



Legislation Text

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**AN ORDINANCE TO AUTHORIZE THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS UNDER THE MUNICIPALITIES AND COUNTIES INDUSTRIAL DEVELOPMENT REVENUE BOND LAW FOR THE PURPOSE OF SECURING AND DEVELOPING INDUSTRY; TO AUTHORIZE THE SALE OF THE BONDS AND THE APPROVAL OF BOND PURCHASE AGREEMENTS, A PAYMENT IN LIEU OF TAXES AGREEMENT AND RELATED AGREEMENTS; TO AUTHORIZE THE EXECUTION AND DELIVERY OF TRUST INDENTURES SECURING THE BONDS; TO AUTHORIZE AND PRESCRIBE CERTAIN MATTERS PERTAINING TO THE PROJECT, THE ACQUISITION, CONSTRUCTION, AND EQUIPPING THEREOF, AND THE FINANCING THEREOF; TO AUTHORIZE THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT RELATING TO THE PROJECT; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Jonesboro, Arkansas (the “City”) is authorized under the provisions of Amendment 65 to the Arkansas Constitution and the Municipalities and Counties Industrial Development Revenue Bond Law, Ark. Code Ann. §§ 14-164-201 *et seq.* and Ark. Code Ann. §§ 14-164-701 *et seq.*, each as amended from time to time (collectively, the “Act”), to own, acquire, construct, equip, and lease 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**, Colson Caster LLC or its affiliate (the “Company”) has evidenced its interest in acquiring, constructing, and equipping an industrial facility in the City if permanent financing can be provided through the issuance of revenue bonds under the authority of the Act; and

**WHEREAS**, the City has agreed to cooperate with the Company in the acquisition, construction, and equipping of an industrial facility in the City and to finance the acquisition and construction of manufacturing facilities, infrastructure and improvements and the acquisition and installation of facilities and equipment for the development, manufacture, warehousing and distribution of casters and wheels to be located at 2121 Barnhill Road, Jonesboro, Arkansas (the “Project”) relating to the operations of the Company; and

**WHEREAS**, to provide permanent financing of the Project costs, necessary costs and expenditures incidental thereto, and the cost of the issuance of bonds, the City will issue its taxable economic development revenue bonds under the provisions of the Act in one or more series, in the aggregate principal amount of not to exceed \$24,000,000.00, to be comprised of (i) not to exceed \$11,000,000.00 taxable economic development revenue bonds issued pursuant to the Act and guaranteed (the “Guaranties”) by the Arkansas Development Finance Authority (“ADFA”) and the Arkansas Economic Development Commission (“AEDC”) and designated as the “City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (ADFA/AEDC Guaranty Programs) (Colson Caster Project), Series 2022A (the “Series A Bonds”), (ii) not to exceed \$4,000,000.00 taxable economic development revenue bonds issued pursuant to the Act and designated as the “City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022B (the “Series B Bonds”), and (iii) not to exceed \$9,000,000.00 taxable economic development revenue bonds issued pursuant to the Act and designated as the “City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022C (the “Series C Bonds” and together with the Series A

Bonds and the Series C Bonds, the “Bonds”); and

**WHEREAS**, the Series A Bonds and Series B Bonds will be issued pursuant to the provisions of a Trust Indenture (the “Series A and B Indenture”) and the Series C Bonds will be issued pursuant to the provisions of a Trust Indenture (the “Series C Indenture”) and with the Series A & B Indenture, the “Indentures”) to be entered into between the City and a trustee (the “Trustee”) to be selected upon the mutual agreement of the City and the Company; and

**WHEREAS**, the City and the Company intend to enter into a Lease Agreement (the “Lease Agreement”) relating to the real and personal property constituting the Project, which contemplates that the Project will be leased to the Company, with an option to purchase for a nominal price, and the rental payments therefor together with other moneys available shall be sufficient to pay debt service on the Bonds and all related costs; and

**WHEREAS**, the Series A Bonds will be sold to Crews & Associates, Inc. (the “Underwriter”) pursuant to a Bond Purchase Agreement (the “Series A Purchase Agreement”) between the City, the Company and the Underwriter; and

**WHEREAS**, in order to market the Series A Bonds and determine the total principal amount of the Series A Bonds, the Underwriter requires an Official Statement (and a Preliminary Official Statement) (collectively, the “Official Statement”) in a form deemed final pursuant to Rule 15c2-12 of the Securities and Exchange Commission, as described in the Series A Purchase Agreement; and

**WHEREAS**, the Series A Bonds will be special obligations of the City payable solely from moneys derived from payments by the Company to the City pursuant to the Lease Agreement on a parity basis with the Series B Bonds and any payments made by ADFA and AEDC under the Guaranties; and

**WHEREAS**, the Series B Bonds will be placed with “accredited investors” and/or “qualified institutional buyers” (as such terms are defined in the Securities Act of 1933 and related regulations) (the “Series B Purchaser”) by Crews & Associates, Inc. (the “Placement Agent”) pursuant to the terms of a Letter of Offer and Representations (the “Letter of Offer and Representations”) between the City and the Purchaser; and

**WHEREAS**, the Series B Bonds will be special obligations of the City payable solely from moneys derived from payments by the Company to the City pursuant to the Lease Agreement on a parity basis with the Series A Bonds and a valid first priority mortgage on the Project pursuant to a Mortgage, Security Agreement and Fixture Filing (the “Mortgage”), a valid first priority leasehold mortgage on the Company’s leasehold interest in the Project, a valid first priority security interest in all machinery, equipment, furnishings, and personal property included within the Project pursuant to a Security Agreement (the “Security Agreement”) and an assignment of any and all rents and leases on the Project pursuant to an Assignment of Rents and Leases (the “Assignment of Rents and Leases” and together with the Mortgage and Security Agreement, the “Security Documents”), granted by the Company in favor of the Collateral Agent (defined below). The Series B Bonds and the Guaranties are secured by the Security Documents on a parity basis; and

**WHEREAS**, ADFA, AEDC, the City, the Trustee, the Company and the Series B Purchaser will enter into an intercreditor agreement (the “Intercreditor Agreement”) pursuant to which ADFA, AEDC and the Series B Purchaser will share on a ratable basis the Security Documents as pledged on a parity basis for the Series B Bonds and the Guaranties and a collateral agent (the “Collateral Agent”) will be appointed upon mutual agreement of the parties thereto to act on behalf of ADFA, AEDC and the Series B Purchaser; and

**WHEREAS**, the City proposes to sell the Series C Bonds to an affiliate of the Company (the “Series C Purchaser”) pursuant to Bond Purchase Agreement (the “Series C Purchase Agreement”) by and between the City and the Series C Purchaser; and

**WHEREAS**, the Series C Bonds will be special obligations of the City payable solely from moneys derived from payments by the Company to the City pursuant to the Lease Agreement on a subordinate basis with the Series A Bonds and the Series B Bonds; and

**WHEREAS**, to induce the City to proceed with the issuance of the Bonds for the purpose indicated, which will inure to the benefit of the Company, the City and the Company will enter into a Payment in Lieu of

Taxes Agreement ( the “PILOT Agreement”); and

**WHEREAS**, the City caused a form of a notice of public hearing to be published on November 20, 2020, and the City hereby ratifies the form of notice published; and

**WHEREAS**, an open public hearing on the question of the issuance of the Bonds was held before the City Council on December 1, 2020 following publication of notice of the hearing and that having heard all persons desiring to be heard in the matter, the City has taken under advisement the comments and statements of such persons, and declared the public hearing duly closed; and

**WHEREAS**, the completion of the Project will furnish additional employment and other benefits to and be in the best interest of the City and its residents.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS:**

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

(a)(i) The Series A Bonds shall be issued in an aggregate principal amount not to exceed Eleven Million and 00/100 Dollars (\$11,000,000.00), and the Series A Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, and shall be subject to redemption prior to maturity all upon the terms and conditions set forth in the Series A and B Indenture. The Series A Bonds shall mature not later than December 31, 2037, and bear interest at a rate or rates not to exceed six and three-quarters percent (6.75%) per annum.

(ii) The Series B Bonds shall be issued in an aggregate principal amounts not to exceed Four Million and 00/100 Dollars (\$4,000,000.00), and the Series B Bonds shall be sold to the Series B Purchaser for a price of par plus the costs of issuance upon the terms and conditions set forth in the Letter of Offer and Representations. The Series B Bonds shall mature not later than December 31, 2037, and bear interest at a rate or rates not to exceed six and three-quarters percent (6.75%) per annum.

(iii) The Series C Bonds shall be issued in an aggregate principal amount not to exceed Nine Million and 00/100 Dollars (\$9,000,000.00), and the Series C Bonds shall be sold to the Series C Purchaser for a price of par plus the costs of issuance upon the terms and conditions set forth in the Series C Purchase Agreement. The Series C Bonds shall mature not later than December 31, 2042, and bear interest at a rate or rates not to exceed six and three-quarters percent (6.75%) per annum.

(b) The Bonds shall bear interest at the rate or rates per annum as set forth in the Indentures, so long as no rate exceeds the maximum permitted by law. The Bonds shall mature (or be subject to mandatory sinking fund redemption) on the date or dates and in the principal amount or amounts as set forth in the Indentures, so long as the final maturity of the Bonds is not greater than 20 years from their date of issuance. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, and shall be subject to redemption prior to maturity all upon the terms and conditions set forth in the Indentures.

(c) The acquisition, construction, and equipping of the Project, and, in connection therewith, the execution of any necessary architectural, engineering, or construction contracts or the acceptance of an assignment of any such contracts previously executed by the Company for the construction and equipping of the Project on behalf of the City is hereby authorized and directed.

**Section 2.** (a) The Series A Bonds shall be sold to the Underwriter for a purchase price negotiated with the Company, plus original issue premium or minus original issue discount, if any, plus accrued interest, if any, from the date of the Series A Bonds to the date of delivery, and upon the terms and conditions set forth in the Series A Purchase Agreement. There be, and there is hereby, authorized and directed the execution and delivery of the Series A Purchase Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Series A Purchase Agreement for and on behalf of the City. The Series A Purchase Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such Series A Purchase Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company and the Underwriter in order to complete the Series A Purchase Agreement in substantially the form submitted to this meeting, with

such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

There is hereby authorized the preparation and distribution to various prospective and actual purchasers of the Series A Bonds of the Official Statement describing the Series A Bonds and their security and setting forth such other information as may be determined to be necessary or desirable. The Mayor is hereby authorized to execute such Official Statement on behalf of the City in substantially the form submitted to this meeting (and a copy of such Official Statement is on file with the City Clerk and available for inspection by any interested person), with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

(b) The Series B Bonds will be privately placed with the Series B Purchaser for the purchase price of par plus costs of issuance pursuant to the terms of the Letter of Offer and Representations. There be, and there is hereby, authorized and directed the execution and delivery of the Letter of Offer and Representations, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Letter of Offer and Representations for and on behalf of the City. The Letter of Offer and Representations is hereby approved in substantially the form submitted to this meeting (and a copy of such Letter of Offer and Representations is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company and the Series B Purchaser in order to complete the Letter of Offer and Representations in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

(c) The Series C Bonds shall be sold to the Series C Purchaser for a price of par plus the costs of issuance upon the terms and conditions set forth in the Series C Purchase Agreement. There be, and there is hereby, authorized and directed the execution and delivery of the Series C Purchase Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Series C Purchase Agreement for and on behalf of the City. The Series C Purchase Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such Series C Purchase Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company and the Series C Purchaser in order to complete the Series C Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

(d) That to further 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 (when requested to do so by the Company) to execute and acknowledge the Indentures, and the City Clerk is hereby authorized and directed to execute and acknowledge the Indentures and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Indentures to be accepted, executed and acknowledged by the Trustee. The Indentures are hereby approved in substantially the forms submitted to this meeting (and a copy of such Indentures are on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Trustee and the Company in order to complete the Indentures in substantially the forms submitted to this meeting with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

**Section 3.** There be, and there is hereby, authorized and directed the execution and delivery of the Lease Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Lease Agreement for and on behalf of the City. The Lease Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such Lease Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company, in order to complete the Lease Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

**Section 4.** There be, and there is hereby, authorized and directed the execution and delivery of

the Intercreditor Agreement; and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Intercreditor Agreement for and on behalf of the City. The Intercreditor Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such Intercreditor Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company, in order to complete the Intercreditor Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

**Section 5.** In connection with the issuance of the Bonds, there be, and there is hereby, authorized and directed the execution and delivery of the PILOT Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the PILOT Agreement for and on behalf of the City. The PILOT Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such PILOT Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company, in order to complete the PILOT Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

**Section 6.** The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect (i) the execution of the Lease Agreement, (ii) the performance of the City's obligations under the Lease Agreement, (iii) the execution and delivery of the Indentures, (iv) the performance of all obligations of the City under and pursuant to the Indentures, (v) the execution and delivery of the Bonds, (vi) the execution and delivery of the Official Statement, (vii) the execution and delivery of the Intercreditor Agreement, (viii) the performance of the City's obligations under the Intercreditor Agreement, (ix) the execution and delivery of the PILOT Agreement, (x) the performance of the City's obligations under the PILOT Agreement, (xi) the execution and delivery of the Series A Purchase Agreement, (xii) the performance of the City's obligations under the Series A Purchase Agreement, (xiii) the execution and delivery of the Letter of Offer and Representations, (xiv) the performance of the City's obligations under the Letter of Offer and Representations, (xv) the execution and delivery of the Series C Purchase Agreement, (xvi) the performance of the City's obligations under the Series C Purchase Agreement, and (xvii) the performance of all other acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, in connection with the issuance of the Bonds and in connection with on-going rights and obligations that arise after issuance and prior to maturity of the Bonds, 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, including, but not limited to, the execution of a Home Office Payment Agreement, a Memorandum of Lease, Delivery Instructions and other closing certificates.

**Section 7.** The Project involves the acquisition, constructing, and equipping of a complex industrial project, requiring highly specialized work and specialized types of machinery and equipment. In compliance with Ark. Code. Ann. § 14-164-204, it has been and is hereby determined by the City Council that competitive bidding be, and the same is hereby, waived as to this particular industrial project. This action is taken by the City Council pursuant to applicable laws of the State of Arkansas, including particularly the Act.

**Section 8.** All actions heretofore taken by the City, the Company, the Underwriter, the Placement Agent, the Series B Purchaser and the Series C Purchaser in connection with the issuance, offer and sale of the Bonds and the development and completion of the Project are hereby in all respects ratified and approved.

**Section 9.** *Severability.* In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

**Section 10.** *Repealer.* All ordinances or resolutions of the City in conflict herewith are hereby repealed to the extent of such conflict.

PASSED AND APPROVED THIS 15TH DAY OF MARCH 2022.