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Doc#2008— 21411
Date 11/04/2008
01:02:28 PM
Filed & Recorded in
Official Records of 3132
Faulkner County
RHONDA LONG-WHARTON

D.C.

ORDINANCE NO. 0-08-1220ULKNER COUNTY CIRCUIT CLERK

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY A TRUST INDENTURE **SECURING** CERTAIN **TAXABLE** INDUSTRIAL DEVELOPMENT REVENUE BONDS PREVIOUSLY AUTHORIZED BY THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT WITH RESPECT TO THE FINANCED FACILITY BETWEEN THE CITY, AS LESSOR, AND CORPORATION. AS LESSEE: CONWAY DEVELOPMENT AUTHORIZING AN AGREEMENT FOR PAYMENTS IN LIEU OF TAXES AND OTHER DOCUMENTS RELATING TO THE ISSUANCE OF AND SECURITY FOR THE BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO: AND DECLARING AN EMERGENCY.

WHEREAS, as permitted 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"), the City, pursuant to Ordinance No. O-08-120 adopted October 8, 2008, previously authorized the issuance and sale 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, the necessary arrangements have been made with the Conway Development Corporation ("CDC") and the Hewlett-Packard Company ("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, the Bonds will be issued pursuant to the terms and provisions of a Trust Indenture (the "Indenture"), by and between the City and First Security Bank, as trustee (the "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. To prescribe the terms and conditions upon which the Bonds are 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 Indenture, by and between the City and the Trustee, and the Mayor and City Clerk are hereby authorized and

directed to cause the Indenture to be accepted, executed and acknowledged by the Trustee. The Indenture is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, CDC, Crews & Associates, Inc, Little Rock, Arkansas (the "Financial Advisor"), and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete the 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 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 2. To prescribe the terms upon which the Project is to be leased by the City to CDC, there is hereby authorized and directed the execution and delivery of the Lease Agreement by and between the City, as lessor, and CDC, 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 is hereby authorized to confer with CDC, the Trustee, the Financial Advisor 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. Upon satisfaction of the conditions set forth in the Lease Agreement, CDC's right to further sublease the property leased to it under the Lease Agreement is hereby recognized.

(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.)

The City and CDC recognize that under Article 16, Section 5, of the Section 3. 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, CDC 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 CDC 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 is hereby authorized to confer with CDC 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.)

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Section 4. 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 Bonds, the Indenture, the Lease Agreement, the PILOT Agreement and a Mortgage on the Project securing the Bonds, 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 5. 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.

<u>Section 6</u>. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 7. 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 14th, 2008.

Mayor Tab Townsell

ATTEST:

Michael O. Garrett
City Clerk/Treasurer

(SEAL)