (\$85,000,000), 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 5.00% 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 Bond at such time as requested by the Company, and the City Clerk is hereby authorized and directed to execute and deliver the Bond and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Bond to be authenticated by the Trustee.

Section 3. To prescribe the terms and conditions upon which the 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 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 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 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 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 Bond, the fees and expenses of which firm shall be costs of the Project and paid from the proceeds of the Bond or by Westrock.


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.

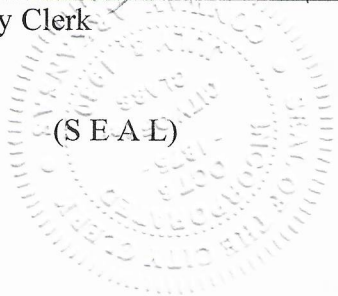
Section 11. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

ADOPTED: \_\_\_\_\_, 2023.

  
\_\_\_\_\_  
Mayor

ATTEST:

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



**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**

