

RESOLUTION NO. R-86-09

A RESOLUTION AUTHORIZING A MEMORANDUM OF INTENT BY AND BETWEEN THE CITY OF CONWAY, ARKANSAS AND TATE CONTAINERS OF CONWAY, INC., PERTAINING TO THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS FOR FINANCING THE COSTS OF ACQUIRING, CONSTRUCTING AND EQUIPPING AN EXPANSION TO EXISTING 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 Intent by and between the City of Conway, Arkansas (the "Municipality"), and Tate Containers of Conway, Inc., an Arkansas corporation (the "Company"), and the Mayor and City Clerk be, and they are hereby, authorized to execute and deliver the Memorandum of Intent for and on behalf of the Municipality. The Memorandum of Intent is approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Company in order to complete the Memorandum of Intent in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

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 Intent.

PASSED: March 25th, 1986.

ATTEST:

Martha Hartwick  
City Clerk

APPROVED:

Bill W. [Signature]  
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 TATE CONTAINERS OF CONWAY, INC., an Arkansas 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 (the "Act"), to issue revenue bonds for financing the costs of acquiring, constructing and equipping industrial facilities (as defined in and authorized by the Act) 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 has heretofore authorized and issued (i) its Industrial Development Revenue Bonds - Tate Containers of Conway, Inc. Project, Series A, dated June 1, 1978, in the original principal amount of \$400,000, (ii) its Industrial Development Revenue Bonds - Tate Containers of Conway, Inc. Project, Series B and C, dated July 1, 1982, in the original principal amount of \$1,500,000, and (iii) its Insured Industrial Development Revenue Bonds (InDeBonds-TM) - Tate Containers of Conway, Inc. Project, dated November 1, 1983, in the original principal amount of \$2,000,000, for the purpose of financing the cost of acquiring, constructing and equipping expansions to the plant (the "Plant") operated by the Company at the Municipality. The Plant is utilized by the Company for the manufacture of corrugated boxes. The Company proposes that certain additional industrial facilities be acquired, constructed and equipped as part of an additional expansion to the Plant (the "Project"). It is expected at this time that the Project will consist of an additional building and additional 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 the Act 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 the Act), 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 the Act.

(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 revenue bonds under the Act, 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 \$2,500,000 will be issued. However, the Municipality's commitment is to issue revenue bonds under the Act 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 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 the Act 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, premium, 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, premium, 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 the Act.

(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 the Company will cooperate with the Municipality in the sale and issuance of the bonds.

(b) That the Company 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, 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 the Act.

(c) The Company is informed and understands that all or part of the properties comprising the Project may be exempt from ad valorem taxes by virtue of their ownership by the Municipality, and in such case and as consideration to the Municipality to enter into this Memorandum of Intent, the Company will agree to make payments to the Municipality in lieu of ad valorem taxes. The amount and other details concerning

such payments will be embodied in an appropriate agreement between the Municipality and the Company.

(d) That the Company 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 the Company will take such further action 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. (a) The costs of the Project may include any costs permissible under the Act, including but not limited to reasonable and necessary costs, expenses and fees incurred by the Municipality in connection with the issuance of the bonds or in connection with the Project, including, without limitation, out-of-pocket expenses incurred by any employee of the Municipality; fees and out-of-pocket expenses incurred by counsel for the Municipality, Friday, Eldredge & Clark, Bond Counsel, and any trustee; fees and expenses, if any, required in connection with the underwriting or placement of the bonds; recording costs; rating agency fees, if any; and printing costs. The Municipality will upon request provide or cause to be provided any data or information which may be reasonably required to verify any of the costs, expenses and fees enumerated above.

(b) In the event that the bonds shall not be sold within 3 years from the date hereof, this Memorandum of Intent shall automatically terminate unless the parties hereto shall agree in writing to its extension for a further period of time specified in such writing. The Company may unilaterally terminate this Memorandum of Intent without liability to the Municipality (except for any amounts due and owing by the Company to the Municipality arising out of the transactions occurring on or before the time of such termination, which shall be promptly paid by the Company to the Municipality) by giving notice by ordinary mail, postage prepaid, to the Municipality specifying therein the date of the termination which may be the date of the notice.

(c) It is understood that 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 the Act, as the Municipality shall deem appropriate or desirable, and 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 under the Act or such other laws as the Municipality shall deem appropriate or desirable, 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.

IN WITNESS WHEREOF, the Municipality and the Company have entered into this Memorandum of Intent by their officers thereunto duly authorized, as of the 25th day of March, 1986.

CITY OF CONWAY, ARKANSAS

ATTEST:

Martha Hartwick  
City Clerk

By \_\_\_\_\_  
Mayor

(SEAL)

TATE CONTAINERS OF CONWAY, INC.

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_  
(title)

By \_\_\_\_\_  
\_\_\_\_\_  
(title)

(SEAL)