

ORDINANCE NO. 0-84-37

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 CCX NETWORK, 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; AUTHORIZING THE EXECUTION AND DELIVERY OF A MORTGAGE TO SECURE THE BONDS; 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-84-08, adopted March 13, 1984, has entered into an agreement thereto with CCX Network, Inc., a Delaware corporation ("the Company") to issue such bonds under Act No. 9 to the extent of \$2,000,000 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

WHEREAS, the necessary arrangements have been made with the Company, for an industrial project consisting of the acquisition, construction, and equipping of an addition to their existing data processing facilities and including acquisition and installation of certain data processing equipment 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 \$3,000,000, and are designated Series 1984 (the "Bonds"); and

WHEREAS, the Bonds are to be secured, in part, by a mortgage on certain City owned property which is currently leased to the Company by the City in connection with the City's \$1,100,000 issue of Industrial Development Revenue Bonds (CCX Project) 1982 Series A and 1982 Series B, dated April 1, 1982 (the "1982 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 \$3,000,000, 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 Subscription Contract 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. The City Council makes the following findings and determinations:

- (a) That based on information compiled and released by the Arkansas Employment Security Division, unemployment in Faulkner County during June of 1984 averaged 8.5%. It has been determined that current employment at the Company's existing facility located in the City is 200 persons, and that one year following completion of the Project employment at the Company's operations in the City is estimated to be 295 persons. Accordingly, the completion of the Project will maintain existing employment, provide additional employment and other benefits;

- (b) The Company is an industry which owns and operates data processing facilities in the City.
- (c) The Company's presence in the City of Conway is and will continue to be an important factor in the economic well being and employment base for the City and its inhabitants.
- (d) The City's assistance to the Company in financing the Project under Act 9, with such facilities to be leased to the Company, will serve the best interests of the City and its inhabitants and satisfies a proper public purpose, within the meaning of Act 9, toward the further securing and developing of industry.

Section 2. That there be, and there is hereby authorized and directed the following:

- (a) The sale of \$3,000,000 Industrial Development Revenue Bonds (CCX Project), Series 1984, according to the terms of a Bond Subscription Contract recommended by the Company, substantially in the form submitted at this meeting, which Bond Subscription Contract shall be entered into by the Mayor with Citizens Fidelity Bank & Trust Company, of Louisville, Kentucky (the "Purchaser"), and an executed copy of which shall be filed with the City Clerk;
- (b) 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;
- (c) 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
- (d) The mortgaging of all real property leased to the Company by the City in connection with the issuance of the 1982 Bonds.
- (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 3. The Series 1984 Bonds shall bear interest at the rate or rates, not to exceed 14% per annum, as specified in the Trust Indenture (hereinafter authorized), shall mature, and shall be in the aggregate, original principal amount of \$3,000,000, 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 September 1, 1984 (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 4. That there be, and there is hereby authorized the execution and delivery of a Mortgage to secure repayment of the Bonds, in form recommended and approved by the Company, whereby the City will, subject and subordinate to existing liens, mortgage all real property leased to the Company in connection with the 1982 Bonds, and the Mayor and Clerk be, and they are hereby, authorized to execute, acknowledge and deliver said mortgage for and on behalf of the City.

Section 5. That there be, and there is hereby authorized the execution and delivery of a Lease Agreement, dated as of September 1, 1984, 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 6. 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 Bond Purchase Agreement, 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 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 7. 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.

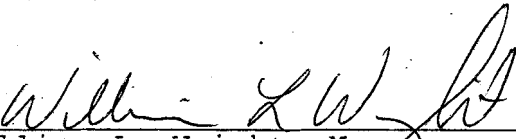
Section 8. Rose Law Firm, a Professional Association, of Little Rock, Arkansas, is hereby appointed as Bond Counsel with respect to the issuance of said bonds, the fees and expenses of which firm shall be costs of the Project.

Section 9. 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 10. That all ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 11. 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: August 14, 1984.


William L. Wright, Mayor

ATTEST:


Martha Hartwick, City Clerk

(S E A L)