

ORDINANCE 2006-137

**EVIDENCING THE INTENTION OF THE CITY OF MASON
TO ISSUE INDUSTRIAL DEVELOPMENT REVENUE
BONDS, AUTHORIZING THE EXECUTION OF AN
AGREEMENT WITH CRANE PLASTICS COMPANY LLC,
AND DECLARING AN EMERGENCY**

WHEREAS, the City of Mason, Ohio, a municipal corporation (the "City") organized and existing under the laws of the State of Ohio, acting pursuant to the authority of Article VIII, Section 13, of the Constitution of the State of Ohio, Chapter 165 of the Ohio Revised Code, is empowered and authorized and desires to take certain necessary actions toward the issuance of its industrial development revenue bonds (the "Bonds") for the purpose of acquisition, installation, renovation and equipping of an approximately 215,000 sq. ft. building and related machinery, equipment and adjacent land for the manufacture of vinyl fencing, to be located at 4074 Bethany Road, Mason, Ohio (the "Project"), which Project will be owned and operated by Crane Plastics Company LLC (the "Company") doing business as Vinyl Visions; and

WHEREAS, the Council, acting on behalf of the City, has determined that an Agreement between the City and the Company, in substantially the form attached hereto (the "Agreement"), which is incorporated by reference herein, adequately sets forth the general terms and conditions under which the City is willing to proceed with the financing of the Project; and

WHEREAS, the Company has represented, and based solely on such representations, the City anticipates that the Project would preserve jobs within the City and provide additional jobs and employment opportunities for residents of the City, and that the Project would improve the economic welfare of the City and its people.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE MUNICIPALITY OF MASON, OHIO, THAT:

Section 1. The City will undertake to authorize and issue its Bonds, in one or more series, in the maximum principal amount of \$8,500,000 for the purpose of financing the Project, and both the City and its officers will take all further action necessary or desirable for that purpose, all subject, however, to the conditions stated in the Agreement, and upon the terms therein provided.

Section 2. The form of the Agreement as presented to the Council is hereby approved. The City Manager is hereby authorized and directed to execute and deliver the Agreement on behalf of the City, which shall be substantially in the form attached hereto; the execution by the City Manager on behalf of the City to be conclusive evidence of such authorization and approval.

Section 3. The City intends that this Ordinance constitute an "official intent" for purposes of Section 1.150-2(e) of the Treasury Regulations prescribed under the Internal Revenue Code of 1986, as amended, and declares its intention to use a portion of the proceeds of the Bonds to reimburse the City for certain capital expenditures by the Company with respect to the Project and paid not more than 60 days prior to the date of the adoption of this Ordinance.

Section 4. It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 5. The adoption of this Ordinance is urgently needed for the financial needs of the City in that the Company has become obligated or will soon become obligated with respect to certain expenditures related to the Project and the adoption of this Ordinance will assist the Company by preserving the benefits of tax exempt financing, thereby improving the industrial, economic and commercial welfare of the City, whereupon this Ordinance shall take effect and be in force immediately upon its passage.

ADOPTED: ~~October 23~~ 23, 2006.


Mayor

Attest: 

Clerk of Council

EXTRACT OF MINUTES

The Council (the "Council") of the City of Mason, Ohio (the "City") met in regular session on the 23rd day of October, 2006, at the offices of the Council, 6000 S. Mason Montgomery Rd., Mason, Ohio, with the following members present:

Victor Kidd, Tony Bradburn, Todd Wurzbacher, Tom Grossmann

Mr. Bradburn introduced the following ordinance and moved its adoption and an emergency ordinance:

CERTIFICATE

The undersigned, duly appointed and acting Clerk of Council of the City of Mason, Ohio, hereby certifies that the foregoing is a true and correct excerpt from the minutes of the meeting of such Council held on the 23rd day of October, 2006, and that the copy of such Ordinance attached hereto is a true copy thereof, and the same has not as of this date been amended or repealed.

This 23rd day of October, 2006.



Clerk of Council, City of Mason, Ohio

AGREEMENT TO ISSUE BONDS

THIS AGREEMENT is entered into as of the 23rd day of October, 2006, between the City of Mason, Ohio, a municipal corporation organized and existing under the laws of the State of Ohio (the "City"), and Crane Plastics Company LLC (the "Company"), under the following circumstances:

A. The Company desires to acquire, install, renovate and equip an approximately 215,000 sq. ft. building and machinery, equipment and related adjacent land for the manufacture of vinyl fencing, to be located at 4074 Bethany Road, Mason, Ohio (the "Project"), which Project will be owned and operated the by Company within the boundaries of the City.

B. The Company has evidenced a desire to have the costs of the Project financed with the proceeds of qualified small issue industrial development revenue bonds (the "Bonds") issued by the City pursuant to the authority of Article VIII, Section 13, of the Constitution of the State of Ohio, Chapter 165 of the Ohio Revised Code, in an aggregate principal amount currently estimated not to exceed \$8,500,000

C. The Company has represented, and based solely on such representations the City anticipates that the Project would preserve jobs within the City and provide additional jobs and employment opportunities for residents of the City, and that the Project would improve the economic welfare of the City and its people.

D. In order to obtain for the residents of the City the benefit of the jobs, employment opportunities and economic improvement which the acquisition, installation, renovation and equipping of the Project would create and preserve, the City desires to encourage and induce the Company to proceed with the Project.

NOW, THEREFORE, the City and the Company agree as follows:

1. After approval of the Project by the Mason Community Improvement Corporation and certification of such approval to the Clerk of the Council (the "Council") of the City, at the request of the Company, the Council will enact the necessary resolutions and ordinances to authorize the issuance of the Bonds and execution on its behalf of the Financing Agreement, as hereafter defined, and other necessary documents. The Bonds, the Financing Agreement, the resolutions, ordinances and other necessary documents shall have such terms as shall be approved

by Bond Counsel, as hereinafter defined, the City, the purchaser(s) of the Bonds and the Company, and the City will deliver the Bonds to the purchaser(s) thereof and will cooperate to the fullest extent in consummating the transaction. The City will have no financial responsibility with respect to the Bonds or the Project except from "revenues" (as defined in Section 165.01 of the Ohio Revised Code) derived by the City with respect to the Bonds and the Project.

2. Pending issuance of the Bonds, the Company will provide without expense to the City any necessary interim financing for the Project. The Company also agrees that upon issuance of the Bonds for the Project it will enter into an agreement (the "Financing Agreement") with the City providing for the payment by the Company of amounts sufficient to pay when due the principal of and premium, if any, and interest on the Bonds. The City shall have no financial responsibility with respect to the Bonds or the Project except from the proceeds of the Bonds or revenues produced pursuant to the Financing Agreement.

3. In the event that the Company requests the Council to adopt its ordinance authorizing the issuance of the Bonds, the Company agrees that all laborers and mechanics (if any) employed on the Project shall be paid as provided in Section 165.031 of the Ohio Revised Code, so that laborers and mechanics shall be paid at the prevailing rates of wages determined in accordance with Chapter 4115, Ohio Revised Code, by the Ohio Department of Industrial Relations (the "Department"); provided that if the Company or other non-public user beneficiary of the Project undertakes, as part of the Project, construction to be performed by its regular bargaining unit employees who are covered under a collective bargaining agreement which was in existence prior to the date of this Agreement, the rate of pay provided under such collective bargaining agreement may be paid to such employees. The Company shall comply, and shall require compliance by all contractors or subcontractors working on the Project, with all applicable requirements of Sections 4115.03 through 4115.16 of the Ohio Revised Code. Without limiting the generality of the foregoing, if construction work is undertaken with respect to the Project and the Project is financed with the Bonds: (1) the Company shall obtain, or cause any contractors and subcontractors working on construction work with respect to the Project to obtain, from the Department, the schedule of prevailing rates of wages applicable to laborers and mechanics for the classes of work called for by the Project, on or before the adoption by the Council of its ordinance authorizing the issuance of the Bonds and execution of the Financing Agreement; (2) unless the City appoints a prevailing wage

coordinator (the "Coordinator") for the Project under Section 4115.071 of the Ohio Revised Code, the Company shall request that the Department appoint a Coordinator; and (3) until such time as the City or the Department appoints a Coordinator, the Company shall designate one of its officers, employees or agents to act as Coordinator for the Project and to perform all of the applicable functions and duties thereof under Chapter 4115 of the Ohio Revised Code with respect to the Project, including making available for public inspection all files, reports and other documentation submitted by Project contractors and subcontractors. If the Coordinator is an employee of the City or the Department, the cost of such employee's services as Coordinator, as determined by the City or the Department, shall upon demand be reimbursed to the City or the Department by the Company.

4. If the Company abandons the Project, it shall notify the City, whereupon this Agreement shall terminate. In addition, this Agreement shall terminate one year after completion of the Project if for any reason the Company has not by then requested the City to issue the Bonds. Upon any termination of this Agreement under this paragraph, neither the City nor the Company shall have any further rights or obligations hereunder, except that the obligations of the Company under paragraph 6 hereof shall survive any such termination.

5. Upon receipt of a request from the Company, the City shall authorized its community improvement corporation to hold a public hearing, and subsequent to such hearing, the City shall consider the approval of the Project for purposes of Section 147 (f) of the Internal Revenue Code of 1986, as amended; provided, however, this Agreement shall not bind the City to render such approval.

6. In order to induce the City to execute and deliver this Agreement, the Company hereby agrees to defend, indemnify and hold the City and its officials harmless from and against any and all loss, cost, expense, claims or actions arising out of or connected with the execution and delivery of this Agreement and the consummation of the transactions provided for herein and contemplated hereunder. The provisions of this paragraph shall be superseded by a similar agreement by the Company in the Financing Agreement.

7. The law firm of Bricker & Eckler is hereby appointed to serve as bond counsel ("Bond Counsel") in connection with the issuance of the Bonds.

8. Any of the officers of the City is hereby authorized to execute a Notice of Intent, a Notice of Issuance and any documents or certificates with respect to the Bonds as may be required

by the Ohio Department of Development for the purpose of obtaining an allocation of the volume cap for purposes of Section 146 of the Internal Revenue Code of 1986, as amended.

9. In the event that the Project is financed with the Bonds, the Company covenants that it will comply with the provisions of the Internal Revenue Code of 1986, as amended, in order to preserve the tax-exempt status of interest on the Bonds. The Company further represents and warrants that it will not use any portion of the proceeds of the Bonds to reimburse itself for costs paid earlier than a date which date is not more than 60 days prior to the date of the adoption of the ordinance of the Council authorizing the execution of this Agreement), for the acquisition, installation, renovation or equipping of the Project, unless such reimbursement is permitted pursuant to Section 1.150-2(f)(2) of the Treasury Regulations prescribed under the Internal Revenue Code of 1954, as amended.

IN WITNESS WHEREOF, the City, pursuant to a resolution of its Council, has caused this Agreement to be executed by the undersigned officer of the City and the Company has caused this Agreement to be duly executed by an authorized signer, as of the day and year first written above.

CITY OF MASON, OHIO

Attest: 
Clerk of Council

By: _____
City Manager

CRANE PLASTICS COMPANY LLC

By: _____
Authorized Signer

This Agreement is approved as to form by the undersigned Law Director of the City of Mason, Ohio.

Law Director