

City of Conway, Arkansas  
Ordinance No. O-20-23



L202008166

CERTIFICATE OF RECORD  
FAULKNER CO, AR FEE \$35.00

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CRYSTAL TAYLOR

CIRCUIT CLERK

BY: NICOLE SPILLER, D.C.

ORDINANCE

5 Pages

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF TAXABLE INDUSTRIAL DEVELOPMENT REVENUE REFUNDING BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL TRUST INDENTURE SECURING THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO LEASE AGREEMENT WITH RESPECT TO THE REFINANCED FACILITY BETWEEN THE CITY, AS LESSOR, AND CONWAY DEVELOPMENT CORPORATION, AS LESSEE; AUTHORIZING OTHER DOCUMENTS RELATING TO THE ISSUANCE OF AND SECURITY FOR THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF BOND PURCHASE AGREEMENTS 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. & 2019 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 and refinancing thereof by the issuance of bonds payable from the revenues derived from such facilities; and

**WHEREAS**, pursuant to the Act and as approved by Ordinance No. O-08-120 and Ordinance No. O-08-122 of the City Council, the City has previously issued its not to exceed \$20,500,000 Taxable Industrial Development Revenue Bonds (Hewlett-Packard Company Project), Series 2008A (the "Series 2008A Bonds"), and its not to exceed \$10,000,000 Subordinate Taxable Industrial Development Revenue Bonds (Hewlett-Packard Company Project), Series 2008B (the "Series 2008B Bonds"), for the purpose of financing the acquisition, and construction of a facility (the "Project") located at 355 LedgeLawn Drive in The Meadows Office & Technology Park within the corporate boundaries of the City; and

**WHEREAS**, the Project facilities were leased by the City to the Conway Development Corporation ("CDC") and subleased by CDC to Hewlett-Packard Company ("HP"), and subsequently leased to DXC Technology Services LLC, a Delaware limited liability company ("DXC"), as successor to an affiliate entity of HP; and

**WHEREAS**, the necessary arrangements have now been made with CDC for the refinancing of the Project through the issuance of the City's Taxable Industrial Development Revenue Refunding Bonds (Conway Development Corporation Project), Series 2020, in principal amount not to exceed \$15,490,000 (the "Series 2020 Bonds"); and

**WHEREAS**, the Series 2020 Bonds will be issued pursuant to the terms and provisions of a Trust Indenture dated as of November 1, 2008, as supplemented and amended by a First Supplemental Trust Indenture to be dated as of the date of delivery of the Series 2020 Bonds (as supplemented and amended, 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 continue leasing the Project to CDC pursuant to the terms and provisions of a Lease Agreement dated as of November 1, 2008, as a supplemented and amended by a First Amendment to Lease Agreement to be dated as of the date of delivery of the Series 2020 Bonds (as supplemented and amended, the "Lease Agreement"), and for CDC to sublease the Project to DXC;

**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 Division of Workforce Services, the unemployment rate in Faulkner County during February of 2020 averaged 3.4%. Although county numbers aren't yet available, the unemployment rate for the State of Arkansas increased from 3.5% in February 2020 to 4.8% in March 2020. Current employment at the Project facility is approximately 750 persons. Accordingly, the continuation of operations at the Project facility will provide needed employment opportunities and other benefits to residents of the City.

(b) DXC will continue to utilize the Project facility in connection with its information technology services and solutions business.

(c) DXC'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 Series 2020 Bonds will not constitute general obligations of the City within the meaning of any constitutional or statutory limitation, but will 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. There is hereby authorized and directed the issuance of the Series 2020 Bonds and the sale thereof to all or some of First Security Bank, Centennial Bank, Arvest Bank and Simmons Bank pursuant to the terms and provisions of Bond Purchase Agreements to be dated as of the date of adoption of this ordinance (the "Bond Purchase Agreements"). The form of said Bond Purchase Agreements is specifically approved in Section 5 hereof. It is understood and agreed that the above-named financial institutions shall have the right to assign all or any portion of their rights and obligations under their respective 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, Centennial Bank, Arvest Bank and/or Simmons Bank and any such assignees shall be referred to hereinafter as the "Purchasers." The Series 2020 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 Bond Purchase Agreements. The Series 2020 Bonds shall be issued in the original aggregate principal amount of not to exceed Fifteen Million Four Hundred Ninety Thousand Dollars (\$15,490,000), shall be dated as of the date of their delivery, and shall bear interest at the rate of 4.50% per annum. The precise form of the Series 2020 Bonds shall be set forth in the First Supplemental Trust Indenture between the City and First Security Bank, as trustee (the "Trustee"), specifically approved in Section 3 hereof. The Mayor is hereby authorized and directed to execute and deliver the Series 2020 Bonds to the Purchasers as requested by CDC, and the City Clerk is hereby authorized and directed to execute and deliver the Series 2020 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 2020 Bonds to be authenticated by the Trustee.



Section 3. To prescribe the terms and conditions upon which the Series 2020 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 First Supplemental Trust Indenture, by and between the City and the Trustee, and the Mayor and City Clerk are hereby authorized and directed to cause the First Supplemental Trust Indenture to be accepted, executed and acknowledged by the Trustee. The First Supplemental Trust Indenture is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, CDC, and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete the First Supplemental 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.

(Advice is given that a copy of the First Supplemental 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 4. 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 First Amendment to 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 First Amendment to Lease Agreement for and on behalf of the City. The First Amendment to 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 and Bond Counsel in order to complete the First Amendment to 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. CDC's right to further sublease the property leased to it under the Lease Agreement, as supplemented and amended by the First Amendment to Lease Agreement, is hereby recognized.

(Advice is given that a copy of the First Amendment to 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.)

Section 5. To prescribe the terms and conditions upon which the Series 2020 Bonds are to be sold to the Purchasers, the Mayor is hereby authorized and directed to execute the Bond Purchase Agreements on behalf of the City. The Bond Purchase Agreements are hereby approved in substantially the form thereof submitted to this meeting, and the Mayor is hereby authorized to confer with CDC and Bond Counsel in order to complete such Bond Purchase Agreements in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the documents, 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 execution and delivery of the Series 2020 Bonds, the First Supplemental Trust Indenture, the First Amendment to Lease Agreement, and a supplement to the existing Mortgage on the Project which will secure the Series 2020 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 7. Kutak Rock LLP, Little Rock, Arkansas, is hereby appointed as Bond Counsel with respect to the issuance of the Series 2020 Bonds, the fees and expenses of which firm shall be paid from the proceeds of the Bonds or by CDC.


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 invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions.

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 for securing and maintaining 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 Series 2020 Bonds authorized hereby and the taking of the other actions authorized herein are immediately necessary in connection with the securing and maintenance 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.

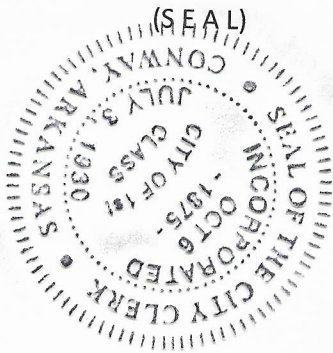
ADOPTED: April 28<sup>th</sup>, 2020.

Approved:

  
Mayor Bart Castleberry

Attest:

  
Michael O. Garrett  
City Clerk/Treasurer



**CERTIFICATE**

**STATE OF ARKANSAS  
COUNTY OF FAULKNER  
CITY OF CONWAY**

I, Michael Garrett, the duly elected, qualified, and acting: Clerk-Treasurer of the City of Conway, Arkansas, do hereby certify that the attached and foregoing is a true and correct copy of an ordinance presented to the City Council of the City of Conway, Arkansas, at a meeting of that body held on the 28<sup>th</sup> day of April, 2020 same is duly recorded in the minutes of meeting of said Council.

Witness, my hand, and seal of the City of Conway, Arkansas this 12<sup>th</sup> day of May, 2020.

  
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**CITY CLERK-TREASURER**

