

ORDINANCE NO. 185

AN ORDINANCE TO AUTHORIZE THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS UNDER THE MUNICIPALITIES AND COUNTIES INDUSTRIAL DEVELOPMENT REVENUE BOND LAW FOR THE PURPOSE OF SECURING AND DEVELOPING INDUSTRY; TO AUTHORIZE THE SALE OF THE BONDS AND THE APPROVAL OF A BOND PURCHASE AGREEMENT AND A PAYMENT IN LIEU OF TAXES AGREEMENT IN CONNECTION THEREWITH; TO AUTHORIZE THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE BONDS; TO AUTHORIZE AND PRESCRIBE CERTAIN MATTERS PERTAINING TO THE PROJECT, THE ACQUISITION, CONSTRUCTION, AND EQUIPPING THEREOF, AND THE FINANCING THEREOF; TO AUTHORIZE THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT RELATING TO THE PROJECT; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, City of Cherry Valley, Arkansas (the “City”) is authorized under the provisions of Amendment 65 to the Arkansas Constitution and the Municipalities and Counties Industrial Development Revenue Bond Law, Ark. Code Ann. §§ 14-164-201 *et seq.* and Ark. Code Ann. §§ 14-164-701 *et seq.*, each as amended from time to time (collectively, the “Act”), to own, acquire, construct, 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, Cherry Valley PV I, LLC, an affiliate of Tyr Energy Development (TED) Renewables, LLC or their affiliate (the “Company”) has evidenced its interest in acquiring, constructing, and equipping a facility useful in securing and developing industry within and near the City if permanent financing can be provided through the issuance of revenue bonds under the authority of the Act; and

WHEREAS, the City has agreed to cooperate with the Company in the acquisition of land and/or leasehold rights, construction of infrastructure and improvements, and acquisition and installation of equipment, including solar panels and batteries, utilized in environmentally sustainable generation and storage of electricity and related to a photovoltaic solar energy facility on approximately 2,500 acres of land that is currently used primarily as farmland that is bisected by Highway 1 and generally lying south and mostly west of the current city limits of the City of Cherry Valley and within all or portions of Sections 15, 16, 20, 21, 22, 27, 28, 29, and 33, Township Nine (9) North, Range Three (3) East within Cross County, Arkansas (the “Project”) relating to the operations of the Company; and

WHEREAS, to provide permanent financing of the Project costs, necessary costs and expenditures incidental thereto, and the cost of the issuance of bonds, the City will issue its taxable industrial development revenue bonds under the provisions of the Act designated “City of Cherry Valley, Arkansas Taxable Industrial Development Revenue Bonds (Cherry Valley Solar Project), Series 20___,” or such other series as are otherwise designated, in the principal amount of not to exceed \$250,000,000.00 (the “Bonds”); and

WHEREAS, copies of the herein described Bond Purchase Agreement, Trust Indenture, Lease Agreement, RNA Agreement, and Payment in Lieu of Taxes Agreement have been presented to and are before this meeting and a copy of each are on file with the City Recorder/Treasurer and available for inspection by any interested person; and

WHEREAS, the Bonds will be issued pursuant to the provisions of a Trust Indenture (the “Trust Indenture”) to be entered into between the City and a trustee (the “Trustee”) to be selected upon the mutual agreement of the City and the Company; and

WHEREAS, the City and the Company intend to enter into a Lease Agreement (the “Lease Agreement”) relating to the real and personal property, infrastructure and improvements constituting the Project, which contemplates that the Project will be leased to the Company, with an option to purchase for a nominal price, and the rental payments therefor together with other available moneys shall be sufficient to pay debt service on the Bonds and all related costs; and

WHEREAS, to induce the City to proceed with the issuance of the Bonds for the purpose indicated, which will inure to the benefit of the Company, the City and the Company will enter into a Payment in Lieu of Taxes Agreement (the “Payment in Lieu of Taxes Agreement”) in substantially the form presented at this meeting which provides for 65% ad valorem tax abatement for a period of 30 years; and

WHEREAS, the City and the Company caused a form of a notice of public hearing to be published in the *Arkansas Democrat-Gazette* on April 23, 2023 and April 30, 2023, and the City hereby ratifies the form of notice published; and

WHEREAS, an open public hearing on the question of the issuance of the Bonds was held before the City Council on May 9, 2023 following publication of notice of the hearing and that having heard all persons desiring to be heard in the matter, the City Council has taken under

advisement the comments and statements of such persons, and declared the public hearing duly closed; and

WHEREAS, the City proposes to sell the Bonds to an affiliate of the Company (the “Purchaser”) pursuant to a Bond Purchase Agreement by and between the City and the Purchaser; and

WHEREAS, the Company has obtained or may obtain independent loans from one or more lenders secured by liens on, or security interests in, title to all or part of the Project granted pursuant to various agreements, instruments and documents;

WHEREAS, the City acknowledges and consents to all liens and encumbrances on, security interests in and rights to, the title to the Project granted by the Company, and acknowledges that the Company’s interests in the Project will be transferred to City subject to such liens, encumbrances and security interests and such acknowledgement and consent may be evidenced through the execution of a Recognition of Prior Interests, Nondisturbance and Attornment Agreement between the City, the Company, and the lenders of the Company (or such lenders’ agents) benefitting from such lien, encumbrance or security interest (the “RNA Agreement”);

WHEREAS, the City believes the completion of the Project will be useful in the future in securing and developing industry within or near the City and will furnish other benefits to and be in the best interest of the City and its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHERRY VALLEY, ARKANSAS:

Section 1. There be, and there is hereby, authorized and directed the following:

(a) The Bonds shall be issued in one or more series in an aggregate principal amount of not to exceed Two Hundred Fifty Million and 00/100 Dollars (\$250,000,000.00), and the Bonds shall be sold to the Purchaser for a price of par plus the costs of issuance upon the terms and conditions set forth in the Bond Purchase Agreement.

(b) That there be and hereby is authorized the execution and delivery of the Payment In Lieu of Taxes Agreement by and between the City and the Company in substantially the form presented at this meeting which provides 65% ad valorem tax abatement for a period of 30 years. The Mayor and City Recorder/Treasurer are hereby, directed and authorized to execute, acknowledge and deliver the Payment In Lieu of Taxes Agreement for and on behalf of the City, with such changes as shall be approved by such persons executing the documents, their execution to constitute conclusive evidence of such approval, is hereby authorized and directed. An executed copy of the Payment In Lieu of Taxes Agreement shall be filed in the City Recorder/Treasurer's office.

(c) The acquisition, construction, and equipping of the Project, and, in connection therewith, to the extent necessary or convenient, the execution of any necessary architectural, engineering, or construction contracts or the acceptance of an assignment of any such contracts previously executed by the Company for the construction and equipping of the Project on behalf of the City is hereby authorized and directed.

Section 2. The issuance of the Bonds in the total principal amount of not to exceed Two Hundred Fifty Million and 00/100 Dollars (\$250,000,000.00) in one or more series is hereby authorized. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall bear interest (at a rate or rates) and shall be subject to

redemption prior to maturity, all upon the terms and conditions to be set forth in the Trust Indenture.

That to further prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed (when requested to do so by the Company) to execute and acknowledge the Trust Indenture, and the City Recorder/Treasurer is hereby authorized and directed to execute and acknowledge the Trust Indenture and to affix the seal of the City thereto, and the Mayor and City Recorder/Treasurer 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 is hereby authorized to confer with the Trustee and the Company 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.

Section 3. There be, and there is hereby, authorized and directed the execution and delivery of the Lease Agreement, and the Mayor and City Recorder/Treasurer 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, 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.

Section 4. There be, and there is hereby, authorized and directed the execution and delivery of the Bond Purchase Agreement, and the Mayor and City Recorder/Treasurer are

hereby authorized to execute, acknowledge, and deliver the Bond Purchase Agreement for and on behalf of the City. The Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Purchaser 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.

Section 5. There be, and there is hereby, authorized and directed the execution and delivery of the RNA Agreement if the Company determines that such an agreement is required by its lenders. The Mayor and City Recorder/Treasurer are hereby authorized to execute, acknowledge, and deliver the RNA Agreement for and on behalf of the City. The RNA Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Company and its lenders (or such lenders' agents) in order to complete the RNA 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.

Section 6. The Mayor and City Recorder/Treasurer, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect (i) the execution of the Lease Agreement, (ii) the performance of the City's obligations under the Lease Agreement, (iii) the execution and delivery of the Trust Indenture, (iv) the performance of all obligations of the City under and pursuant to the Trust Indenture, (v) the execution and delivery of the Bonds, (vi) the execution and delivery of the PILOT Agreement, (vii) the performance of the City's obligations under the PILOT Agreement, (viii) the execution and delivery of the Bond Purchase Agreement, (ix) the performance of the City's obligations under the Bond Purchase Agreement,

(x) the execution and delivery of the RNA Agreement, (xi) the performance of the City's obligations under the RNA Agreement, and (xii) the performance of all other acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and City Recorder/Treasurer are further authorized and directed, for and on behalf of the City, in connection with the issuance of the Bonds and in connection with on-going rights and obligations that arise after issuance and prior to maturity of the Bonds, 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, including, but not limited to, the execution of one or more Home Office Payment Agreements, a Memorandums of Lease, Delivery Instructions and other closing certificates.

Section 7. The Project involves the acquisition, constructing, and equipping of a complex project, requiring highly specialized work and specialized types of machinery and equipment. In compliance with Ark. Code. Ann. § 14-164-204, 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 project. This action is taken by the City Council pursuant to applicable laws of the State of Arkansas, including particularly the Act.

Section 8. All actions heretofore taken by the City, the Company, and the Purchaser in connection with the issuance, offer and sale of the Bonds and the development and completion of the Project are hereby in all respects ratified and approved.

Section 9. *Severability.* In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this

ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

Section 10. *Repealer.* All ordinances or resolutions of the City in conflict herewith are hereby repealed to the extent of such conflict.

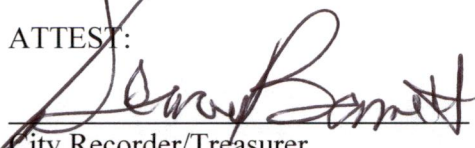
Section 11. *Emergency Clause.* There is hereby found and declared to be an immediate need for the securing and developing of industrial operations in order to benefit the public health, safety, and welfare of the City and the inhabitants thereof, and the issuance of the Bonds authorized hereby and the taking of the other action authorized herein are immediately necessary in connection with the securing and developing of industrial operations and deriving the public benefits referred to above. It is therefore, declared that an emergency exists and this Ordinance, being necessary for the immediate preservation of the public health, safety, and welfare, shall be in force and take effect immediately upon and after its passage.

PASSED and APPROVED this 9th day of May, 2023



Mayor

ATTEST:



City Recorder/Treasurer

