



Legislation Text

File #: ORD-04:285, Version: 1

AN ORDINANCE 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 **(NOTE: THIS ORDINANCE WAS AMENDED BY ORD-06:145 ON MARCH 21, 2006; ORD-08:100 ON NOVEMBER 18, 2008)**

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 and Series 1999, 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”), as part of an industrial plant being operated by the Company (or its successors or assigns) in the City under that certain Lease Agreement dated as of December 1, 1997 (the “Lease”); and

WHEREAS, it is proposed that the City issue additional bonds to expand the Project with certain improvements, machinery, equipment and related facilities (the “Expansion Project”); and

WHEREAS, pursuant to and in accordance with the provisions of the Act, the City is now prepared to proceed with financing the Project and to issue and sell \$200,000,000 in principal amount of its Taxable Industrial Development Revenue Bonds (Frito-Lay Project), Series 2004 (the “Bonds”), to provide such financing; and

WHEREAS, copies of the hereinafter-described Trust Indenture, and 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 the Bonds is hereby authorized. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature (over a period not to exceed thirty (30) years), shall bear interest (at a rate or rates not to exceed ten percent (10%) per annum), and shall be subject to redemption prior to maturity, all upon the terms and conditions recommended by the Company and to be set forth in the Trust Indenture (hereinafter authorized) securing the Bonds.

SECTION 2: That the Bonds be sold to PepsiCo, Inc., (the “Purchaser”) for the purchase price of one hundred

cents on the dollar.

SECTION 3: That 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 by and between the City and Regions Bank, Little Rock, Arkansas (the "Trustee"), dated as of October 1, 2004 (the "Indenture"), 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 Indenture to be accepted, executed and acknowledged by the Trustee. The 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 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 4: That there be, and there is hereby authorized the execution and delivery of a Supplemental Lease Agreement by and between the City as Lessor, and the Company as Lessee (the "Lease Agreement"), and the Mayor and City Clerk be, and they 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, the Trustee and the Purchaser in order to complete the 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 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 Lease Agreement, the performance of all obligations of the City under the Lease Agreement, the execution and delivery of the Indenture, the performance of all obligations of the City under and pursuant to the 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: That the City is hereby involved with the acquiring, constructing and equipping of industrial facilities, and pursuant to applicable laws of the State of Arkansas, including particularly the Act, competitive bidding is waived.

SECTION 7: That 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 a copy of the Indenture, and the Lease Agreement, and such documents shall be on file for inspection by any interested person.

SECTION 8: That the law firm of Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., Little Rock, Arkansas, be appointed to act as Bond Counsel on behalf of the City in connection with the issuance and sale of the Bonds.

SECTION 9: 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 10: That all ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 11: 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: September 7, 2004.