



Legislation Text

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AN ORDINANCE AMENDING ORDINANCE NO. 3487 AND AUTHORIZING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS FOR THE PURPOSE OF PROVIDING PERMANENT FINANCING FOR INDUSTRIAL FACILITIES; AUTHORIZING A TRUST INDENTURE SECURING THE BONDS; AUTHORIZING A SUPPLEMENTAL LEASE AGREEMENT BETWEEN THE CITY OF JONESBORO, ARKANSAS, AS LESSOR, AND FRITO-LAY, INC., AS LESSEE; AUTHORIZING THE SALE OF THE BONDS; AND PRESCRIBING OTHER MATTERS RELATED THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Jonesboro, Arkansas (the “City”), is authorized and empowered under the provisions of Act No. 9 of the First Extraordinary Session of the Sixty-Second General Assembly of the State of Arkansas, approved January 21, 1960, as amended and the Economic and Industrial Development Revenue Bond Law of 1985, as amended (the “Acts”), to issue revenue bonds and to expend the proceeds thereof to finance the acquisition, construction and equipment of land, buildings or facilities which can be used in securing or developing industry; and

WHEREAS, the City has previously provided permanent financing, through the issuance of its City of Jonesboro, Arkansas Taxable Industrial Development Revenue Bonds (Frito-Lay, Inc. Project), Series 1997, Series 1999, and Series 2006 of the costs of acquiring, constructing and equipping that certain industrial facility consisting of land, buildings, improvements, machinery, equipment and related facilities (the “Project”), and that the City has leased the Project to Frito-Lay, Inc., a Delaware corporation (the “Company”), to be operated by the Company as an industrial plant consisting of a snack food manufacturing facility under that certain Lease Agreement dated as of December 1, 1997 as supplemented by the First Supplemental Lease Agreement dated July 1, 1999 and the Second Supplemental Lease Agreement dated April 21, 2006 (the “Lease”); and

WHEREAS, the Company has previously requested that the City issue additional bonds to finance additional capital improvements for the Project (“Expansion Projects”), and

WHEREAS, on September 7, 2004, the City adopted Ordinance No. 3487 authorizing the issuance of \$200,000,000 in principle amount of additional Taxable Industrial Development Revenue Bonds (Frito-Lay Project) (the “2004 Bond Authorization”) to finance Expansion Projects; and

WHEREAS, on March 21, 2006 the City adopted Ordinance No. 3623 authorizing the issuance of \$67,000,000 in Taxable Industrial Development Revenue Bonds out of the 2004 Bond Authorization to finance certain Expansion Projects; and

WHEREAS, the Company now wishes to issue the remaining amount of the 2004 Bond Authorization for additional Expansion Projects, and it is necessary to approve certain modifications to be made to the Trust Indenture (the “Supplemental Trust Indenture”) and to approve a Third Supplemental Lease Agreement between the City and the Company; and

WHEREAS, copies of the hereinafter-described Supplemental Trust Indenture, and Third Supplemental Lease Agreement have been presented to and are before this meeting;

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

Section 1. That the issuance of \$133,000,000 Taxable Industrial Development Revenue Bonds (Frito-Lay, Inc. Project) Series 2008 (the "Series 2008 Bonds") is hereby authorized. That the Series 2008 Bonds are the second series of bonds to be issued pursuant to the 2004 Bond Authorization. The Series 2008 Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, and shall be subject to redemption prior to maturity, all upon the terms and conditions recommended by the Company and set forth in the Supplemental Trust Indenture, defined below. The Series 2008 Bonds shall mature not later than December 1, 2027, and bear interest at a rate or rates not to exceed six and twenty-five hundredths percent (6.25%) per annum.

Section 2. That to prescribe the terms and conditions upon which the Series 2008 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 Company) to execute and acknowledge a Supplemental Trust Indenture by and between the City and Regions Bank, Little Rock, Arkansas (the "Trustee"), and the City Clerk is hereby authorized and directed to execute and acknowledge the Indenture and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Supplemental Trust Indenture to be accepted, executed and acknowledged by the Trustee. The 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, the Company and the Purchaser in order to complete the 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.

Section 3. That there be, and there is hereby authorized the execution and delivery of a Third Supplemental Lease Agreement by and between the City as Lessor, and the Company as Lessee (the "Supplemental Lease Agreement"), and the Mayor and City Clerk be, and they are hereby, authorized (when requested to do so by the Company) to execute, acknowledge and deliver the Supplemental Lease Agreement for and on behalf of the City. The Supplemental Lease Agreement is hereby approved in substantially the form submitted to this meeting and the Mayor is hereby authorized to confer with the Company, the Trustee and the Purchaser in order to complete the Supplemental 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.

Section 4. That the full principle amount of the Series 2008 Bonds shall be issued at one single typewritten bond to be sold to PepsiCo, Inc. for the purchase price of one hundred cents on the dollar.

Section 5. That the Mayor and City Clerk, for and on behalf of the City, be, and they are hereby, authorized and directed to do any and all things necessary to effect the execution and delivery of the Supplemental Lease Agreement, the performance of all obligations of the City under the Supplemental Lease Agreement, the execution and delivery of the Indenture, the performance of all obligations of the City under and pursuant to the Supplemental Trust Indenture, the issuance, execution, sale and delivery of the Bonds, and the performance of all acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. That the Mayor and the City Clerk be, and they 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 6. A full transcript of all documents executed in connection with the issuance of the Series 2008

Bonds shall be filed in the office of the City Clerk following the delivery of the Series 2008 Bonds and the closing of the bond issue.

Section 7. That the provisions of this Ordinance are hereby declared to be separable, 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 and provisions.

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

Section 9. That there is hereby found and declared to be an immediate need for the securing and developing of industry in order to provide employment and payrolls, 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 hereby are immediately necessary for the accomplishing of these public benefits and purposes. It is, therefore, declared that an emergency exists and this Ordinance being necessary for the immediate preservation of the public peace, health and safety shall be in force and effect immediately upon and after its passage.

PASSED AND ADOPTED this 18th day of November, 2008.