

ORDINANCE NO. 0-76-46

AN ORDINANCE AUTHORIZING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REFUNDING 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 REFUNDING PRIOR BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE BONDS; AUTHORIZING AND PRESCRIBING OTHER MATTERS PERTAINING THERETO; 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 and constructed and secured by a lien thereon and security interest therein; and

WHEREAS, the City has previously issued City of Conway, Arkansas Industrial Development Revenue Bonds - Braden Project, Series A, dated November 15, 1974 (the "Prior Issue") and used the proceeds of the Prior Issue to finance an industrial undertaking consisting of lands, buildings, machinery, equipment, improvements and facilities (the "Project"); and

WHEREAS, the Project is owned by the City and has been leased to Braden Industries, Inc. pursuant to a Lease and Agreement, dated as of November 15, 1974 (the "Prior Lease"), and Valley Industries, Inc., a New

Jersey corporation ("Valley"), is acquiring the leasehold interest of Braden Industries, Inc. under the Prior Lease and in connection therewith, it is necessary to refund the bonds of the Prior Issue; and

WHEREAS, the City has undertaken to refinance Project costs and provide the necessary funds to pay the expenses of authorizing and issuing refunding bonds by the issuance of Industrial Development Refunding Revenue Bonds under Act No. 9 in the principal amount of \$700,000 (the "Special Obligation Bonds" or the "Bonds") and by the issuance of Industrial Development Refunding and Improvement Revenue Bonds, Series A 1977, in the principal amount of \$1,450,000 (the "Series A Bonds"); and

WHEREAS, the Series A Bonds are the first series of an issue of bonds (the "Revenue Bonds") to be sold and issued for the purpose of accomplishing the refunding of the Prior Issue (in the case of the Series A Bonds) and financing the costs of expansions to the Project (in the case of subsequent series); and

WHEREAS, the proceeds of the Special Obligation Bonds and the Series A Bonds will be deposited in trust and invested so as to provide funds sufficient to pay as due the principal of, interest on and Trustee's and Paying Agent's fees in connection with the bonds of the Prior Issue and the Special Obligation Bonds, and the Trustee's and Paying Agent's fees in connection with the Revenue Bonds will be paid from rent paid by Valley under a Lease and Agreement subsequently identified and referred to as the "Lease Agreement"; and

WHEREAS, the Bonds are dated, bear interest, mature and are 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 Bonds to Jon R. Brittenum & Associates, Inc., Little Rock, Arkansas, and the execution by the Mayor and City Clerk of a Bond Purchase Agreement with such purchaser for the price and pursuant to the terms recommended by Valley (a copy of which shall be filed in the office of the City Clerk);
- (b) The acquiring, constructing and equipping of the Project in accordance with the provisions of the Lease Agreement; and
- (c) The performance of all obligations of the City under the Lease Agreement pertaining to the acquiring, constructing and equipping of the Project.

Section 2. That the issuance of the 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 and delivery 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 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 Mayor and City Clerk for and on behalf of the City, be and they are hereby authorized and directed 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 5. 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 6. That all ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 7. 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 exist 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: December 14, 1976.

ATTEST:

APPROVED:

Doris Dunn
City Clerk

John A. Haggard
Mayor

(SEAL)

