



Legislation Text

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AN ORDINANCE TO AUTHORIZE THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS UNDER THE MUNICIPALITIES AND COUNTIES INDUSTRIAL DEVELOPMENT REVENUE BOND LAW FOR THE PURPOSE OF SECURING AND DEVELOPING INDUSTRY; TO AUTHORIZE THE SALE OF THE BONDS AND THE APPROVAL OF A BOND PURCHASE AGREEMENT AND PAYMENT IN LIEU OF TAXES AGREEMENTS IN CONNECTION THEREWITH; TO AUTHORIZE THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE BONDS; TO AUTHORIZE AND PRESCRIBE CERTAIN MATTERS PERTAINING TO THE PROJECT, THE ACQUISITION, CONSTRUCTION, AND EQUIPPING THEREOF, AND THE FINANCING THEREOF; TO AUTHORIZE THE EXECUTION AND DELIVERY OF LEASE AGREEMENTS RELATING TO THE PROJECT; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, the City of Jonesboro, Arkansas (the “City”) is authorized under the provisions of Amendment 65 to the Arkansas Constitution and the Municipalities and Counties Industrial Development Revenue Bond Law, Ark. Code Ann. §§ 14-164-201 to -224 (collectively, the “Act”), to own, acquire, construct, 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, FMH Conveyors LLC (“FMH”) and HMD Jonesboro, LLC (“HMD”, and collectively with FMH, the “Companies”) have evidenced their interest in acquiring, constructing, and equipping an industrial facility in the City if permanent financing can be provided through the issuance of bonds under the authority of the Act; and

WHEREAS, the City has agreed to cooperate with the Companies in the acquisition, construction, and equipping of an industrial facility in the City and to finance the acquisition of land and/or leasehold rights, construction of buildings, infrastructure and improvements, and acquisition and installation of equipment for the manufacture, fabrication or processing of custom-engineered conveyors to be located at the intersection of Barnhill Road and Highland Drive in Jonesboro, Arkansas (the “Project”) relating to the operations of FMH; and

WHEREAS, to provide permanent financing of the Project costs, necessary costs and expenditures incidental thereto, and the cost of the issuance of bonds, the City will issue multiple series of its taxable industrial development revenue bonds under the provisions of the Act designated “City of Jonesboro, Arkansas Taxable Industrial Development Revenue Bonds (FMH Conveyors LLC Project), Series 2016,” in the principal amount of not to exceed \$2,000,000.00 (the “FMH Bonds”) and “City of Jonesboro, Arkansas Taxable Industrial Development Revenue Bonds (HMD Jonesboro, LLC Project), Series 2016,” in the principal amount of not to exceed \$12,000,000.00 (the “HMD Bonds,” and collectively with the FMH Bonds, the “Bonds”); and

WHEREAS, the Bonds will be issued pursuant to the provisions of a Trust Indenture (the “Trust Indenture”) to be entered into between the City and a trustee to be selected upon the mutual agreement of the City and the Companies (the “Trustee”); and

WHEREAS, the City and FMH intend to enter into a Lease Agreement (the “FMH Lease Agreement”) relating to the real property, infrastructure and improvements constituting a portion of the Project, which contemplates that a portion of the Project will be leased to FMH, with an option to purchase for a nominal price, and the rental payments therefor together with other moneys available shall be sufficient to pay debt service on the FMH Bonds and all related costs; and

WHEREAS, the City and HMD intend to enter into a Lease Agreement (the “HMD Lease Agreement”) relating to the personal property and infrastructure and improvements to real property constituting a portion of the Project, which contemplates that a portion of the Project will be leased to HMD, with an option to purchase for a nominal price, and the rental payments therefor together with other moneys available shall be sufficient to pay debt service on the HMD Bonds and all related costs; and

WHEREAS, to induce the City to proceed with the issuance of the FMH Bonds for the purpose indicated, which will inure to the benefit of FMH, the City and FMH will enter into a Payment in Lieu of Taxes Agreement (“FMH PILOT Agreement”) in substantially the form presented at this meeting; and

WHEREAS, to induce the City to proceed with the issuance of the HMD Bonds for the purpose indicated, which will inure to the benefit of HMD, the City and HMD will enter into a Payment in Lieu of Taxes Agreement (“HMD PILOT Agreement”) in substantially the form presented at this meeting; and

WHEREAS, the City caused a form of a notice of public hearing to be published on June 10, 2016, and the City hereby ratifies the form of notice published; and

WHEREAS, an open public hearing on the question of the issuance of the Bonds was held before the City Council on June 21, 2016 following publication of notice of the hearing and that having heard all persons desiring to be heard in the matter, the City has taken under advisement the comments and statements of such persons, and declared the public hearing duly closed; and

WHEREAS, the City proposes to sell the HMD Bonds and the FMH Bonds to affiliates of the respective Companies (collectively, the “Purchasers”) pursuant to Bond Purchase Agreement by and between the City and the Purchasers; and

WHEREAS, FMH and HMD, respectively, have obtained independent loans from one or more lenders secured by liens on, or security interests in, title to all or part of the Project granted pursuant to various agreements, instruments and documents;

WHEREAS, the City acknowledges and consents to all liens and encumbrances on, security interests in and rights to, the title to the Project granted by FMH or HMD, respectively, and acknowledges that FMH’s and HMD’s respective interests in the Project will be transferred to City subject to the such liens, encumbrances and security interests and such acknowledgement and consent may be evidenced through the execution of a Recognition of Prior Interests, Nondisturbance and Attornment Agreement between the City, FMH, and the lenders of FMH (or such lenders’ agents) benefitting from such lien, encumbrance or security interest (the “FMH RNA Agreement”) and a Recognition of Prior Interests, Nondisturbance and Attornment Agreement between the City, HMD, and the lenders of HMD (or such lenders’ agents) benefitting from such lien,

encumbrance or security interest (the “HMD RNA Agreement”);

WHEREAS, the completion of the Project will furnish additional employment and other benefits to and be in the best interest of the City and its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS:

Section 1. There be, and there is hereby, authorized and directed the following:

- (a) The Bonds shall be issued in one or more series in an aggregate principal amount of not to exceed \$14,000,000.00, and the Bonds shall be sold to the Purchasers for a price of par plus the costs of issuance upon the terms and conditions set forth in the Bond Purchase Agreement.
- (b) The execution and delivery of the FMH PILOT Agreement and the HMD PILOT Agreement by the Mayor and City Clerk on behalf of the City, 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, is hereby authorized and directed. Executed copies of the FMH PILOT Agreement and the HMD PILOT Agreement shall be filed in the City Clerk’s office.
- (c) The acquisition, construction, and equipping of the Project, and, in connection therewith, the execution of any necessary architectural, engineering, or construction contracts or the acceptance of an assignment of any such contracts previously executed by the Companies for the construction and equipping of the Project on behalf of the City is hereby authorized and directed.

Section 2. The issuance of the Bonds in the total principal amount of not to exceed \$14,000,000.00 is hereby authorized. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall bear interest (at a rate or rates) and shall be subject to redemption prior to maturity, all upon the terms and conditions to be set forth in the Trust Indenture. That to further 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 (when requested to do so by the Companies) to execute and acknowledge the Trust Indenture, 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 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 (and a copy of such Trust Indenture is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Trustee and the Company 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 document, their execution to constitute conclusive evidence of such approval.

Section 3. There be, and there is hereby, authorized and directed the execution and delivery of the FMH Lease Agreement and the HMD Lease Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the FMH Lease Agreement and the HMD Lease Agreement for and on behalf of the City. The FMH Lease Agreement and the HMD Lease Agreement are hereby approved in substantially the form submitted to this meeting (and a copy of such FMH Lease Agreement and HMD Lease Agreement are on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with FMH and HMD, respectively, in order to complete the FMH Lease Agreement and the HMD Lease Agreement in substantially the forms 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.

Section 4. There be, and there is hereby, authorized and directed the execution and delivery of the Bond Purchase Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Bond Purchase Agreement for and on behalf of the City. The Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such Bond Purchase Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Purchasers in order to complete the 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.

Section 5. There be, and there is hereby, authorized and directed the execution and delivery of the FMH RNA Agreement and the HMD RNA Agreement if either or both Companies determine that such agreements are required by its lenders. The Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the FMH RNA Agreement and the HMD RNA Agreement for and on behalf of the City. The FMH RNA Agreement and the HMD RNA Agreement are hereby approved in substantially the forms submitted to this meeting (and a copy of such FMH RNA Agreement and the HMD RNA Agreement are on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with FMH, HMD and lenders of FMH and HMD (or such lenders' agents) in order to complete the FMH RNA Agreement and the HMD RNA Agreement in substantially the forms 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.

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 (i) the execution of the FMH Lease Agreement, (ii) the performance of the City's obligations under the FMH Lease Agreement, (iii) the execution of the HMD Lease Agreement, (iv) the performance of the City's obligations under the HMD Lease Agreement, (v) the execution and delivery of the Trust Indenture, (vi) the performance of all obligations of the City under and pursuant to the Trust Indenture, (vii) the execution and delivery of the Bonds, (viii) the execution and delivery of the FMH PILOT Agreement, (ix) the performance of the City's obligations under the FMH PILOT Agreement, (x) the execution and delivery of the HMD PILOT Agreement, (xi) the performance of the City's obligations under the HMD PILOT Agreement, (xii) the execution and delivery of the Bond Purchase Agreement, (xiii) the performance of the City's obligations under the Bond Purchase Agreement, (xiv) the execution and delivery of the FMH RNA Agreement, (xv) the performance of the City's obligations under the FMH RNA Agreement, (xvi) the execution and delivery of the HMD RNA Agreement, (xvii) the performance of the City's obligations under the HMD RNA Agreement, and (xviii) the performance of all other acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, in connection with the issuance of the Bonds and in connection with on-going rights and obligations that arise after issuance and prior to maturity of the Bonds, 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, including, but not limited to, the execution of one or more Home Office Payment Agreements, Memorandums of Lease, Delivery Instructions and other closing certificates.

Section 7. The Project involves the acquisition, constructing, and equipping of a complex industrial project, requiring highly specialized work and specialized types of machinery and equipment. In compliance with Ark. Code. Ann. § 14-164-204, 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 Council pursuant to applicable laws of the State of Arkansas, including particularly the Act.

Section 8. All actions heretofore taken by the City, the Companies, and the Purchasers in connection with

the issuance, offer and sale of the Bonds and the development and completion of the Project are hereby in all respects ratified and approved.

Section 9. Severability. In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

Section 10. Repealer. All ordinances or resolutions of the City in conflict herewith are hereby repealed to the extent of such conflict.

Section 11. 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, 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 action 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.

PASSED AND ADOPTED this 20th day of September, 2016.