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Doc#2008- 21409  
Date 11/04/2008  
01:02:26 PM  
Filed & Recorded in  
Official Records of  
Faulkner County  
RHONDA LONG-WHARTON  
FAULKNER COUNTY CIRCUIT CLERK  
Fees \$35.00  
by                      D. C.

313207

0-08-120

ORDINANCE NO. 120

City of Conway

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS 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 BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Conway, Arkansas (the "City") is authorized under the provisions of the Municipalities and Counties Industrial Development Revenue Bond Law, Arkansas Code Annotated (1998 Repl. & 2005 Supp.) 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**, the City desires to issue its industrial development revenue bonds under the authority of the Act for the purpose of financing certain industrial facilities to be leased by the City to the Conway Development Corporation ("CDC") and subleased by CDC to the Hewlett-Packard Company or a related entity ("HP"); and

**WHEREAS**, the necessary arrangements have been made with CDC and HP for the financing of a substantial industrial project consisting of the acquisition, construction and equipping of a facility to be utilized in connection with HP's technology products business (the "Project") and to be located on Executive Center Parkway at Ledgelawn Drive in The Meadows Office & Technology Park within the corporate boundaries of the City; and

**WHEREAS**, permanent financing of the Project costs, necessary costs and expenditures incidental thereto and the cost of the issuance of bonds is being furnished by the City pursuant to the Act through the issuance of (i) its Taxable Industrial Development Revenue Bonds (Hewlett-Packard Company Project), Series 2008A, in principal amount not to exceed Twenty Million Five Hundred Thousand Dollars (\$20,500,000) (the "Series 2008A Bonds"), and (ii) its Subordinate Taxable Industrial Development Revenue Bonds (Hewlett-Packard Company Project), Series 2008B, in principal amount not to exceed Ten Million Dollars (\$10,000,000) (the "Series 2008B Bonds," and together with the Series 2008A Bonds, the "Bonds"); and

**WHEREAS**, an open public hearing on the question of the issuance of the Bonds was held before the City Council and the Mayor on August 26 2008, following publication of notice thereof in *The Log Cabin Democrat* on August 15, 2008; and

**WHEREAS**, the Bonds will be issued pursuant to the terms and provisions of a Trust Indenture, by and between the City and First Security Bank, as trustee; and

**WHEREAS**, the necessary arrangements have been made by the City to lease the Project to CDC pursuant to the terms of a Lease Agreement (the "Lease Agreement"), and for CDC to sublease the Project to HP;

**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 Department of Workforce Services, unemployment in Faulkner County during June of 2008 averaged 4.8%. It has been determined that, upon completion of the Project, employment by HP at the Project facility is anticipated to be approximately 1,200 persons. Accordingly, the completion of the Project will provide additional employment and other benefits to residents of the City.

(b) HP will utilize the Project in connection with its technology products business.

(c) HP's presence within the City will be an important factor in the economic well being and employment base for the City and its inhabitants.

(d) The Bonds shall not constitute general obligations of the City within the meaning of any constitutional or statutory limitation, but shall be special limited obligations of the City as provided in the Act, the principal of and the interest on which shall be payable solely from the revenues or other receipts, funds, monies and property pledged therefor under the Indenture.

Section 2. (a) There is hereby authorized and directed the issuance of the Series 2008A Bonds and the sale thereof to First Security Bank pursuant to the terms and provisions of a Bond Purchase Agreement to be dated as of the date of adoption of this ordinance (the "2008A Bond Purchase Agreement"). The form of said Series 2008A Bond Purchase Agreement is specifically approved in Section 3(a) hereof. It is understood and agreed that First Security Bank shall have the right to assign all or any portion of its rights and obligations under the 2008A Bond Purchase Agreement to other "qualified institutional buyers" or "accredited investors" (as such terms are defined in Rule 144A and Rule 501 of Regulation D of the U.S. Securities and Exchange Commission). First Security Bank and any such assignees shall be referred to hereinafter as the "2008A Purchasers." The Series 2008A Bonds shall be sold at a purchase price of par and shall be issued and delivered and shall mature according to the terms and provisions of the 2008A Bond Purchase Agreement. The Series 2008A Bonds shall be issued in the original aggregate principal amount of not to exceed Twenty Million Five Hundred Thousand Dollars (\$20,500,000), shall be dated as of the date of their delivery, and shall bear interest at a rate of 7.00% per annum. The precise form of the Series 2008A Bonds shall be set forth in a Trust Indenture between the City and First Security Bank, as trustee (the "Trustee"), to be approved by subsequent ordinance of the City Council. The Mayor is hereby authorized and directed to execute and deliver the Series 2008A Bonds from time to time to the 2008A Purchasers as requested by CDC, and the City Clerk is hereby authorized and directed to execute and deliver the Series 2008A Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Series 2008A Bonds to be authenticated by the Trustee.

(b) There is also hereby authorized and directed the issuance of the Series 2008B Bonds and the sale thereof to the Conway Development Corporation (the "2008B Purchaser") pursuant to the terms and provisions of a Bond Purchase Agreement to be dated as of the date of adoption of this ordinance (the "2008B Bond Purchase Agreement"), which Series 2008B Bond Purchase Agreement is specifically approved in Section 3(b) hereof. The Series 2008B Bonds shall be sold at the purchase price of par and shall be issued and delivered and shall mature according to the terms and provisions of the 2008B Bond Purchase Agreement. The Series 2008B Bonds shall be issued in the original aggregate principal amount of not to exceed Ten Million Dollars (\$10,000,000), shall be dated as of the date of their delivery, and shall bear interest at a rate of 7.00% per annum. The precise form of the Series 2008B Bonds shall be set forth in the Indenture. The Mayor is hereby authorized and directed to execute and deliver the Series 2008B Bonds from time to time to the 2008B Purchaser as requested by CDC, and the City Clerk is hereby authorized and directed to execute and deliver the Series 2008B Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Series 2008B Bonds to be authenticated by the Trustee.

Section 3. (a) To prescribe the terms and conditions upon which the Series 2008A Bonds are to be sold to the 2008A Purchasers, the Mayor is hereby authorized and directed to execute the 2008A Bond Purchase Agreement on behalf of the City. The 2008A Bond Purchase Agreement is hereby approved in substantially the form thereof submitted to this meeting, and the Mayor is hereby authorized to confer with CDC, Crews & Associates, Inc., Little Rock, Arkansas (the "Financial Advisor"), and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete such 2008A 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 2008A 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.)

(b) To prescribe the terms and conditions upon which the Series 2008B Bonds are to be sold to the 2008B Purchaser, the Mayor is hereby authorized and directed to execute the 2008B Bond Purchase Agreement on behalf of the City. The 2008B Bond Purchase Agreement is hereby approved in substantially the form thereof submitted to this meeting, and the Mayor is hereby authorized to confer with the 2008B Purchaser, the Financial Advisor and Bond Counsel in order to complete the 2008B 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 2008B 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 precise terms and conditions upon which the Bonds are to be secured, executed, authenticated, issued, accepted and held, the terms and conditions upon which the Project is to be leased to the CDC, and other related matters, the City Council will consider the approval of various documents by subsequent ordinance. Such documents are

expected to include a Trust Indenture, a Lease Agreement, an Agreement for Payments in Lieu of Taxes and a Mortgage.

Section 5. Because the City is here involved with the acquisition, construction 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 6. Kutak Rock LLP, Little Rock, Arkansas, is hereby appointed as Bond Counsel with respect to the issuance of the Bonds, the fees and expenses of which firm shall be costs of the Project and paid from the proceeds of the Bonds or by CDC.

Section 7. 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 8. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. There is hereby found and declared to be an immediate need for the securing and developing of substantial industrial operations in order to provide additional employment, retain existing employment, alleviate unemployment, and otherwise 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 actions authorized herein are immediately necessary in connection with the securing and developing of substantial 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.

ADOPTED: October 8, 2008.

  
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Mayor

ATTEST:

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

( S E A L )