



Legislation Text

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AN ORDINANCE AMENDING ORDINANCE NO.1816 OF THE CITY COUNCIL OF THE CITY OF JONESBORO, TO PROVIDE FOR THE SALE OF SAID CITY'S INDUSTRIAL DEVELOPMENT REVENUE BONDS (ANHEUSER-BUSH COMPANIES, INC. PROJECT) SERIES 1982 TO MORGAN GUARANTY TRUST COMPANY OF NEW YORK AND TO PROVIDE FOR THE EXECUTION AND DELIVERY OF REVISED FORMS OF AN AGREEMENT OF SALE, INDENTURE OF TRUST, BOND PURCHASE AGREEMENT AND SUCH BONDS IN CONNECTION THEREWITH; DECLARING AN EMERGENCY; AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the City of Jonesboro, Arkansas (the "Issuer"), is authorized and empowered by the provisions of the Municipalities and Counties Industrial Development Revenue Bond Law, Acts 1960 (Ex. Sess.), No. 9, as amended (the "Act"), to issue its revenue bonds for the purpose of financing land, buildings or facilities of any and every nature whatsoever that can be used in securing or developing industry within or near the Issuer upon such terms as the City Council of the Issuer shall deem advisable and as shall not conflict with the provisions of the Act; and

WHEREAS, in order to accomplish the purpose of the Act, the Issuer has heretofore determined it necessary and advisable to finance the costs of the acquisition, construction and installation of certain facilities, including buildings, equipment and related facilities suitable for use as a new rice mill facility (the "Project") for Anheuser-Bush Companies, Inc., a Delaware Corporation, and its wholly-owned subsidiary, Anheuser-Busch, Incorporated (together, the "Companies"), which Project will be located within or near the Issuer and will be used by Busch Agricultural Resources, Inc., a wholly-owned subsidiary of Anheuser-Bush Companies, Inc. (the "User"), and which Project qualifies as "facilities" which may be financed pursuant to the Act; and

WHEREAS, this City Council did on December 7, 1981 adopt a resolution, indicating its intent to issue industrial development revenue bonds of the Issuer for financing the cost of the Project: and

WHEREAS, this City Council did on November 15, 1982 hold a public hearing relating to the Project and the proposed issuance of its bonds to finance the Project and after said public hearing did adopt Ordinance No.1816 authorizing (a) issuance of \$6,200,000 aggregate principal amount of City of Jonesboro, Arkansas Industrial Development Revenue Bonds (Anheuser-Bush Companies, Inc. Project) Series 1982 (the "Bonds"), (b) the sale of the Bonds to Dillon, Read & Co., Inc., as underwriter (the "Underwriter"), pursuant to a Bond Purchase Agreement (the "Bond Purchase Agreement") between the Issuer and the Underwriter, (c) the execution and delivery of an Agreement of Sale dated as of November 15, 1982 (the "Agreement") pursuant to which the Issuer will sell the Project to the Companies, (d) the execution and delivery of an Indenture of Trust dated as of November 15, 1982 (the "Indenture") between the Issuer and the Trustee providing for the issuance of the Bonds and the security therefore and (e) other matters related to the foregoing; and

WHEREAS, due to current market conditions the Underwriter is unwilling to purchase the Bonds at such interest rate and containing such terms as are satisfactory to the Companies and as have been approved by the Issuer; and

WHEREAS, Morgan Guaranty Trust Company of New York (the "Purchaser") is willing to purchase the Bonds

from the Issuer provided that certain terms of the Bonds are changed, including the interest rate, from those terms previously approved by the Issuer, which changes are acceptable to the Companies; and

WHEREAS, there have been presented to this meeting, revised forms of the following documents which the City Council proposes to approve or enter into:

- A. The Indenture (including the form of the Bonds);
- B. The Agreement (including the form of the Companies' Series 1982 Promissory Note (the "Note") in the amount of \$6,200,000);
- C. The Bond Purchase Agreement; and

WHEREAS, this City Council proposes to approve such documents and the revised terms contained therein by amending Ordinance No.1816;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Jonesboro, Arkansas as follows:

Section 1: Section 2 of Ordinance No. 1816 is hereby amended to read in its entirety as follows:

Section 2: The Issuer is hereby authorized to issue and sell \$6,200,000 aggregate principal amount of the Bonds to the Purchaser at a purchase price of 100% of the principal amount of the Bonds to be purchased, to be issued for the purpose of providing funds to pay the cost of acquiring, constructing and installing the Project and costs of issuing the Bonds.

The Bonds shall be substantially in the form set forth in the Indenture, with appropriate insertions and revisions in order to comply with the provisions of Ordinance No.1816, as amended, and the Indenture (as executed). The Bonds shall mature on November 15, 2012, and shall initially bear interest from their date on the principal amount from time to time outstanding to and including December 31, 1985 at a varying rate per annum which is 65% of the rate per annum most recently announced by Morgan Guaranty Trust Company of New York as its prime rate (the "Prime Rate"), and from January 1, 1986 so and including December 31, 1987 at a varying rate per annum equal to 70% of the Prime Rate, and thereafter until said principal amount is paid at a varying rate per annum equal to 72% of the Prime Rate, with adjustments in such varying rate to be made on the same date as any announced change in the Prime Rate, provided that the Bonds shall bear interest at the Fixed Rate from and after Conversion Date (as those terms are defined in the Indenture), all as provided in Section 2.2 of the Indenture as executed. In no event shall the interest rate on the Bonds exceed 13.5%. The Pricing Committee is hereby authorized to set the Fixed Rate in the manner and to the extent provided in the Indenture. The Issuer hereby appoints Dillon, Read & Co., Inc., Kenny Information Systems, Inc. and Powell & Satterfield, Inc. as the Pricing Committee.

Interest on the Bonds shall be due and payable quarterly on each February 15, May 15, August 15 and November 15 beginning on February 15, 1983, and at maturity, provided that from and after the Conversion Date interest on the Series 1982 Bonds shall be due and payable semiannually on each May 15 and November 15 and at maturity. The Bonds initially delivered to the Purchaser shall be dated their date of issue and authentication. Bonds later issued for exchange or transfer shall be dated as provided in the Indenture.

The Bonds shall be issued pursuant to and in full compliance with the provisions of the Act and shall be subject to mandatory and optional redemption and other terms and conditions and shall be issued in such manner and subject to such provisions, covenants and agreements, as are specified in the Indenture, as executed.

The Bonds shall be issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas, and under the provisions of the Act. The Bonds are special obligations of the Issuer payable solely out of the revenues and receipts derived by the Issuer from the Project pursuant to the Agreement and the Note or otherwise as provided in the Indenture, and the Issuer's rights under the Agreement (except for the Issuer's rights with respect to title and conveyance of title to the Project and certain of the Issuer's rights to indemnification, to attorneys' fees and to reimbursement for expenses) and to the Note are hereby pledged and assigned to the Trustee as security for payment of the Bonds (and any Additional Bonds issued under the Indenture) as provided in the Indenture, as executed, and such revenues and receipts and the Note shall not be pledged or hypothecated in any manner except as provided in the Indenture and Agreement, as executed. The Bonds shall not constitute an indebtedness of the Issuer or a loan of credit thereof within the meaning of any constitutional or statutory limitation. The Bonds shall not in any respect be a general obligation of the Issuer nor shall they be payable in any manner from revenues raised by taxation.”

Section 3: Pursuant to Sections 3, 4 and 6 of Ordinance No.1816, this City Council has authorized the Issuer to enter into the Agreement, the Indenture and the Bond Purchase Agreement, respectively, and pursuant to Section 5 of such Ordinance this City Council approved the Note. The Agreement, the Indenture, the Bond Purchase Agreement and the Note shall be in substantially the form presented to this meeting, submitted to the City Council of the Issuer on the date hereof, rather than in the form of such documents as presented and submitted to the City Council at its meeting on November 15, 1982, which such changes not inconsistent with Ordinance No.1816, as amended, as shall be approved by the officers of the Issuer executing such documents (or, in the chase of the Note, which such changes as shall be approved by the officer of the Issuer executing the Agreement), such officers' signatures thereon being conclusive evidence of their approval thereof.

Section 4: Section 7 of Ordinance No.1816 is hereby repealed.

Section 5: Section 8 of Ordinance No. 1816 is hereby amended to read in its entirety as follows:

Section 6: The Mayor of the Issuer is hereby authorized and directed to cause the Bonds to be prepared in the form now before this December 20, 1982 meeting of the City Council at its meeting on November 15, 1982, and such form presented to this meeting is hereby approved. The Bonds shall be executed in the name of the Issuer with the manual or facsimile signature of its Mayor and shall be attested by the manual or facsimile signature of its City Clerk, provided that at least one of such signatures shall be a manual signature, and the seal of the Issuer or a facsimile thereof shall be imprinted or impressed on the Bonds. The coupons attached to the coupon Bonds shall be executed by the manual or facsimile signature of the Mayor of the Issuer. The Mayor, the City Clerk or any other officer of the Issuer is hereby authorized and directed to deliver the Bonds to the Trustee for authentication, as so executed, for and on behalf of, and as the act and deed of, the Issuer in the manner provided in the Indenture, as executed, and the Trustee is hereby requested to authenticate the Bonds in accordance with the Indenture. The Mayor of the Issuer is hereby authorized and directed to execute and deliver the Indenture, the Agreement and the Bond Purchase Agreement and to endorse the assignment of the Note to the Trustee, for an on behalf of, and as the act and deed of, the Issuer. The City Clerk of the Issuer is hereby authorized and directed to attest the Agreement and the Indenture and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of Ordinance No.1816, as amended.

The Mayor and the City Clerk of the Issuer are hereby authorized and directed to accept from or on behalf of the Companies or the User delivery of a deed and a bill of sale for the Project and to execute, attest and deliver a deed and a bill of sale re-conveying the Project to the Companies or User pursuant to the terms of the Agreement as executed.”

Section 7: Except as amended by this Ordinance, all of the provisions of Ordinance No. 1816 are hereby ratified, approved and confirmed and shall remain in full force and effect, and from and after the effective date of this Ordinance, Ordinance No. 1816 shall be amended in the manner herein set forth.

Section 8: The provisions of this Ordinance are hereby declared to be separable, and if any section, phrase of provision shall for any reason be declared invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereof.

Section 9: All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 10: It is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this City Council, and that all deliberations of this City Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

Section 11: The City Clerk is hereby directed to file in the office of the City Clerk a copy of each of the documents presented to this meeting, including the Agreement, the Indenture and the Bond Purchase Agreement, which copies shall remain on file in the office of the City Clerk for inspection by any interested person in accordance with the Act.

Section 10: It is hereby found and determined that the commitment of the Purchaser to purchase the Bonds, upon the terms and conditions including the rate of interest on the Bonds hereby approved, may expire within the next thirty days and that there is no assurance that, upon and after the expiration of such commitments, any agreement may be reached amount the Issuer, the Company and the Purchaser or any other potential purchaser of the Bonds enabling the Issuer to issue Bonds to aid in the financing of the Project. Therefore, in order to best ensure that the Issuer may issue the Bonds to aid in the financing of the Project, an emergency is hereby declared to exist and this Ordinance being necessary for the preservation of the public peace, health and safety shall be in full force and effect immediately upon passage.

PASSED and APPROVED this 20th day of December, 1982.