

ORDINANCE NO. 87-08

AN ORDINANCE AUTHORIZING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS FOR THE PURPOSE OF PROVIDING PERMANENT FINANCING FOR INDUSTRIAL FACILITIES; AUTHORIZING A SECOND SUPPLEMENTAL TRUST INDENTURE SECURING THE BONDS; AUTHORIZING A SECOND SUPPLEMENTAL LEASE AND AGREEMENT BETWEEN THE CITY OF CONWAY, ARKANSAS, AS LESSOR, AND TATE CONTAINERS OF CONWAY, INC., AS LESSEE; AUTHORIZING THE SALE OF THE BONDS; AUTHORIZING AND PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Conway, Arkansas (the "City"), is authorized and empowered under the provisions of 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 and to expend the proceeds thereof to finance the acquisition, construction and equipment of land, buildings or facilities which can be used in securing or developing industry; and

WHEREAS, the City has heretofore authorized and issued three series of its Industrial Development Revenue Bonds - Tate Containers of Conway, Inc. Project, being Series A in the principal amount of \$400,000, Series B in the principal amount of \$1,000,000, and Series C in the principal amount of \$500,000, for the purpose of financing the costs of acquiring, constructing and equipping an industrial plant at the City (the "Plant"), which is being leased by the City to Tate Containers of Conway, Inc., an Arkansas corporation (the "Company"); and

WHEREAS, it is proposed that the City provide permanent financing, through the issuance of additional revenue bonds under the Act, of the costs of acquiring, constructing and equipping certain additional industrial facilities (the "Project") as part of an expansion to the Plant; and

WHEREAS, pursuant to and in accordance with the provisions of the Act and Section 147(f) of the Internal Revenue Code of 1986 (the "Code"), a public hearing was held prior to the passage and approval of this Ordinance, before the Mayor and City Council, on the question of the issuance of such revenue bonds under the Act; and

WHEREAS, after due consideration, the City is now prepared to proceed with financing the Project and to issue and sell \$1,280,000 in principal amount of its Industrial Development Revenue Bonds - Tate Containers of Conway, Inc. Project, Series D (the "Bonds"), to provide such financing; and

WHEREAS, the Company advises that upon completion of the Project, it expects to employ approximately 90 additional persons at the Plant; and

WHEREAS, the payment of the principal, premium, if any, and interest on the Bonds will be guaranteed by the Company and by Tate Containers, Inc., an Arkansas corporation and an affiliate of the Company; and

WHEREAS, copies of the hereinafter described Second Supplemental Trust Indenture and Second Supplemental Lease and Agreement have been presented to and are before this meeting;

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

Section 1. The City Council hereby finds that the acquiring, constructing and equipping of the Project, and the issuance of the Bonds to finance the same, will provide a substantial increase in employment and payrolls and will thereby secure and develop industry within the City.

Section 2. That the issuance of the Bonds is hereby authorized. 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 recommended by the Company and to be set forth in the Second Supplemental Trust Indenture (hereinafter authorized) securing the Bonds. The Bonds shall bear interest at the rates per annum, and shall mature in each of the years, as set forth in the following table:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
1988	\$55,000	5.15
1989	60,000	5.25
1990	60,000	5.50
1991	65,000	5.75
1992	70,000	6.00
1993	70,000	6.25
1994	75,000	6.50
1995	80,000	6.60
1996	85,000	6.75
1997	90,000	6.90
1998	100,000	7.00
1999	105,000	7.05
2000	115,000	7.10
2001	120,000	7.15
2002	130,000	7.25

Section 3. That the Bonds be sold to T.J. Raney & Sons, Inc. and Stephens Inc., both of Little Rock, Arkansas (the "Purchasers"), for the purchase price of 98% of par, plus accrued interest from the date of the Bonds to the date of delivery, which price is recommended by the Company.

Section 4. That 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 Second Supplemental Trust Indenture by and between the City and The City National Bank of Fort Smith, Fort Smith, Arkansas, as Trustee thereunder (the "Supplemental Indenture"), and the City Clerk is hereby authorized and directed to execute and acknowledge the Supplemental Indenture and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Supplemental Indenture to be accepted, executed and acknowledged by the Trustee. The Supplemental Indenture is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee and others in order to complete the Supplemental Indenture 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 5. That there be, and there is hereby, authorized the execution and delivery of a Second Supplemental Lease and Agreement by and between the City as Lessor, and the Company as Lessee (the "Supplemental Lease Agreement"), and the Mayor and City Clerk be, and they are hereby, authorized to execute, acknowledge and deliver the Supplemental Lease

Agreement for and on behalf of the City. The Supplemental Lease Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Company and others in order to complete the Supplemental Lease Agreement 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 6. That there be, and there is hereby, authorized the preparation and distribution to various prospective and actual purchasers of the Bonds of an Official Statement, in the name of the City, describing the City, the Bonds, the Supplemental Indenture, the Supplemental Lease Agreement, and setting forth such other information as may be determined to be necessary or desirable by the Purchasers, the Company and the City. The Mayor is authorized to execute such Official Statement on behalf of the City.

Section 7. That the City hereby makes the election provided by Section 144(a)(4)(A) of the Code.

Section 8. 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 Supplemental Lease Agreement and the performance of all obligations of the City thereunder, the execution and delivery of the Supplemental Indenture and the performance of all obligations of the City thereunder, the issuance, execution, sale and delivery of the Bonds, the execution, delivery and distribution of an Official Statement, and the performance of all acts of whatever nature necessary to effect and carry out the authority conferred 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 9. That the City is hereby involved with the acquiring, constructing and equipping of industrial facilities, and pursuant to applicable laws of the State of Arkansas, including particularly the Act, competitive bidding is waived.

Section 10. That the City Clerk is hereby authorized and directed to file in the office of the City Clerk, as a part of the minutes of the meeting at which this Ordinance is adopted, for inspection by any interested person a copy of the Supplemental Indenture and Supplemental Lease Agreement, and

such documents shall be on file for inspection by any interested person.

Section 11. That the law firm of Friday, Eldredge & Clark, Little Rock, Arkansas, be appointed to act as Bond Counsel on behalf of the City in connection with the issuance and sale of the Bonds.

Section 12. 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 13. That all ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 14. 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 exists 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: February 10, 1987.

ATTEST:

Martha Hartman  
City Clerk

(SEAL)

APPROVED:

David A. Gentry  
Mayor