

ORDINANCE NO. O-75-24

AN ORDINANCE AUTHORIZING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS UNDER 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, FOR THE PURPOSE OF PROVIDING PERMANENT FINANCING OF THE COSTS OF SECURING AND DEVELOPING INDUSTRY (THE PARTICULAR INDUSTRIAL PROJECT IS DESCRIBED IN THE ORDINANCE); AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE BONDS; AUTHORIZING AND PRESCRIBING OTHER MATTERS PERTAINING TO THE ACQUISITION, CONSTRUCTION AND EQUIPMENT OF THE INDUSTRIAL PROJECT AND THE FINANCING THEREOF; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Conway, Arkansas (the "City") is authorized by 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 ("Act No. 9"), to acquire lands, construct and equip manufacturing buildings, improvements and facilities and to incur other costs and expenses and make other expenditures incidental to and for the implementing and accomplishing of the conduct of manufacturing operations; and

WHEREAS, the City is authorized by Act No. 9 to issue Industrial Development Revenue Bonds payable from revenues derived from the industrial project so acquired, constructed and equipped and secured by a lien thereon and security interest therein; and

WHEREAS, the necessary arrangements have been made with Kirkwood Industries, Inc., an Ohio corporation ("Kirkwood") for the acquisition of lands and an existing building, the construction of additional improvements and the acquisition and installation of machinery, equipment and facilities which will be utilized for the manufacturing of such products as Kirkwood shall elect to manufacture (the "Project") and to lease the Project to Kirkwood pursuant to the terms of a Lease and Agreement subsequently identified herein and referred to as the "Lease Agreement"; and

WHEREAS, permanent financing of the Project costs, necessary costs and expenditures incidental thereto and expenses of authorizing and issuing Bonds, is being furnished by the City issuing Industrial Development Revenue Bonds under the provisions of Act No. 9 (the "Bonds"); and

WHEREAS, the Bonds are to be sold and issued in series, with there being initially issued Series A Bonds in the principal amount, bearing interest, maturing and subject to redemption as hereinafter set forth in the form of Indenture authorized by this Ordinance;

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

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

- (a) The sale of the Series A Bonds to Jon R. Brittenum & Associates, Inc., Little Rock, Arkansas, and the execution by the Mayor and City Clerk of an Underwriting Agreement with such purchaser for the price and pursuant to the terms recommended by Kirkwood (a copy of which shall be filed in the office of the City Clerk);
- (b) The acquiring, constructing and equipping of the Project, and in connection therewith, the execution of contracts, and the acceptance of assignments of contracts, for the acquiring, constructing and equipping of the Project;
- (c) The performance of all obligations of the City under the Lease Agreement pertaining to the acquiring, constructing and equipping of the Project and the performance of all obligations of the City under the contracts referred to in (b) above; and
- (d) The execution, by the Mayor and City Clerk, of an agreement with Kirkwood whereby Kirkwood will agree to make payments to the City in lieu of ad valorem taxes (a copy of which shall be filed in the office of the City Clerk).

Section 2. That the issuance of the Bonds from time to time is hereby authorized, and the immediate delivery of the Series A Bonds is hereby authorized. 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 (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, which constitutes and is hereby made a part of this Ordinance, shall be in substantially the following form, to wit:

Section 3. 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 of the Indenture, its execution and acceptance by the Trustee, the performance of all obligations of the City under and pursuant to the Indenture, the execution and delivery of the Series A Bonds, the execution and delivery of an Official Statement, and the performance of all acts of whatever nature necessary to effect and carry out the authority conferred by the Indenture and by this Ordinance. That the Mayor and 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 4. That the City is here involved with the acquiring, constructing and equipping of industrial facilities, and, therefore, competitive bidding is waived, pursuant to applicable laws of the State of Arkansas, including particularly Act No. 9.

Section 5. That the Mayor and City Clerk, for and on behalf of the City, be and they are hereby authorized to take all action, and execute and file all documents, necessary to perfect an election to proceed under Section 103(c) (6) (D) of the Internal Revenue Code of 1954, as amended, to the end of insuring that interest on the Bonds is exempt from federal income taxes.

Section 6. 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 7. That all ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 8. 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: November 25, 1975.

APPROVED:

ATTEST:

David D. ...
City Clerk

John A. Hoggard
Mayor

(SEAL)