

ORDINANCE NO. 0-81-48

AN ORDINANCE AUTHORIZING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS UNDER ACT NO. 9 OF 1960, AS AMENDED, FOR THE PURPOSE OF PROVIDING PERMANENT FINANCING FOR THE COST OF SECURING AND DEVELOPING INDUSTRY (THE PARTICULAR INDUSTRIAL PROJECT IS DESCRIBED IN THE ORDINANCE); AUTHORIZING THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL TRUST INDENTURE SECURING THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO LEASE AGREEMENT BETWEEN THE CITY OF CONWAY, AS LESSOR, AND ROCK-TENN COMPANY, AS LESSEE, IN SUBSTANTIALLY THE FORM AND WITH SUBSTANTIALLY THE CONTENTS SET FORTH IN AND MADE A PART OF THIS ORDINANCE; AUTHORIZING THE SALE OF THE BONDS AND THE APPROVAL OF A BOND PURCHASE AGREEMENT IN CONNECTION THEREWITH; PRESCRIBING OTHER MATTERS RELATING 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 (the "Act"), to acquire lands, construct and equip industrial 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 industrial operations; and

WHEREAS, the City is authorized by the Act 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 \$1,500,000 principal amount of its Industrial Development Revenue Bonds (Rock City Project) Series A, dated April 1, 1975 (the "Series A Bonds"), pursuant to the Act and under the terms of a Trust Indenture dated as of April 1, 1975 (the "Indenture") between the City and First State Bank & Trust Company, of Conway, Arkansas, as trustee (the "Trustee"), for the purpose of providing funds to assist Rock-Tenn Company (the "Company") in acquiring, constructing, and equipping an industrial facility within the City (the "Project", which term shall include the Expanded Facilities, as hereinafter defined), and the Project has been leased by the City to the Company pursuant to the terms of a Lease Agreement dated as of April 1, 1975 (the "Lease Agreement") between the City as lessor and the Company as lessee; and

WHEREAS, the City has determined to assist the Company in order to enlarge, expand and add to the Project, and for such other lawful purposes of the Company as may be profitable to it (such enlarged, expanded and additional facilities and equipment are herein called the "Expanded Facilities"), with such Expanded Facilities to be and become a part of the Project; and

WHEREAS, the City is authorized to issue up to \$500,000 in aggregate principal amount of additional bonds, from time to time under the Indenture, upon compliance with the provisions of the Indenture; and

WHEREAS, the City has determined, for the purpose of providing permanent financing of the costs of acquiring, constructing and installing the Expanded Facilities, to issue and sell its Industrial Development Revenue Bonds (Rock-Tenn Company Project) Series B, dated December 1, 1981, in the aggregate principal amount of \$500,000 (the "Series B Bonds"), under the provisions of the Act and Section 202B of the Indenture, and pursuant to the provisions of an indenture supplemental thereto (the "Supplemental Indenture"), hereafter to be entered into between the City and the Trustee, to be dated as of December 1, 1981 to secure the Series B Bonds, with the Series B Bonds to be issued on a parity of security with the Series A Bonds, to be secured by the Indenture, as supplemented by the Supplemental Indenture, and to be equally and ratably payable under the Indenture with the Series A Bonds; and

WHEREAS, the Expanded Facilities are to be acquired by the City and leased to the Company pursuant to the provisions of a First Amendment to the Lease Agreement (the "First Amendment to Lease") (hereinafter authorized), to be dated as of December 1, 1981, by and between the City and the Company; and

WHEREAS, payment of the principal of, premium, if any, and interest on the Series B Bonds will be unconditionally guaranteed by the Company and by Rock-Tenn Company, a Tennessee corporation (the "Guarantor") which owns all the outstanding capital stock of the Company, pursuant to the terms of a Supplemental Bond Guaranty Agreement, to be dated as of December 1, 1981 (the "Supplemental Guaranty Agreement"); and

WHEREAS, the Project, including the Expanded Facilities, will furnish additional employment and other benefits, and be in the best interests of the City and its residents; and

WHEREAS, the City proposes to enter into a Bond Purchase Agreement with Trust Company Bank (the "Purchaser"), of Atlanta, Georgia for the sale to such Purchaser of the Series B Bonds;

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 Series B Bonds to the Purchaser for the purchase price to be recommended by the Company according to the terms of said Bond Purchase Agreement, which Agreement is hereby approved and authorized to be executed by the Mayor and City Clerk on behalf of the City at the request of the Company;
- (b) The acquisition, construction and installation of the Expanded Facilities, and in connection therewith, the execution of any necessary architectural, engineering, construction or purchase contracts or the acceptance of an assignment of any such contracts previously executed by the Company for the construction and equipping of the Project; and
- (c) The performance of all obligations of the City under the First Amendment to Lease pertaining to the constructing and equipping of the Project and the performance of all obligations of the City under the contracts referred to above.

Section 2. The Series B Bonds shall be issued in the aggregate principal amount of \$500,000, subject to the provisions of the Supplemental Indenture (hereinafter authorized) governing the issuance of bonds in replacement of or substitution for lost, mutilated or destroyed bonds, shall be issued in registered form, shall be numbered B-1R and, if more than one bond is issued, thereafter upward consecutively in the denominations of \$5,000 each or any integral multiple thereof, shall be dated the date of delivery thereof to the Purchaser and shall have a final principal maturity of April 1, 1997.

The Series B Bonds shall bear interest from date of delivery to the Purchaser until maturity at the rate or rates specified in the Indenture (but not in excess of the maximum rate permitted by Section 511(a) of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended). The Series B Bonds shall have such other provisions and shall be issued all upon such other terms and conditions recommended by the Company and as more particularly set forth in the Supplemental Indenture (hereinafter authorized).

Section 3. To provide the terms and conditions upon which the Series B Bonds are to be secured, executed, authenticated, issued, accepted and held, the Mayor is hereby authorized and directed to execute and acknowledge a Supplemental Trust Indenture, by and between the City and First State Bank & Trust Company, Conway, Arkansas, as trustee (the "Trustee"), to be dated as of December 1, 1981, 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, the Company and the Purchaser 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.

(Advice is given that, pursuant to the Act, a copy of the Supplemental Indenture in substantially the form authorized to be executed is on file with the City Clerk of the City of Conway, and is available for inspection by any interested person.)

Section 4. There is hereby authorized the execution and delivery of a First Amendment to Lease Agreement, to be dated as of December 1, 1981, by and between the City as Lessor and the Company as Lessee (the "First Amendment to Lease"), and the Mayor and City Clerk be, and they are hereby authorized to execute, acknowledge and deliver the First Amendment to Lease for and on behalf of the City. The First Amendment to Lease is hereby approved substantially in the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Company, the Trustee and the Purchaser in order to complete the First Amendment to Lease 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.

(Advice is given that, pursuant to the Act, a copy of the First Amendment to Lease in substantially the form authorized to be executed is on file with the City Clerk of the City of Conway, and is available for inspection by any interested person.)

Section 5. 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 of the First Amendment to Lease, the performance of the City's obligations thereunder, the execution and delivery of the

Supplemental Indenture, its execution and acceptance by the Trustee, the performance of all obligations of the City under and pursuant to the Supplemental Indenture, the execution and delivery of the Bond Purchase Agreement, the execution and delivery of the Series B Bonds, the execution and delivery of an official statement in form and substance satisfactory to said officers and the Purchaser of the Series B Bonds, and the performance of all other acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. That the Mayor and the 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 6. Since the City is here involved with the constructing and equipping of a complex industrial project, requiring highly specialized work and specialized types of machinery and equipment, 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 7. Rose Law Firm, a Professional Association, of Little Rock, Arkansas, is hereby appointed as Bond Counsel with respect to the issuance of the Series B Bonds, the fees and expenses of which firm shall be costs of the Project.

Section 8. The provisions of this Ordinance are hereby declared to be severable, 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 or provisions.

Section 9. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 10. There is hereby found and declared to be an immediate need for the securing and developing of substantial industrial operations in order to provide additional employment, alleviate unemployment and otherwise benefit the public health, safety and welfare of the City and the inhabitants thereof, and the issuance of the Series B Bonds authorized hereby and the taking of the other action authorized herein are immediately necessary in connection with the securing and developing of substantial industrial operations and deriving the public benefits referred to above. It is, therefore, declared that an emergency exists and this

Ordinance, being necessary for the immediate preservation of the public health, safety and welfare, shall be in force and take effect immediately upon and after its passage.

PASSED: November 10, 1981.

APPROVED:

William R. W. J. B.
MAYOR

ATTEST:

Dennis D. D.
CITY CLERK

(S E A L)