

RESOLUTION NO. R-94-01

**A RESOLUTION OF THE CITY COUNCIL OF CONWAY, ARKANSAS
AUTHORIZING THE ENTRY INTO AN AGREEMENT TO ISSUE BONDS
FOR THE PURPOSE OF ASSISTING IN THE FINANCING OF AN
INDUSTRIAL FACILITY WITHIN THE CITY.**

WHEREAS, the City of Conway, Arkansas (the "City"), is authorized under the provisions of the laws of the State of Arkansas, including particularly but not limited to, Amendment 65 to the Constitution of the State of Arkansas, Act No. 852 of 1987, Act No. 1017 of 1985, and Act No. 9 of 1960, all as amended, (the "Laws of Arkansas"), to acquire, construct, and equip 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, Kimberly-Clark Corporation, a Delaware corporation ("Kimberly-Clark"), has evidenced its interest in equipping an industrial facility consisting of production and related facilities and improvements within the City if permanent financing can be provided through the issuance of bonds under the authority of the Laws of Arkansas; and

WHEREAS, the City desires to assist Kimberly-Clark in order to secure and develop industry within the City, and to aid in the financing thereof under the provisions of the Laws of Arkansas; and

WHEREAS, it is desirable that Kimberly-Clark and the City enter into an Agreement to Issue Bonds for such purpose;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF CONWAY, ARKANSAS, that:

1. The Mayor and the City Clerk of the City of Conway, Arkansas, be authorized and directed to enter into an Agreement to Issue Bonds in substantially the form and substance as follows:

AGREEMENT TO ISSUE BONDS

THIS AGREEMENT is made as of January 11, 1994, by and between the **CITY OF CONWAY, ARKANSAS**, a municipal corporation under the laws of the State of Arkansas (the "City"), and **KIMBERLY-CLARK CORPORATION**, a Delaware corporation ("Kimberly-Clark"), for the purpose of carrying out the purposes set forth in the laws of the State of Arkansas, including particularly but not limited to, Amendment 65 to the Constitution of the State of Arkansas, Act No. 852 of 1987, Act No. 1017 of 1985, and Act No. 9 of 1960, all as amended, (the "Laws of Arkansas").

W I T N E S S E T H:

WHEREAS, the City is authorized by the Laws of Arkansas to own, acquire, construct, equip, operate, maintain, sell, lease, or contract concerning or otherwise deal in or dispose of any land, buildings, or facilities of any and every nature whatsoever that can be used in securing or developing industry within or near the City; and

WHEREAS, the City has determined that such purposes may be served by cooperation with Kimberly-Clark in the equipping of production and related facilities and improvements to be located at its Conway Mills facility within the City for use by Kimberly-Clark in its manufacturing business (the "Project"); and

WHEREAS, the City and Kimberly-Clark desire to cooperate in the equipping of the Project and to have the costs of the Project financed from the proceeds of revenue bonds of the City (the "Bonds") to be issued pursuant to the Laws of Arkansas in an aggregate principal amount now estimated to be \$25,000,000; and

WHEREAS, the City and Kimberly-Clark contemplate that the Project and existing facilities and improvements to be sold to the City will be leased to Kimberly-Clark, with an option to purchase, and the rental payments therefor shall be sufficient to pay debt service on the Bonds and all related costs;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration under the mutual benefits, covenants, and agreements herein expressed, the City and Kimberly-Clark agree as follows:

1. Proceedings. All proceedings in connection with the issuance of the Bonds shall be consistent with the requirements of the Laws of Arkansas, including notice to all state agencies, and the publication of notice as required by the Laws of Arkansas. All references contained herein to the issuance of the Bonds shall be subject to compliance with the formalities of the Laws of Arkansas when the facts required to do so are determined.

2. Acquisition. The City and Kimberly-Clark will cooperate in causing to be commenced and continued the required equipping of the Project, and Kimberly-Clark may provide, or cause to be provided, the necessary interim financing to permit such acquisition of the Project to commence pending the issuance of interim and/or permanent Bonds. Not later than the time of issuance of the Bonds for any portion of the Project, Kimberly-Clark will convey and transfer or cause to be conveyed and transferred to the City, for an amount approximately equal to that then expended by Kimberly-Clark for the Project or portions thereof which are financed by the Bonds then issued (including at Kimberly-Clark's option any costs of interim financing), the Project or portions thereof to be then financed. Notwithstanding the preceding sentence, upon the initial issuance of the Bonds, Kimberly-Clark shall convey and transfer to the City the existing facilities and improvements provided for herein. There shall also be conveyed to the City any easements and rights-of-way necessary to permit acquisition and operation of the Project or such portion and the operation of the existing facilities and improvements provided for herein.

3. Lease. The City shall enter into a lease, or leases, under which Kimberly-Clark will lease, with an option to purchase, from the City, such Project or portions thereof and the existing facilities and improvements provided for herein for a term not to exceed fifteen (15) years and will agree to make rental payments sufficient to pay the principal of and premium, if any, and interest on the Bonds, together with all charges of any Trustee and/or any Paying Agent for the Bonds.

4. Sale of Bonds, Security. The City will take such steps as are necessary to issue, sell, and deliver, pursuant to the terms of the Laws of Arkansas, the Bonds for the purposes of financing the Project in the aggregate amount necessary to furnish the permanent financing of all or any part of the costs of accomplishing the Project. It is presently estimated by Kimberly-Clark that Bonds in the aggregate amount of \$25,000,000 will be issued. However, the City's commitment is to issue the Bonds, pursuant to the terms of the Laws of Arkansas, in such amount as shall be requested by Kimberly-Clark for accomplishing all or any part of the Project, whether or not such amount is more or less than the above estimate and whether or not the production and related facilities and improvements finally equipped are identical to or different from the facilities presently expected to constitute the Project. The Bonds shall mature in such amount and times and shall bear interest at such rate or rates, to be payable on such date or dates, and to have such optional and mandatory redemption features and prices as are mutually agreed upon in writing by the City and Kimberly-Clark. The City further agrees that it will enter into a lease and, if required, an indenture of trust with a bank or trust company, qualified to exercise trust powers where necessary, for the purpose of providing rental payments sufficient, with direct or indirect proceeds of the Bonds, to pay the principal of and premium, if any, and interest on the

Bonds as they become due together with the charges of any Trustee and/or any Paying Agent for the Bonds, and pledging and/or otherwise securing the payment of such rental payments for the benefit of the owner(s) of the Bonds. The lease, the indenture, other related documents, and the Bonds shall contain such customary terms and conditions as are agreed upon by the City and Kimberly-Clark. The City will co-operate in consummating the transaction so contemplated.

5. Bonds to be Special Obligations. The City shall have no financial responsibility with respect to the Project, the existing facilities and improvements provided for herein, the Bonds, or the costs associated thereto, and the Bonds shall be special obligations of the City and shall never constitute a general obligation, indebtedness, or pledge of the credit of the City within the meaning of any constitutional or statutory provision and shall never be paid in whole or in part out of any funds raised or to be raised by taxation or any other revenues or other funds of the City except those (including unexpended Bond proceeds) derived from or in connection with the sale or lease of the Project and the existing facilities and improvements provided for herein.

6. Conditions of Issuance. The Bonds may be issued either at one time or in several series and/or issues from time to time, in such aggregate principal amount or amounts as Kimberly-Clark shall request in writing; provided, however, that all conditions of the Laws of Arkansas shall have been met.

7. Costs to be Financed. The costs of the Project may include any costs permissible under the Laws of Arkansas, including but not limited to reasonable and necessary costs, expenses, and fees incurred by the City in connection with the issuance of the Bonds; attorney's fees and expenses; and any trustee fees and expenses, if any, required in connection with the underwriting or placement of the Bonds; recording costs; rating agency's fees, if any, and printing costs. The City will upon request provide or cause to be provided to Kimberly-Clark any data or information which may be reasonably required to verify any of such costs, expenses, and fees.

8. Termination. In the event that the Bonds shall not be sold within five years from the date hereof, this Agreement shall automatically terminate unless the parties hereto shall agree in writing to its extension for a further period of time specified in such writing. Kimberly-Clark may unilaterally terminate this Agreement without liability to the City (except for any amounts due and owing by Kimberly-Clark to the City arising out of the transactions occurring on or before the time of such termination, which shall be promptly paid by Kimberly-Clark to the City) by giving notice by ordinary mail, postage prepaid, facsimile or overnight courier service to the City specifying therein the date of termination which may be the date of the notice.

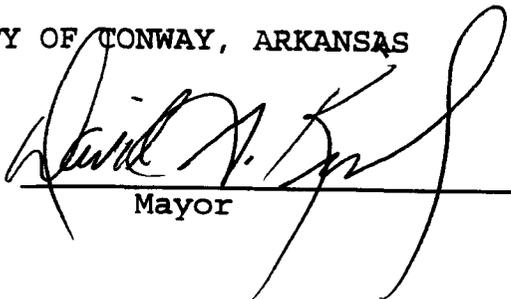
9. Protection to the City. Kimberly-Clark shall pay all of the City's costs and expenses reasonably and necessarily incurred in connection with this Agreement or any other related document or instrument. Excepting gross negligence and willful misconduct by the City, Kimberly-Clark will at all times indemnify and hold harmless the City against any and all losses, costs, damages, expenses, and liabilities of whatsoever nature directly or indirectly resulting from, arising out of, or related to matters in connection with this Agreement.

10. Payment in Lieu of Taxes. The City and Kimberly-Clark recognize that under decisions of the Supreme Court of Arkansas the Project and the existing facilities and improvements to be sold to the City will be exempt from ad valorem taxation. Kimberly-Clark and the City agree, however, to enter into an agreement in the form attached hereto as Exhibit A requiring Kimberly-Clark to make payments in lieu of taxes, in such amounts and on such terms as set forth therein. The City and Kimberly-Clark each agree to use their best efforts to sustain the enforceability of the Agreement for Payments in Lieu of Taxes.

11. Purpose and Effect. The Bonds are to be issued, sold, and delivered under the authority of the Laws of Arkansas and all related actions and documents shall be in conformity therewith. The City intends this Agreement to be the expression of its present intent, pursuant to the terms hereof, to issue the Bonds in the aggregate principal amount necessary to furnish the permanent financing to pay for all of the costs of accomplishing the Project and to expend the Bond proceeds to defray the costs of the Project. The City considers this Agreement to be an official action for all purposes of the Federal Income Tax Regulations.

IN WITNESS WHEREOF, the City of Conway, Arkansas, acting pursuant to a resolution of its City Council, has caused its name to be hereunto subscribed and Kimberly-Clark has caused its name to be subscribed hereto by its duly authorized officers, all as of the year and date first above written.

CITY OF CONWAY, ARKANSAS

By: 

Mayor

ATTEST:

By: 

City Clerk

(S E A L)

KIMBERLY-CLARK CORPORATION,
a Delaware Corporation

By: _____
Senior Vice President and
Chief Financial Officer

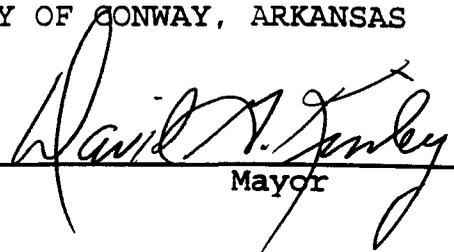
ATTEST:

By: _____
Secretary

2. This Resolution shall be in full force and effect from and after its adoption.

ADOPTED this 11th day of January, 1994.

CITY OF CONWAY, ARKANSAS

By: 

Mayor

ATTEST:

By: 

City Clerk

(S E A L)

EXHIBIT A

AGREEMENT FOR PAYMENTS IN LIEU OF TAXES

City of Conway, Arkansas
Conway, Arkansas

Ladies and Gentlemen:

Kimberly-Clark Corporation, a Delaware corporation ("Kimberly-Clark") has requested the City of Conway, Arkansas (the "City") to enter into an Agreement to Issue Bonds pursuant to the authority of the laws of the State of Arkansas, including particularly but not limited to, Amendment 65 to the Constitution of the State of Arkansas, Act No. 852 of 1987, Act No. 1017 of 1985, and Act No. 9 of 1960, as amended (the "Laws of Arkansas"), for the purpose of assisting Kimberly-Clark in equipping industrial facilities, consisting of production and related facilities and improvements to be located at its Conway Mills facility within the City (the "Project"). To provide for the financing of the cost of the Project it is proposed that the City issue approximately \$25,000,000 of industrial development revenue bonds under the authority of the Laws of Arkansas (the "Bonds").

The Bonds will be secured by a pledge of revenues derived from the Project and the existing facilities and improvements to be sold to the City, consisting of lease rentals to be paid by Kimberly-Clark to the City under a lease agreement not to exceed fifteen years (the "Lease") proposed to be entered into between the City and Kimberly-Clark.

The Lease will provide that Kimberly-Clark would be obligated to pay all taxes and assessments, general and special, levied and assessed on the Project and the existing facilities and improvements provided for herein during the term of the Lease, as well as water and sewer charges, assessments and other governmental charges and impositions. Kimberly-Clark is informed and understands that, notwithstanding such provisions in the Lease, under the decision of the Supreme Court of the State of Arkansas in the case of Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 633 (1960), the Project and the existing facilities and improvements provided for herein will be exempt from ad valorem taxes because it would be owned by the City and used for a public purpose within the meaning of the applicable Constitutional provision affording the exemption. Thus, Kimberly-Clark understands that it, as lessee of the Project and the existing facilities and improvements provided for herein all owned by the City, will, in fact, have no ad valorem taxes to pay under the provisions of the Lease. The City has indicated a

reluctance to lose all tax revenues which would otherwise be received if the properties involved were privately owned. Therefore to induce the City to proceed with the issuance of the Bonds for the purpose indicated, which will inure to the benefit of Kimberly-Clark, and for other valuable consideration, the receipt of which is hereby acknowledged by the City, Kimberly-Clark agrees with the City as follows:

1. For the duration of the Lease, Kimberly-Clark will pay annually to the City an amount equal to one percent (1%) of the principal amount of the Bonds sold with the first such payment to be made on or before the 10th day of October, 1996, with reference to tax year 1995.

2. The payments to be made by Kimberly-Clark, pursuant to Act No. 497 of 1981 and this Agreement, are intended to be in lieu of all ad valorem taxes that would have to be paid on the Project and the existing facilities and improvements leased by Kimberly-Clark in the Lease to the State of Arkansas, the City of Conway, Faulkner County, School or Community College Districts and/or other political subdivisions of the State of Arkansas if the Project and the existing facilities and improvements were not exempt from ad valorem taxes under the provisions of Article 16, Section 5 of the Constitution of the State of Arkansas as interpreted by the Supreme Court of the State of Arkansas in Wayland v. Snapp, supra (the "taxing authorities").

3. The City agrees to distribute each payment hereunder among the taxing authorities in the proportion that the millage collected by each bears to the total millage collected by all during the year of distribution.

4. If by reason of a change in the Constitution, or a change by the Supreme Court of the State of Arkansas in its interpretation of the Constitution or otherwise, Kimberly-Clark is required to pay any tax which the payments specified herein are intended to be in lieu of, Kimberly-Clark may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of taxes and need only pay the difference to the City. Furthermore, inasmuch as the payment herein agreed to be made by Kimberly-Clark is intended to be in lieu of taxes, it is agreed that said payment shall not as to any year be in an amount greater than would be payable for such year in ad valorem taxes, in the aggregate, on account of its ownership of the Project and the existing facilities and improvements.

5. The agreement herein made shall terminate and be of no further force and effect from and after the date that the Lease shall terminate for any purpose other than a default on the part of Kimberly-Clark.

If such termination shall be at a point constituting a portion of a tax year, Kimberly-Clark shall pay in lieu of taxes for the year in which termination occurred that portion of the specified

annual payment that the number of days in such tax year that Kimberly-Clark was Lessee prior to the termination bears to 365 days.

6. This agreement shall be binding upon the successors and assigns of Kimberly-Clark, but no assignment shall be effective to relieve Kimberly-Clark of any of its obligations hereunder unless expressly authorized and approved in writing by the City.

7. This agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

If the foregoing is acceptable, please so indicate by executing the acceptance set forth below, and returning to Kimberly-Clark, whereupon this instrument shall constitute a valid and binding contract between Kimberly-Clark and the City.

DATED: January 11, 1994.

KIMBERLY-CLARK CORPORATION,
a Delaware Corporation

By: _____
Senior Vice President and
Chief Financial Officer

ACCEPTED:

CITY OF CONWAY, ARKANSAS

By: _____

Mayor

January 11, 1994

CERTIFICATE

The undersigned, Clerk of the City of Conway, Arkansas, hereby certifies that the foregoing is a true and perfect copy of Resolution No. R-94-0 adopted by the City Council of Conway, Arkansas, at a regular meeting held at City Hall in said City, at 6:30 o'clock, P.M., on the 11th day of January, 1994.

GIVEN under my hand and seal on this 12th day of January, 1994.



City Clerk

(S E A L)