

RESOLUTION NO. 179-17

A RESOLUTION AUTHORIZING A MEMORANDUM OF AGREEMENT BY AND BETWEEN THE CITY OF CONWAY, ARKANSAS, AND KIRKWOOD INDUSTRIES, INC. PERTAINING TO THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS FOR FINANCING THE COSTS OF ACQUIRING, CONSTRUCTING AND EQUIPPING INDUSTRIAL FACILITIES; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

BE IT RESOLVED by the City Council of the City of Conway, Arkansas:

Section 1. That there be, and there is hereby authorized the execution and delivery of a Memorandum of Agreement by and between the City of Conway, Arkansas (the "Municipality"), and Kirkwood Industries, Inc., an Ohio corporation, in substantially the form and with substantially the contents hereinafter set forth, and the Mayor and City Clerk be, and they are hereby, authorized to execute and deliver the Memorandum of Agreement for and on behalf of the Municipality. The form and contents of the Memorandum of Agreement, which are approved and which are made a part hereto, shall be substantially as follows:

Section 2. That the Mayor and City Clerk be, and they are hereby authorized and directed, for and on behalf of the Municipality, to do all things, execute all instruments and otherwise take all action necessary to the realization of the Municipality's obligations under the Memorandum of Agreement.

PASSED: April 16, 1979,

APPROVED:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

(SEAL)

CERTIFICATE

The undersigned, City Clerk of Conway, Arkansas, hereby certifies that the foregoing is a true and compared copy of a resolution passed at a ~~regular~~<sup>Special</sup> session of the City Council of Conway, Arkansas, held at the regular meeting place of the Council at ~~6.30~~<sup>12.58</sup> o'clock ~~P.M.~~<sup>P.M.</sup>, on the 16th day of April, 1979.

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City Clerk

(SEAL)

MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT is between the City of Conway, Arkansas, party of the first part (hereinafter referred to as the "Municipality"), and Kirkwood Industries, Inc., an Ohio corporation, party of the second part (hereinafter referred to as the "Company").

IN CONSIDERATION of the undertakings of the parties set forth herein and the benefits to be derived therefrom and of other good and valuable considerations, receipt of which is hereby acknowledged by the parties, the Municipality and the Company AGREE:

1. Preliminary Statement. (a) The Municipality is a duly organized and existing city of the first class under the laws of the State of Arkansas and is authorized by the laws of the State of Arkansas, including particularly 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 9"), to issue revenue bonds for financing the costs of acquiring, constructing and equipping industrial facilities (as defined in and authorized by Act 9) and to lease, sell and/or make loans to finance the same for such rentals and payments and upon such terms and conditions as the Municipality deems advisable.

(b) The Municipality heretofore authorized and issued its Industrial Development Revenue Bonds - Kirkwood Project, Series A, dated December 1, 1975, in the aggregate principal amount of \$2,000,000, for the purpose of acquiring, constructing and equipping an industrial plant at the Municipality, which plant has been leased by the Municipality to the Company pursuant to a Lease and Agreement dated as of December 1, 1975. It is proposed that an expansion to the plant (consisting of buildings, improvements, machinery, equipment and facilities) be acquired, constructed and equipped (the "Project"). It is expected at this time that the Project will consist of a 30,000 square foot expansion to the present facility, together with related machinery and equipment.

(c) The Company has determined that prior to commencement of acquisition or construction of the Project, it must obtain a commitment from the Municipality that it will issue revenue

bonds under Act 9 as the Company and the Municipality, upon advice of counsel, shall deem appropriate and make the proceeds available for the permanent financing of any part or all of the costs and expenses incurred in acquiring, constructing and equipping the Project.

(d) In order to secure and develop industry which will furnish and will assure the continuation of substantial employment and payrolls (in furtherance of the public purpose of Act 9), the Municipality is willing to so commit and to proceed with the issuance of such bonds as and when requested by the Company, in principal amounts necessary to furnish such permanent financing subject to compliance with all conditions set forth in Act 9.

(e) The Municipality considers that the acquiring, constructing and equipping of the Project, and the making of loans to finance or the leasing or sale to the Company of all such facilities as are so financed, will secure and develop industry and thereby promote the general health and economic welfare of the inhabitants of the Municipality and adjacent areas.

2. Undertakings on the Part of the Municipality. Subject to the conditions above stated, the Municipality agrees as follows:

(a) That when requested by the Company, it will authorize and take, or cause to be taken, the necessary steps to issue revenue bonds under Act 9, in the aggregate principal amount necessary to furnish the permanent financing of all or any part of the costs of accomplishing the Project. In this regard, it is estimated at this time that revenue bonds in the aggregate principal amount of \$1,000,000 will be issued. However, the Municipality's commitment is to issue revenue bonds under Act 9

in such amount as shall be requested by the Company for accomplishing all or any part of the Project, whether that amount is more or less than the above estimate and whether the additional facilities finally acquired, constructed and equipped are identical to or are different from the facilities presently expected to constitute the Project. It is understood that as specified in

the Act such bonds will not be general obligations of the Municipality,

but will be special obligations, and in no event will they constitute an indebtedness of the Municipality within the meaning of any constitutional or statutory limitation. The Municipality will not be called upon to pay any costs or expenses incurred in connection with the authorization and issuance of the bonds, and all such costs and expenses will be paid out of the proceeds of the bonds or by the Company.

(b) That it will, at the proper time and subject in all respects to the recommendation and approval of the Company, adopt, or cause to be adopted, such proceedings and authorize the execution of such documents as may be necessary and advisable for the authorization, sale and issuance of the bonds, the acquiring, constructing and equipping of the Project, and for the leasing or sale thereof or the making of loans therefor to the Company, all in conformity with Act 9 and any other applicable federal and state laws and upon terms and conditions mutually satisfactory to the Municipality and the Company.

(c) That the aggregate basic rents or payments (i.e., the rents or payments to be used to pay the principal of, premiums, if any, and interest on the bonds) payable under leases, sale agreements or other agreements between the Municipality and the Company, shall be sufficient to pay the principal of, premiums, if any, and interest on the bonds when due. The leases, sale agreements or other agreements shall contain such provisions as are necessary or desirable, consistent with the authority conferred by Act 9.

(d) That it will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3. Undertakings on the Part of the Company. Subject to the conditions above stated, the Company agrees as follows:

(a) That it will cooperate with the Municipality in the sale and issuance of the bonds.

(b) That it will enter into such leases, sale agreements or other appropriate agreements with the Municipality under which the Company will obligate itself to pay to the Municipality rents or payments sufficient to pay the principal of, premiums, if any, and interest on the bonds when due and containing such other provisions as are necessary or desirable consistent with the authority conferred by Act 9.

(c) That it will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

4. General Provisions. (a) This Memorandum of Agreement shall continue in full force and effect until the Project and its financing by bonds, as herein specified, is accomplished, and in this regard it is understood that there may be separate issues of bonds, and separate series within a particular issue, with different maturities, interest rates, redemption provisions and other details. In the case of each issue, and of each series, the Municipality will take appropriate action by ordinance or resolution to sell and authorize the bonds and to authorize and execute such agreements and documents as may be determined necessary or desirable by the Municipality and the Company.

(b) The Company agrees to make payments in lieu of ad valorem taxes in accordance with the letter agreement dated December 30, 1975, entered into between the Municipality and the Company, which provides for additional annual payments in the event bonds are issued in series subsequent to the Series A bonds referred to in Section 1(b) hereof.

Formula

IN WITNESS WHEREOF, the parties hereto have entered into  
this Memorandum of Agreement by their officers thereunto duly  
authorized as of the 16~~10~~th day of April, 1979.

ATTEST:

CITY OF CONWAY, ARKANSAS

By \_\_\_\_\_

Mayor

\_\_\_\_\_  
City Clerk

(SEAL)

ATTEST:

KIRKWOOD INDUSTRIES, INC.

By \_\_\_\_\_

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

(SEAL)