

RESOLUTION NO. R-81-26

A RESOLUTION AUTHORIZING A MEMORANDUM OF INTENT BY AND BETWEEN THE CITY OF CONWAY, ARKANSAS AND KIMBERLY-CLARK CORPORATION PERTAINING TO THE ISSUANCE OF \$1,000,000 INDUSTRIAL REVENUE BONDS FOR FINANCING THE COSTS OF ACQUIRING INDUSTRIAL FACILITIES; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Conway, Arkansas, is authorized under the provisions of Act No. 9 of the First Extraordinary Session of the Sixty-second General Assembly of the State of Arkansas for the year 1960, as amended (the "Act"), to acquire, construct, equip and improve 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, is interested in expanding its existing industrial facility within or near the City of Conway if the financing thereof can be provided through the issuance of bonds under the authority of the Act; and

WHEREAS, the City of Conway desires to assist Kimberly-Clark Corporation in the expansion of its operations in or near the City of Conway, and to aid in the financing thereof under the provisions of the Act;

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

Section 1. The execution and delivery of a Memorandum of Intent (a copy of which has been submitted to the City Council) by and between the City of Conway, Arkansas and Kimberly-Clark Corporation is hereby authorized, and the Mayor and City Clerk are hereby authorized and directed to execute and deliver the Memorandum of Intent for and on behalf of the City of Conway. The Memorandum of Intent is hereby approved in substantially the form submitted to this meeting, with such changes thereto as shall be approved by the Mayor, his execution thereof to constitute conclusive evidence of such approval.

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

Section 3. This Resolution shall take effect immediately upon its adoption.

ADOPTED: August 11, 1981.

ATTEST:

APPROVED:

City Clerk

Mayor

(SEAL)

MEMORANDUM OF INTENT

This MEMORANDUM OF INTENT is between the CITY OF CONWAY, ARKANSAS, party of the first part (hereinafter referred to as the "Municipality"), and KIMBERLY-CLARK CORPORATION, a Delaware 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 consideration, 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, construction and equipping industrial facilities (as defined in and authorized by Act 9) and to lease or sell the same for such rental or other payments and upon such other terms and conditions as the Municipality deems advisable.

(b) The Municipality proposes to acquire, construct and equip certain industrial facilities (the "Project") as requested by the Company, such facilities to constitute an expansion of the Company's existing mill at Conway, Arkansas. The Project will involve the acquisition and installation of machinery and equipment and the construction of additional improvements all as shall be deemed to be necessary or desirable by the Company to permit the accomplishment of its manufacturing operations. It is expected that the Project will be used for the manufacture of feminine hygiene products.

(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 upon such terms as the Company and the Municipality, upon advice of counsel, shall deem appropriate and that it will use the proceeds therefrom for the 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 thereby assure the continuation of substantial employment (in furtherance of the public purpose of Act 9), the Municipality is willing so to commit and to proceed with the issuance of such bonds as and when requested by the Company, in principal amount necessary to furnish such 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 stated herein, 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 its revenue bonds under Act 9, in aggregate principal amount necessary to furnish the financing of all or any part of the costs of acquiring, constructing and equipping the Project. It is estimated at this time that revenue bonds in aggregate principal amount of not to exceed \$1,000,000 will be issued. However, the Municipality agrees to issue its 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 present estimate and whether the facilities finally acquired, constructed and equipped are identical to or are different from the facilities presently expected to constitute the Project. 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 may not be called upon to pay any costs or expenses incurred, all such costs and expenses to 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 payments (i.e., the rents or other payments to be used to pay the principal of, premium, if any, and interest on the bonds) payable under any lease, installment sale agreement or loan agreement between the Municipality and the Company with respect to the Project, shall be sufficient to pay the principal of, premium, if any, and interest on the bonds when due. Such lease, installment sale agreement or loan agreement may 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 action 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 stated herein, the Company agrees as follows:

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

(b) That it enter into a lease, installment sale agreement or loan agreement with the Municipality under which the Company will obligate itself to pay to the Municipality rents or other payments sufficient to pay the principal of, premium, 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 is informed and understands that in the event that the Project is owned by the Municipality and leased to the Company, the Project will be exempt from ad valorem taxes by virtue of its ownership by the Municipality. In such case and as inducement to the Municipality to enter into this Memorandum of Intent, the Company agrees to make payments to the Municipality in lieu of ad valorem taxes otherwise attributable to the Project. The amount and other details concerning such payments shall be embodied in an appropriate agreement between the Municipality and the Company, to be entered into prior to the issuance of the bonds. In the event that the Company enters into an installment sale agreement or loan agreement with the Municipality, with the result that the Project will be owned by the Company and subject to all applicable ad valorem taxes, no such in lieu of tax payments will be made and no such agreement will be entered into.

(d) That it will pay all costs of the Project, costs and expenditures incidental thereto, and financing costs (including all costs of authorizing and issuing the bonds) not paid from the proceeds of the bonds.

(e) That it will take such further action (including responsibility for all appropriate public filings on behalf of the Company or the Municipality) and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

4. General Provisions. This Memorandum of Intent shall continue in full force and effect until the Project and its financing by bonds is accomplished. The Project may be financed by separate issues of bonds and separate series within a particular issue, with different maturities, interest rates, redemption provisions and other details. The bonds to be issued pursuant to this Memorandum of Intent may be issued under the Constitution and laws of the State of Arkansas other than Act 9 as the Municipality and the Company shall deem appropriate or desirable. In the case of each issue and of each series, the Municipality will take appropriate action under Act 9 or such other laws as the Municipality shall deem appropriate or desirable, by ordinance, resolution or otherwise, to authorize and sell the bonds and to authorize and execute such agreements and documents as may be determined by the Municipality and the Company to be necessary or desirable.

IN WITNESS WHEREOF, the Municipality and the Company have entered into this Memorandum of Intent by their officers thereunto duly authorized, as of the ____ day of August, 1981.

ATTEST:

CITY OF CONWAY, ARKANSAS

City Clerk

By _____
Mayor

(SEAL)

ATTEST:

KIMBERLY-CLARK CORPORATION

(title)

By _____

(title)

(SEAL)