



## Legislation Text

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**File #:** ORD-10:068, **Version:** 1

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AN ORDINANCE AUTHORIZING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS AND RECOVERY ZONE FACILITY REVENUE BONDS TO FINANCE CERTAIN INDUSTRIAL FACILITIES; AUTHORIZING THE LEASING OF SUCH FACILITIES TO NORDEX USA, INC.; AUTHORIZING TRUST INDENTURES SECURING THE BONDS; AUTHORIZING THE SALE OF THE BONDS; DESIGNATING A PORTION OF THE BONDS AS RECOVERY ZONE FACILITY BONDS; DESIGNATING THE JONESBORO WORK FORCE RECOVERY ZONE; AUTHORIZING AND PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND DECLARING AN EMERGENCY. WHEREAS, the City of Jonesboro, Arkansas (the City), is authorized and empowered under the provisions of Title 14, Chapter 164, Subchapter 2 of the Arkansas Code of 1987 Annotated (the Act), to issue revenue bonds and to expend the proceeds thereof to finance land, buildings or facilities which can be used in securing or developing industry; and

WHEREAS, it is proposed that the City issue its revenue bonds under the Act to finance the cost of acquiring, constructing and equipping an industrial facility for the manufacture of wind turbine nacelles and rotor blades to be located at 3100 Nordex Drive, Jonesboro, Arkansas 72401 (the Project), for use by Nordex USA, Inc., a Delaware corporation (the Company), and paying the bond guaranty fees, establishing a reserve fund, and paying the expenses of issuing the bonds; and

WHEREAS, after due consideration, the City has determined to proceed with financing the Project and to issue and sell its revenue bonds in the aggregate principal amount of \$45,000,000 (the Bonds), and in connection therewith to enter into three Trust Indentures (the Indentures) between the City and a Trustee to be named prior to the issuance of the Bonds (the Trustee), to secure the Bonds; and

WHEREAS, the Bonds will be comprised of (i) \$11,000,000 of Economic Development Revenue Bonds issued pursuant to the Act and guaranteed by the Arkansas Development Finance Authority and the Arkansas Economic Development Commission, (ii) \$9,000,000 of Recovery Zone Facility Revenue Bonds issued pursuant to the Act and pursuant to the American Recovery and Reinvestment Tax Act of 2009, and (iii) not to exceed \$25,000,000 of Economic Development Revenue Bonds; and

WHEREAS, Recovery Zone Bonds are to be issued to finance certain expenditures for equipment located in an area within the jurisdiction of the city that is in a designated recovery zone; and

WHEREAS, the Arkansas Development Finance Authority pursuant to Executive Order ED 09-13, October 13, 2009, has designated the Jonesboro Work Force Recovery Zone as an area suffering from loss of employment, increase in poverty levels, below average per capita income and declining tax revenue; and

WHEREAS, the Jonesboro Work Force Area is composed of the counties of Clay, Craighead, Crittenden, Cross, Greene, Jackson, Lawrence, Mississippi, Poinsett, Randolph, and Sharp; and

WHEREAS, the Project will be owned by the City and leased to the Company pursuant to the provisions of a Lease Agreement (the Lease Agreement) between the City and the Company; and

WHEREAS, the Bonds will be sold to Crews & Associates, Inc. (the Underwriter) pursuant to a Bond Purchase Agreement (the Purchase Agreement) among the City, the Company, and the Underwriter; and

WHEREAS, the Company will enter into an Agreement for Payments in Lieu of Taxes (the PILOT Agreement) with the City as hereinafter provided; and

WHEREAS, pursuant to and in accordance with applicable provisions of Arkansas law and Section 147(f) of the Internal Revenue Code of 1986, as amended (the Code), a public hearing was held on the date hereof before the City Council on the question of the issuance of the Bonds; and

WHEREAS, forms of the Indentures, Lease Agreement, and PILOT 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. The City Council hereby finds that the accomplishment of the Project, and the issuance of the Bonds to finance the same, will provide substantial employment and payrolls and will thereby secure and develop industry within the city and in the counties comprising the Jonesboro Workforce Area.

Section 2. Based on the findings and determination of ADFA and AEDC and at the request of the Company, the City further finds that there is significant unemployment and general economic distress in the Jonesboro Workforce Area and the City hereby designates the Jonesboro Workforce Area as a Recovery Zone pursuant to the requirements of Sections 1400U-1--1400U-3 of the Code.

Section 3. The issuance of the Bonds in the aggregate principal amount of \$45,000,000 is hereby authorized. The Bonds shall be issued in three series designated: (a) City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (ADFA/AEDC Guaranty Program), (Nordex USA, Inc. Project) 2010 Series A, in the principal amount of \$11,000,000, (b) City of Jonesboro, Arkansas Tax Exempt Recovery Zone Facility Revenue Bonds (Nordex USA, Inc. Project), 2010 Series B, in the principal amount of \$9,000,000, and City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (Nordex USA, Inc., Project) 2010 Series C. The Bonds shall bear interest at the rate or rates per annum as shall be recommended by the Company and set forth in the Indentures, so long as no rate exceeds the maximum permitted by law. The Bonds shall mature (or be subject to mandatory sinking fund redemption) on the date or dates and in the principal amount or amounts as shall be recommended by the Company and set forth in the Indentures, so long as the final maturity of the Bonds is not greater than 20 years from their date of issuance. The 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 Indenture.

Section 4. The 2010 Series A Bonds and the 2010 Series B Bonds shall be sold to the Underwriter for a purchase price negotiated with the Company, plus original issue premium or minus original issue discount, if any, and plus accrued interest, if any, from the date of the Bonds to the date of delivery, and upon the terms and conditions set forth in the Purchase Agreement. The Mayor is hereby authorized to confer with the Company, the Underwriter and others in order to complete a Purchase Agreement and to execute and deliver the same on behalf of the City on the terms contained in this section with such additional terms as shall be approved by the Mayor. The 2010 Series C Bonds will be sold as a private placement with an affiliate of the Company.

Section 5. To prescribe the terms and conditions upon which the Bonds are to be executed, authenticated,

issued, accepted, held and secured, the Mayor and City Clerk are hereby authorized and directed to execute, acknowledge and deliver the Indentures for and on behalf of the City. The Indentures are hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee and others in order to complete the Indentures in substantially the form submitted to this meeting with such changes as shall be approved by him, his execution to constitute conclusive evidence of such approval.

Section 6. There is hereby authorized the execution and delivery of the Lease Agreement, and the Mayor and 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 the Company and others in order to complete the Lease Agreement in substantially the form submitted to this meeting with such changes as shall be approved by him, his execution to constitute conclusive evidence of such approval.

Section 7. There has heretofore been proposed, approved and executed an Agreement between the City and the Company authorizing the execution of a Pilot Agreement to Issue Bonds. The Mayor is hereby authorized to execute and deliver the Pilot Agreement in the form previously approved.

Section 8. There is hereby authorized the preparation and distribution to various prospective and actual purchasers of the Bonds of an Official Statement (and Preliminary Official Statement) describing the Bonds and their security and setting forth such other information as may be determined to be necessary or desirable. The Mayor is hereby authorized to execute such Official Statement on behalf of the City.

Section 9. The acquiring, constructing and equipping of the Project, and the issuance and sale of the Bonds, are exceptional situations in which the City has no responsibility for payment of the costs and expenses thereof, all of which are payable by the Company, and the Company's recommendations with respect thereto are acceptable to the City. In particular, the City Council finds that (i) the Project consists of industrial facilities within the meaning of the Act, and (ii) the Company's selection of Bond Counsel is a nationally recognized firm in the field of municipal bonds, familiar with the Company, the Act, and the policies of the City with respect to the issuance of bonds of the type now being issued. Therefore, pursuant to applicable laws of the State of Arkansas, including the Act and Section 14-47-138 of the Arkansas Code of 1987 Annotated, competitive bidding is hereby waived.

Section 10. 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 documents herein authorized and the performance of all obligations of the City thereunder, 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. The Mayor and 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 11. The City Clerk is hereby authorized and directed to file in the office of the City Clerk, as a part of the minutes of the meeting at which this Ordinance is adopted, for inspection by any interested person copies of the Indentures, the Lease Agreement, and the PILOT Agreement, and such documents shall be on file for inspection by any interested person.

Section 12. The City hereby designates the 2010 Series B Bonds as recovery zone facility bonds pursuant to Section 1400U-3(b)(1)(C) of the Code and covenants that 95% or more of the net proceeds of the Bonds will be used to acquire recovery zone property as defined in Section 1400U-3(c)(1).

Section 13. 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 14. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 15. There is hereby found and declared to be an immediate need for the securing and developing of industry in order to provide substantial employment and payrolls, thereby alleviating unemployment and otherwise benefitting 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 preservation of the public peace, health and safety shall be in force and effect immediately upon and after its passage.

PASSED AND ADOPTED this 7<sup>th</sup> day of September, 2010.