

RESOLUTION NO. R-81-~~47~~

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CONWAY AUTHORIZING THE ENTRY INTO AN AGREEMENT TO ISSUE BONDS FOR THE PURPOSE OF SECURING AND DEVELOPING INDUSTRY WITHIN OR NEAR THE CITY.

WHEREAS, the City of Conway, Arkansas, is authorized 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 acquire, construct, and equip facilities to secure and develop industry, and to assist in the financing thereof by the issuance of bonds payable from the revenues derived from such facilities; and

WHEREAS, ETOL Incorporated, an Arkansas corporation, has evidenced its interest in acquiring, constructing, and equipping industrial facilities within or near the City of Conway, if the permanent financing can be provided through the issuance of bonds under the authority of the Act; and

WHEREAS, the City of Conway desires to assist ETOL Incorporated in the acquisition, construction, and equipping of such facilities within or near the City of Conway, and to aid in the financing thereof under the provisions of the Act; and

WHEREAS, it is desirable that the City of Conway enter into an Agreement to Issue Bonds for such purpose;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS, that:

1. The Mayor and the City Clerk of the City of Conway, Arkansas, be authorized to enter into an Agreement to Issue Bonds in substantially the form and substance as follows:

AGREEMENT TO ISSUE BONDS

THIS AGREEMENT is made as of \_\_\_\_\_, 1981, by and between the City of Conway, Arkansas, a municipal corporation under the laws of the State of Arkansas (the "City"), and ETOL Incorporated, an Arkansas corporation (herein, together with any successor or assignee to its rights and duties hereunder, called the "Company"), for the purpose of carrying out the purposes set forth in 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").

W I T N E S S E T H:

WHEREAS, the City is authorized by the Act to own, acquire, construct, equip, operate, maintain, sell, lease or contract concerning or otherwise deal in or dispose of any land, buildings, or facilities of any and every nature whatever that can be used in securing or developing industry within or near the City; and

WHEREAS, the City has determined that such purposes may be served by cooperation with the Company for the acquisition, construction and equipping of an industrial facility within or near the City for use as a manufacturing facility for the production and sale of ethanol alcohol distillery to produce gasohol, and for other industrial purposes as may be profitable to the Company (the "Project"); and

WHEREAS, the City and the Company desire to cooperate in the acquisition, construction and equipping of the Project and to have the costs of the Project financed from the proceeds of revenue bonds of the City (the "Bonds") to be issued pursuant to the Act in an aggregate principal amount now estimated not to exceed \$9,500,000 (excluding any bonds issued to refund the Bonds); and

WHEREAS, the City and the Company contemplate that the Project will be leased to the Company, with an option to purchase, and the rental payments therefor together with other moneys available shall be sufficient to pay debt service on the Bonds and all related costs;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration under the mutual benefits, covenants and agreements herein expressed, the City and the Company agree as follows:

1. Proceedings. All proceedings in connection with the issuance of the Bonds shall be consistent with the requirements of the Act, including notice to all state agencies, and the publication of notice as required by the Act. All references contained herein to the issuance of the Bonds shall be subject to compliance with the formalities of the Act when the facts required to do so are determined.

2. Construction. The City and the Company will cooperate in causing to be commenced and continued the required acquisition, construction, re-construction, extension, equipping and improvement of the Project, and the Company may provide, or cause to be provided, the necessary interim financing to permit such work on the Project to commence and continue expeditiously pending the issuance of interim and/or permanent bonds. Not later than the time of issuance of the Bonds for any portion of the Project, the Company will convey and transfer or cause to be conveyed and transferred to the City, for an amount approximately equal to that then expended by the Company for the Project or portions thereof which are financed by the Bonds then issued (including at the Company's option any costs of interim financing), the Project or portions thereof to be then financed. There shall also be conveyed to the City any easements and rights-of-way necessary to permit acquisition, construction, equipping, operation and maintenance of the Project or such portion.

3. Lease. The City shall enter into a lease, or leases, under which the Company will lease, with an option to purchase, from the City such Project or portions thereof and will agree to make rental payments sufficient to pay the principal of, premium, if any, and interest on the Bonds, together with all charges of any Trustee and any Paying Agent for the Bonds.

4. Sale of Bonds, Security. The City will take such steps as are necessary to issue, sell and deliver, pursuant to the terms of the Act, the Bonds for the purposes of financing the costs of the Project, in each case only upon receipt of the written designation by the Company of the purchaser(s) or underwriter(s) thereof, such Bonds to be in such principal amount, to mature in such amount and times, to bear interest at such rate or rates and to be payable on such dates and to have such optional and mandatory redemption features and prices as are determined by the City and approved in writing by the Company. The City further agrees that it will enter into the lease and, if required, an indenture of trust with a bank or trust company qualified to exercise trust powers where necessary for the purpose of providing rental payments

sufficient, with other amounts available from the Company or directly or indirectly from the proceeds of the Bonds, to pay the principal of, premium if any, and interest on the Bonds as they become due together with the charges of any Trustee and any Paying Agent for the Bonds, and pledging and otherwise securing the payment of such rental payments for the benefit of the holder(s) of the Bonds. The lease, the indenture, other related documents, and the Bonds shall contain such terms and conditions as are agreed upon by the City and the Company. The City will cooperate in consummating the transaction so contemplated and in attempting to realize the desire of the parties hereto that the interest on all Bonds be exempt from Federal income taxation.

5. Bonds to be Special Obligations. The City shall have no financial responsibility with respect to the Project, the Bonds or the costs associated with either, and the Bonds shall be special obligations of the City and shall never constitute a general obligation, indebtedness or pledge of the credit of the City within the meaning of any constitutional or statutory provision and shall never be paid in whole or in part out of any funds raised or to be raised by taxation or any other revenues or other funds of the City except those (including unexpended Bond proceeds) derived from or in connection with the sale or lease of the Project as provided for herein.

6. Conditions of Issuance. The Bonds may be issued either at one time or in several series and/or issues from time to time, in such aggregate principal amount or amounts as the Company shall request in writing; provided, however, that all conditions of the Act shall have been met. It is further agreed that the proceeds of the Bonds shall not be invested so as to constitute any of the Bonds as arbitrage bonds within the meaning of Section 103(c) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated pursuant thereto.

7. Costs to be Financed. 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 City in connection with the issuance of the Bonds or in connection with the Project, such as out-of-pocket expenses incurred by any employee of the City; fees and out-of-pocket expenses of counsel for the City, Rose Law Firm, a Professional Association, 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's fees, if any, and printing costs. The City 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.

8. Termination. In the event that the Bonds shall not be sold within three years from the date hereof, this Agreement 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 Agreement without liability to the City (except for any amounts due and owing by the Company to the City arising out of the transactions occurring on or before the time of such termination, which shall be promptly paid by the Company to the City) by giving notice by ordinary mail, postage prepaid, to the City specifying therein the date of termination which may be the date of the notice.

9. Protection to the City. The Company shall pay all of the City's costs and expenses reasonably and necessarily incurred in connection with this Agreement or any other related document or instrument. The Company will at all times indemnify and hold harmless the City against any and all losses, costs, damages, expenses and liabilities of whatsoever nature directly or indirectly resulting from, arising out of, or related to matters in connection with this Agreement.

10. Payment in Lieu of Taxes. The City and the Company recognize that under decisions of the Supreme Court of Arkansas the Project will be exempt from ad valorem taxation. The Company agrees, however, to enter into an agreement with the City for payments in lieu of taxes, in such amounts and on such terms as shall be acceptable to the City and the Company, to local public bodies with taxing authority.

11. Purpose and Effect. The Bonds are to be issued, sold and delivered under the authority of the Act and all related actions and documents shall be in conformity therewith. The City intends this Agreement to be its official binding commitment, pursuant to the terms hereof, to issue the Bonds up to \$9,500,000 aggregate principal amount outstanding at any one time, and also to issue additional Bonds if the Project costs exceeds such amount, and to expend the Bond proceeds to defray the costs of the Project. The City considers this Agreement to be an official action for all purposes of the Federal Income Tax Regulations.

IN WITNESS WHEREOF, the City of Conway, Arkansas, acting pursuant to resolution of its City Council, has caused its name to be hereunto subscribed and the Company has caused its corporate name to be subscribed hereto by its duly authorized officer, all as of the year and date first above written.

CITY OF CONWAY, ARKANSAS

By: \_\_\_\_\_  
William L. Wright, Mayor

ATTEST:

\_\_\_\_\_  
Doris Nunn, City Clerk

(S E A L)

ETOL INCORPORATED

By: \_\_\_\_\_  
E. J. McGuire, President

2. This Resolution shall be in full force and effect from and after its adoption.

ADOPTED this \_\_\_\_\_ day of October, 1981.

\_\_\_\_\_  
William L. Wright, Mayor

ATTEST:

\_\_\_\_\_  
Doris Nunn, City Clerk

(S E A L)