

ORDINANCE NO. ~~111~~ 2020-14

AN ORDINANCE AUTHORIZING THE CITY OF LEBANON, INDIANA TO ISSUE ITS TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS (NEWCOLD PROJECT) AND AUTHORIZING AND APPROVING OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of Lebanon, Indiana (“City”) is a municipal corporation and political subdivision of the State of Indiana and, is authorized and empowered by Indiana Code 36-7-11.9 and Indiana Code 36-7-12 (collectively, the “Act”) to adopt this ordinance (the “Bond Ordinance”) and to carry out its provisions;

WHEREAS, NewCold USA III, LLC or an affiliate or designee thereof (collectively, the “Company”) has advised the City and the Lebanon Economic Development Commission (the “Economic Development Commission”) that it proposes the City issue its Taxable Economic Development Revenue Bonds, in one or more series (NewCold Project), pursuant to the Act, in an aggregate principal amount not to exceed Nine Million Eight Hundred Thousand Dollars (\$9,800,000) (the “Bonds”) for the purpose of financing economic development facilities consisting of the construction, acquisition, installation and equipping of an approximate 384,300 sq. ft. dark high-bay oxygen reduced highly automated large-scale cold storage warehouse with an estimated 10,000 pallet capacity situated on 55 acres, including administrative offices, serving local and regional cold storage needs, together with all necessary appurtenances, related improvements and equipment, capitalized interest, if any, a debt service reserve, if necessary, and costs of issuance related to the financing (collectively, the “Project”);

WHEREAS, the Project will be in, or physically connected to, the NewCold Allocation Area (the “Allocation Area”) as established by the Lebanon Redevelopment Commission (the “Redevelopment Commission”);

WHEREAS, the Redevelopment Commission has or is expected to adopt a resolution pledging incremental property taxes generated in the Allocation Area (the “Tax Increment”) to pay debt service on the Bonds;

WHEREAS, the financing of a portion of the Project results in the diversification of industry, the creation and retention of jobs, the creation and retention of business opportunities in the City, and will be of public benefit to the health, safety and general welfare of the City and its citizens;

WHEREAS, on November 9, 2020, the Economic Development Commission conducted a public hearing in accordance with Act and Indiana Code 5-3-1, and adopted its resolution finding that the financing of a portion of the costs of the Project complies with the purposes and provisions of the Act, that such financing will be of benefit to the health and general welfare of the City, and that the Project will not have a material adverse competitive effect on similar facilities already constructed on operating in the City; and

WHEREAS, there has been submitted to the Common Council of the City (the "Council") for its approval forms of: (i) a Financing Agreement, between the City and the Company; (ii) a Trust Indenture with respect to the Bonds (the "Indenture") between the City and a trustee to be selected by the City (the "Trustee") (clauses (i) and (ii), the "Financing Documents"); and (iii) this Bond Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF LEBANON, INDIANA, THAT:

Section 1. It is hereby found, determined, ratified and confirmed that the financing and reimbursement of the economic development facilities referred to in the Financing Documents consisting of the Project, the issuance and sale of the Bonds, and the provision of the net proceeds thereof to the Company to finance a portion of the Project will (i) result in the diversification of industry, the creation or retention of business opportunities and the creation or retention of opportunities for gainful employment within the jurisdiction of the City, (ii) serve a public purpose, and will be of benefit to the health and general welfare of the City, (iii) comply with the purposes and provisions of the Act and it is in the public interest that the City take such lawful actions as determined to be necessary or desirable to encourage the diversification of industry, the creation or retention of business opportunities, and the creation or retention of opportunities for gainful employment within the jurisdiction of the City, and (iv) not have a material adverse competitive effect on any similar facilities already constructed or operating in or near the City.

Section 2. The proposed financing of a portion of the Project, and the financing of certain costs related to the issuance of the Bonds, including capitalized interest, if any, and the funding of a debt service reserve, if necessary, as further described in the Financing Documents, by the issuance of the Bonds under the Act, in the form that such financing was approved by the Commission, is hereby approved.

Section 3. (a) The City is hereby authorized to issue the Bonds, in one or more series, in the aggregate principal amount not to exceed Nine Million Eight Hundred Thousand Dollars (\$9,800,000), which shall (i) be designated as "Taxable Economic Development Revenue Bonds, Series 20__ (NewCold Project)" (with such further designation as may be necessary or appropriate, including such designation to indicate the year in which the bonds are issued); (ii) be executed at or prior to the closing date by the manual or facsimile signatures of the Mayor and the Clerk-Treasurer of the City; (iii) be dated as of the date of issuance; (iv) mature on a date not later than twenty-five (25) years following the date of issuance; (v) bear interest at a rate not to exceed five percent (5.0%), the exact rate or rates to be determined through negotiations with the purchaser thereof, with such interest to be payable as provided in the Financing Documents; (vi) be issuable in such denominations as set forth in the Financing Documents; (vii) be issuable only in fully registered form; (viii) be payable as to principal and interest on February 1 and August 1; (ix) be subject to registration on the bond register as provided in the Indenture; (x) be payable in lawful money of the United States of America; (xi) be payable at an office of the Trustee as provided in the Indenture; (xii) be subject to optional redemption prior to maturity and subject to redemption as otherwise provided for in the Financing Documents and (xiii) contain such other terms and provisions as may be provided in the Financing Documents.

(b) The Mayor and the Clerk-Treasurer of the City are hereby authorized and directed, in the name and on behalf of the City, to sell the Bonds to a purchaser or purchasers selected by such officers (the "Purchaser") at such prices and on such terms as may be determined at the time of sale and approved by the Mayor and the Clerk-Treasurer of the City. The Mayor and the Clerk-Treasurer of the City are hereby authorized to approve and execute a bond purchase agreement for the Bonds with the Purchaser, in a form approved by such officers, such approval to be conclusively evidenced by their execution thereof.

(c) The Mayor and the Clerk-Treasurer of the City are hereby authorized and directed to select a financial institution to serve as the Trustee.

(d) The Bonds and the interest thereon do not and shall never constitute an indebtedness of, or a charge against the general credit or taxing power of, the City, but shall be special and limited obligations of the City, payable as to principal and interest from incremental real and personal property tax revenue (the "Tax Increment") minus Annual Fees (as defined in the Indenture) generated from the Project in the Allocation Area, and to the extent Tax Increment is not sufficient, payments made by the Company under one or more agreements in the form of a guaranty or taxpayer agreement, upon such terms and conditions as otherwise described in the Financing Documents and the Indenture.

Section 4. The substantially final forms of the Financing Documents presented at this meeting are hereby, in all respects, approved and are by this reference incorporated in this Bond Ordinance. The Clerk-Treasurer of the City is hereby directed, in the name and on behalf of the City, to insert them in the minutes of the Council and to keep them on file. The Mayor and the Clerk-Treasurer of the City are hereby authorized and directed, in the name and on behalf of the City, to execute or endorse and deliver the Financing Documents and, without further approval of the Council or the Economic Development Commission, to approve such changes in the Financing Documents as may be permitted by the Act, such approval to be conclusively evidenced by their execution thereof.

Section 5. The Mayor, the Clerk-Treasurer of the City, and each of them, are hereby authorized and directed, in the name and on behalf of the City, to execute or endorse any and all agreements, documents and instruments, perform any and all acts, approve any and all matters, and do any and all other things deemed by them, or either of them, to be necessary or desirable in order to carry out and comply with the intent, conditions and purposes of this Bond Ordinance (including the preambles hereto and the documents mentioned herein), the Project, the issuance and sale of the Bonds, and the securing of the Bonds under the Financing Document, and any such execution, endorsement, performance or doing of other things heretofore effected be, and hereby is, ratified and approved.

Section 6. The provisions of this Bond Ordinance and the Financing Documents shall constitute a binding contract between the City and the holders of the Bonds, and after issuance of the Bonds this Bond Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of the holders of the Bonds as long as the Bonds or interest thereon remains unpaid.

Section 7. All ordinance or parts of ordinances in conflict herewith are hereby repealed.

Section 8. This Bond Ordinance shall be in full force and effect immediately upon adoption.

Section 9. Two copies of the Financing Agreements incorporated into this Bond Ordinance were duly filed in the office of the Clerk-Treasurer of the City and are available for public inspection in accordance with Indiana Code § 36-1-5-4.

* * * * *

ADOPTED this 23rd day of November, 2020, by the Lebanon Common Council of the City of Lebanon, Indiana.

Voting For

Voting Against

Abstain

Keith Campbell
Keith Campbell

Keith Campbell

Keith Campbell

John Copeland
John Copeland

John Copeland

John Copeland

Morris Jones
Morris Jones

Morris Jones

Morris Jones

ASSENT
Mike Kincaid

Mike Kincaid

Mike Kincaid

Sierra Messenger
Sierra Messenger

Sierra Messenger

Sierra Messenger

Dick Robertson
Dick Robertson

Dick Robertson

Dick Robertson

Brent Wheat
Brent Wheat

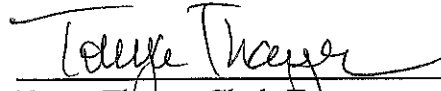
Brent Wheat

Brent Wheat

ATTEST:

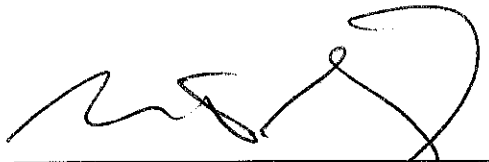
Tonya Thayer
Tonya Thayer, Clerk-Treasurer

I hereby certify that ORDINANCE 2020-14 was delivered to the Mayor of Lebanon on the 23 day of November, 2020, at 8 : 23 p.m.



Tonya Thayer, Clerk-Treasurer

I hereby APPROVE ORDINANCE 2020-14
this 24 day of November, 2020



Matthew T. Gentry, Mayor

I hereby VETO ORDINANCE 2020-__
this _____ day of November, 2020

Matthew T. Gentry, Mayor

I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. /s/ M. Catherine Fanello.

This document prepared by M. Catherine Fanello, Esq. Krieg DeVault LLP, 12800 North Meridian Street, Suite 300, Carmel, IN 46032, (317) 238-6359.