

Same

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FAULKNER COUNTY CIRCUIT CLERK
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D.C.

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$2,220,000 OF TAXABLE ELECTRIC FRANCHISE FEE REVENUE BONDS (HEWLETT-PACKARD COMPANY PROJECT), SERIES 2008, BY THE CITY OF CONWAY, ARKANSAS FOR THE PURPOSE OF FINANCING THE COST OF SITE IMPROVEMENTS IN CONNECTION WITH THE CONSTRUCTION OF CERTAIN INDUSTRIAL FACILITIES TO BE OWNED BY THE CITY, LEASED TO CONWAY DEVELOPMENT CORPORATION AND SUBLEASED TO HEWLETT-PACKARD COMPANY; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE PURSUANT TO WHICH THE BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT OR AGREEMENTS PROVIDING FOR THE SALE OF THE BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of the City of Conway, Arkansas (the "City"), has determined that there is a critical need for a source of funds to finance the costs of certain roadway, ingress, egress, parking and other site improvements (collectively, the "Project") in connection with the construction of certain industrial facilities to be owned by the City and located at 355 LedgeLawn Drive within the City's Meadows Office & Technology Park, to be leased by the City to Conway Development Corporation, an Arkansas nonprofit corporation (the "CDC"), and to be subleased by CDC to Hewlett-Packard Company, a Delaware corporation ("HP"); and

WHEREAS, the City is authorized and empowered under the provisions of the Constitution and laws of the State of Arkansas, including particularly Amendment 65 and Arkansas Code Annotated Sections 14-164-201 *et seq.* (1998 Repl. & Supp. 2005) (as from time to time amended, the "Act"), to own, acquire, construct, reconstruct, improve, equip and lease facilities, such as those improvements constituting the Project, in order to secure and develop industry and to assist in the financing thereof by the issuance of bonds secured by surplus electric revenues; and

WHEREAS, in order to secure funds necessary to finance the costs of the Project and to pay printing, legal and other expenses incidental to the issuance of revenue bonds for such purposes, the City has determined to issue its Electric Franchise Fee Revenue Bonds (Hewlett-Packard Company Project), Series 2008, in aggregate principal amount not to exceed \$2,220,000 (the "Bonds"), such Bonds to be secured by and payable solely from the municipal franchise fee charged and collected by the City with respect to the electric system serving the residents of the City and operated by the Conway Corporation; and

WHEREAS, the City has determined to issue and secure the Bonds pursuant to a Trust Indenture (the "Trust Indenture"), by and between the City and First Security Bank, an Arkansas banking corporation (the "Trustee"), a form of which has been presented to and is before this meeting; and

WHEREAS, the City proposes to enter into a Bond Purchase Agreement or Agreements (the "Bond Purchase Agreements") in substantially the form presented to and before this meeting, with First Security Bank and certain other "qualified institutional buyers" or other "accredited investors" (as such terms are defined in Rule 144A and Rule 501 of Regulation D of the U.S. Securities and Exchange Commission (the "Purchasers"), providing for the sale of the Bonds; and

WHEREAS, an open public hearing on the question of the issuance of the Bonds has been held before the City Council and Mayor of the City on this date, following publication of notice of such public hearing in the *Log Cabin Democrat* on November 14, 2008.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Conway, Arkansas that:

Section 1. The City Council hereby finds and declares that the financing of the Project is in the best interest of the City and its residents.

Section 2. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 65 to the Constitution of the State of Arkansas and the Act, there is hereby authorized the issuance of bonds of the City to be designated as "Electric Franchise Fee Revenue Bonds (Hewlett-Packard Company Project), Series 2008" (the "Bonds"). The Bonds shall be issued in original aggregate principal amount not to exceed Two Million Two Hundred Twenty Thousand Dollars (\$2,220,000), and shall mature not later than January 1, 2020, in the principal amounts and bearing interest at the rates specified in the Trust Indenture. In no event shall the interest rate borne by any Bond exceed 6.250% per annum and in no event shall the average interest rate on the Bonds exceed 6.250%. The proceeds of the Bonds will be utilized to construct the improvements comprising the Project and to pay printing, legal and other expenses incidental to the issuance of the Bonds. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall be subject to redemption prior to maturity, and shall contain such other terms, covenants and conditions, all as set forth in the Trust Indenture submitted to this meeting.

The Mayor is hereby authorized and directed to execute and deliver the Bonds in substantially the form thereof contained in the Trust Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Bonds to be accepted and authenticated by the Trustee. The Mayor is hereby authorized to confer with the Trustee, Crews & Associates, Inc. (the "Financial Advisor") and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete the Bonds in substantially the form contained in the Trust Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Bonds, their execution to constitute conclusive evidence of such approval.

Section 3. In order to pay the principal of and interest on the Bonds as they mature or are called for redemption prior to maturity, there is hereby pledged all receipts of the municipal franchise fee heretofore or hereafter charged and collected by the City for the privilege of the use of City streets, alleys, easements and other City-owned property in connection with the operation

of the electric system serving the residents of the City (the "Electric Franchise Fee"). The City covenants and agrees that collections of the Electric Franchise Fee shall not be reduced or discontinued so long as the Bonds are outstanding and that all receipts of the Electric Franchise Fee will be accounted for separately as a special fund on the books of the City and will be deposited and used solely as provided in the Trust Indenture, subject, however, to the prior and senior pledge of such Electric Franchise Fee securing (i) the City's Franchise Fee Revenue Improvement Bonds, Series 2006, and any additional bonds subsequently issued and secured on a parity basis therewith in accordance with the terms thereof, and (ii) the City's obligations with respect to that certain Lease Purchase Agreement dated as of November 17, 2008, by and between the City and First Security Bank, Conway, Arkansas.

Section 4. To 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 to execute and acknowledge a Trust Indenture (the "Trust Indenture"), by and between the City and First Security Bank, Searcy, Arkansas, as trustee (the "Trustee"), and the City Clerk 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 the City Clerk 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, including, without limitation, the provisions thereof pertaining to the pledge of the Electric Franchise Fee and the terms of the Bonds. The Mayor is hereby authorized to confer with the Trustee, the Financial Advisor and Bond Counsel 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 Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Trust 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 5. In order to prescribe the terms and conditions upon which the Bonds are to be sold to the Purchasers, the Mayor is hereby authorized and directed to execute a Bond Purchase Agreement or Agreements on behalf of the City, to be dated as of the date of their execution (the "Bond Purchase Agreements"), by and between the City and the Purchasers, and the Bond Purchase Agreements are hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Financial Advisor and Bond Counsel in order to complete the Bond Purchase Agreements in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the Bond Purchase Agreements, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of a 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 6. 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 issuance, sale, execution and delivery of the Bonds and to effect the execution and delivery of the Trust Indenture and the Bond Purchase Agreements, and to perform all of the obligations of the City under and pursuant

thereto. The Mayor and the City Clerk are 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 7. Kutak Rock LLP, Little Rock, Arkansas, is hereby appointed to act as Bond Counsel on behalf of the City in connection with the issuance and sale of the Bonds.


Section 8. 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 illegal or invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Ordinance.

Section 9. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 10. There is hereby found and declared to be an immediate need to for the securing and developing of substantial industrial operations within the City in order to provide additional employment, retain existing employment and alleviate unemployment, and otherwise benefit and alleviate hardships to the residents of the City, and in order to do so on the most favorable terms, it is necessary to enter into the Bond Purchase Agreements and issue the Bonds as soon as possible. Therefore, an emergency is hereby declared to exist 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 AND APPROVED THIS 25th DAY OF NOVEMBER, 2008.

APPROVED:



Mayor Tab Townsell

ATTEST:



Michael O. Garrett
City Clerk/Treasurer

(S E A L)