

ORDINANCE NO. 0-82-8

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 TRUST INDENTURE SECURING THE BONDS; AUTHORIZING AND PRESCRIBING CERTAIN OTHER MATTERS PERTAINING TO THE INDUSTRIAL PROJECT, THE CONSTRUCTING THEREOF AND THE FINANCING THEREOF; AUTHORIZING A LEASE AGREEMENT BETWEEN THE CITY OF CONWAY, ARKANSAS, AS LESSOR AND CONWAY COMMUNICATIONS EXCHANGE, INC., AS LESSEE, IN SUBSTANTIALLY THE FORM AND WITH SUBSTANTIALLY THE CONTENTS SET FORTH IN AND MADE A PART OF THIS ORDINANCE; AUTHORIZING THE EXECUTION AND DELIVERY OF THE LEASE AGREEMENT; 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 ("Act No. 9"), to acquire lands, construct and equip industrial buildings, improvements, and facilities, and 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 Act No. 9 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 Council pursuant to Resolution No. R-80-25, adopted December 9, 1980, as amended by Resolution No. R-81-25, adopted August 11, 1981, has entered into an agreement, and an amendment thereto, with Conway Communications Exchange, Inc., an Arkansas corporation ("the Company") to issue such bonds under Act No. 9 to the extent of \$3,000,000 for the purposes hereinafter described for the benefit of the Company, such bonds to be issued in one or more series as the Company may request, and of which amount \$1,120,000 have previously been issued as Series 1981; and

WHEREAS, the Company has requested that two additional series of such bonds now be authorized and issued in the amount hereinafter provided in order to provide the permanent financing for the acquisition of and initial improvements to the industrial project; and

WHEREAS, the necessary arrangements have been made with the Company, for an industrial project consisting of the acquisition, construction, and equipping of facilities for computer list processing and manufacture and for the processing and manufacturing of such products as the Company shall elect to process and manufacture, to be located in the City (the "Project"), and to lease the Project to the Company pursuant to the terms of a Lease Agreement (the "Lease Agreement"); and

WHEREAS, permanent financing of the Project costs, necessary costs and expenditures incidental thereto and the cost of the issuance of bonds is being furnished by the City issuing industrial development revenue bonds under the provisions of Act No. 9 of the principal amount of \$1,100,000, of which \$1,000,000 are designated 1982 Series A, and \$100,000 are designated 1982 Series B (the "Bonds"); and

WHEREAS, the Company has agreed to make certain payments in lieu of ad valorem taxes, as more fully set forth in a letter agreement from the Company to the City (the "Letter Agreement"); and

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

WHEREAS, the present series of Bonds are to be sold and delivered in the aggregate principal amount of \$1,100,000, as 1982 Series A Bonds and 1982 Series B Bonds, and are to be dated, bear interest, mature, and subject to redemption as hereinafter set forth in the form of Indenture authorized by this Ordinance; and

WHEREAS, the City proposes to enter into a Bond Purchase Agreement as requested by the Company for the sale of said 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 \$1,000,000 Industrial Development Revenue Bonds (CCX Project), 1982 Series A, according to the terms of a Bond Purchase Agreement recommended by the Company, substantially in the form submitted at this meeting, which Bond Purchase Agreement shall be entered into by the Mayor with T. J. Raney & Sons, Inc., of Little Rock, Arkansas (the "Series A Purchaser"), and an executed copy of which shall be filed with the City Clerk;
- (b) The sale of \$100,000 Industrial Development Revenue Bonds (CCX Project), 1982 Series B, according to the terms of a Bond Purchase Agreement recommended by the Company, substantially in the form submitted at this meeting, which Bond Purchase Agreement shall be entered into by the Mayor with First State Bank & Trust Co., of Conway, Arkansas (the "Series B Purchaser"), and an executed copy of which shall be filed with the City Clerk.
- (c) The approval of the Letter Agreement, substantially in the form submitted at this meeting, which approval shall be evidenced by the signature of the Mayor and an executed copy of which shall be filed with the City Clerk;
- (d) The acquisition, and 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 acquisition, construction or equipping of the Project; and
- (e) The performance of all obligations of the City under the Lease Agreement 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 1982 Series A Bonds and the 1982 Series B Bonds shall bear interest at the rate or rates specified in the Trust Indenture (hereinafter authorized), shall mature, and shall be in the aggregate, original principal amount of \$1,100,000, provided that additional bonds as contemplated by the Trust Indenture may be issued in subsequent series at the request of the Company. To provide the terms and conditions

upon which the Bonds are to be secured, executed, authenticated, issued, accepted, and held, the Mayor is hereby authorized and directed to execute and acknowledge a Trust Indenture, by and between the City and a bank or trust company which will act as trustee thereunder, dated as of April 1, 1982 (the "Indenture"), and the City Clerk is hereby authorized and directed to execute and acknowledge the Indenture and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Indenture to be accepted, executed, and acknowledged by the Trustee. The 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 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 Act No. 9, a copy of the 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 3. That there be, and there is hereby, authorized the execution and delivery of a Lease Agreement, dated as of April 1, 1982, by and between the City as Lessor and the Company as Lessee (the "Lease Agreement"), and the Mayor and City Clerk be, and they are hereby, authorized to execute, acknowledge, and deliver the Lease Agreement for and on behalf of the City. The Lease Agreement 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 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.

(Advice is given that, pursuant to Act No. 9, a copy of the Lease Agreement 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. 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 Lease Agreement, the performance of the City's obligations

under the Lease Agreement, the execution and delivery of the Indenture, its execution and acceptance by the Trustee, the performance of all obligations of the City under and pursuant to the Indenture, the execution and delivery of the respective Bond Purchase Agreements, the execution and delivery of the Bonds, the execution and delivery of an official statement in form and substance satisfactory to said officers and the Series A Purchaser and the Series B Purchaser, 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 5. That 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 Act No. 9.

Section 6. Rose Law Firm, a Professional Association, of Little Rock, Arkansas, is hereby appointed as Bond Counsel with respect to the issuance of said bonds, the fees and expenses of which firm shall be costs of the Project.

Section 7. That 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 8. That all ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. That 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 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.

ADOPTED: February 23, 1982.

  
MAYOR

ATTEST:

  
CITY CLERK

(S E A L)