

332773

ORDINANCE NO. O-10-03

by W.B.D.C.

AN ORDINANCE AUTHORIZING THE ~~ISSUANCE OF AN~~ INDUSTRIAL DEVELOPMENT REVENUE BOND UNDER 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, FOR THE PURPOSE OF PROVIDING FINANCING OF THE COSTS OF SECURING AND DEVELOPING INDUSTRY BY PROVIDING FINANCING FOR THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A FACILITY FOR USABLE CORPORATION; AUTHORIZING THE EXECUTION AND DELIVERY OF THE BOND AND RELATED DOCUMENTS; AUTHORIZING AND PRESCRIBING OTHER MATTERS PERTAINING TO THE INDUSTRIAL PROJECT, INCLUDING BUT NOT LIMITED TO THE ACQUISITION OF THE REAL PROPERTY NECESSARY FOR THE PROJECT, AND THE EXECUTION OF THE LEASE RELATING TO THE PROJECT; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BOND; 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 manufacturing building and 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 manufacturing operations; and

WHEREAS, the City is authorized by Act No. 9 to issue an Industrial Development Revenue Bond payable from revenues derived from the industrial project so acquired and constructed and secured by a lien thereon; and

WHEREAS, the necessary arrangements have been made with USable Corporation, an Arkansas corporation (the "Company"), for the acquisition, design, construction, equipping and operation of a data storage and processing center to be located within the City at the Meadows Industrial Park (the "Project"), and to lease the Project to the Company pursuant to the terms of a Lease Agreement by and between the City and the Company (the "Lease Agreement"); and

WHEREAS, the Company will sublease the Project to Arkansas Blue Cross and Blue Shield (the "Beneficiary") pursuant to the terms of a Sublease Agreement by and between the Company and the Beneficiary; and

WHEREAS, the City desires to issues an Industrial Development Revenue Bond, ("USable Project"), Series 2010 (the "Bond"), in an amount not to exceed Thirteen Million Two Hundred Thousand Dollars (\$13,200,000) to finance the Project, including the costs of issuance of the Bond; and

WHEREAS, the Bond will be dated, bear interest, mature and be subject to redemption as set forth herein and a Bond Purchase Agreement by and among the City, Centennial Bank (the "Purchaser), and the Company (the "Bond Purchase Agreement");

WHEREAS, the Bond will be repaid pursuant to a pledge of all of the revenues paid pursuant to the Lease and the Sublease;

WHEREAS, the Bond will be secured with a Mortgage Agreement on the Project (the "Mortgage") issued by the City in favor of the Purchaser;

WHEREAS, the Bond will be sold to the Purchaser pursuant to a Private Placement Memorandum (the "Private Placement Memorandum") issued by the City; and

WHEREAS, the Company has agreed to make payments in lieu of taxes pursuant to a Payment In Lieu Of Taxes Agreement (the "PILOT Agreement");

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

Section 1. The issuance of the Bond, the execution and delivery of the Bond, Bond Purchase Agreement, the Mortgage, the Lease Agreement, the Private Placement Memorandum, and the PILOT Agreement, and the acquisition, construction and equipping of the Project are hereby authorized and approved.

Section 2. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Arkansas Code Annotated Title 14, Chapter 164, Subchapter 4, the Bond is hereby authorized and ordered sold and issued in a total principal amount not to exceed of Thirteen Million, Two Hundred Thousand Dollars (\$13,200,000). The Bond shall bear interest, and shall mature and be subject to redemption as provided herein. The Bond shall not be a general obligation of the City, but shall be a special obligation payable solely from revenues received by the City pursuant to the Lease Agreement.

Section 3. The issuance of the Bond is hereby authorized for the purposes of (i) financing the costs of the Project, and (ii) to pay the costs of issuance of the Bond. The Bond will be subject to redemption as provided herein in accordance with the provisions of this Ordinance and the Bond Purchase Agreement.

Section 4. The Bond shall be sold to the Purchaser pursuant to and in accordance with the terms of a Bond Purchase Agreement, in substantially the form submitted to the meeting at which this Ordinance is adopted, with such changes, omissions, insertions and revisions as the Mayor and City Clerk with the advice of counsel, shall deem advisable, the execution and delivery by the Mayor of such Bond Purchase Agreement to constitute conclusive evidence of the City's acceptance and approval thereof.

Section 5. The Private Placement Agreement, in substantially the form submitted to the meeting at which this Ordinance is adopted, is approved with such changes, omissions, insertions and revisions as the Mayor and City Clerk with the advice of counsel, shall deem advisable, the execution

and delivery by the Mayor of such Private Placement Agreement to constitute conclusive evidence of the City's acceptance and approval thereof.

Section 6. The Lease Agreement, in substantially the form submitted to the meeting at which this Ordinance is adopted, is approved with such changes, omissions, insertions and revisions as the Mayor and City Clerk with the advice of counsel, shall deem advisable, the execution and delivery by the Mayor of such Lease Agreement to constitute conclusive evidence of the City's acceptance and approval thereof.

Section 7. The Mortgage, in substantially the form submitted to the meeting at which this Ordinance is adopted, is approved with such changes, omissions, insertions and revisions as the Mayor and City Clerk with the advice of counsel, shall deem advisable, the execution and delivery by the Mayor of such Mortgage to constitute conclusive evidence of the City's acceptance and approval thereof.

Section 8. The PILOT Agreement, in substantially the form submitted to the meeting at which this Ordinance is adopted, is approved with such changes, omissions, insertions and revisions as the Mayor and City Clerk with the advice of counsel, shall deem advisable, the execution and delivery by the Mayor of such PILOT Agreement to constitute conclusive evidence of the City's acceptance and approval thereof.

Section 9. All actions heretofore taken by the Mayor and City Clerk in connection with the offering of the Bond, including the preparation of the Private Placement Memorandum, the Bond Purchase Agreement, the Lease Agreement, the Mortgage, the PILOT Agreement and this Ordinance are hereby in all respects ratified and approved.

Section 10. (a) Under the authority of the Constitution and the laws of the State of Arkansas (the "State"), including in particular Act No. 9, the City of Conway Industrial Development Revenue Bond (USABLE Project), Series 2010, is hereby authorized and ordered issued in a principal amount not to exceed Thirteen Million, Two Hundred Thousand Dollars (\$13,200,000) (the "Purchase Price") for the purpose of financing the acquisition, design, construction, and equipping of the Project.

(b) The Bond shall be dated as of the date it is sold to the Purchaser in February 2010, and its final maturity shall be in 2032, two hundred and forty (240) months after the end of the Construction Period, as hereinafter defined. During the Construction Period, the Bond shall bear interest at a fixed rate equal to five and three quarters of one percent (5.75%). The "Construction Period" shall commence at on the date of issuance of the Bond and shall end upon the earlier of (x) the last day of the month after the issuance of a certificate of occupancy by the City of Conway for building to be constructed as part of the Project, or (y) October 31, 2012. After the Construction Period, the Bond shall bear interest at a variable rate established at the current Wall Street Journal Prime Rate plus one percent (1.0%) on the date of issuance and further adjusted by the same margin in two (2) year intervals, with a 5.75% rate floor and a 9.75% rate cap for the life of the Bond (the "Agreed Rate").

(c) The Purchaser agrees to purchase the Bond from the Issuer in installments from time to time in an amount up to the Purchase Price, and the Issuer hereby agrees to sell the Bond to the Purchaser at a price of one hundred percent (100%) of the Principal Amount of the Bond

purchased from time to time. The Purchase Price shall be paid in a series of advances in accordance with the Bond Purchase Agreement. The initial advance shall take place on the date of issuance to pay the costs of acquiring the real estate for the Project and paying all of the costs of issuance of the Bond. So long as the Company is in compliance with the terms and provisions of this Ordinance, the Bond Purchase Agreement and the Lease Agreement, the Purchaser agrees to approve and make advances of the Purchase Price of the Bond (“Disbursements”) to pay Project costs as follows:

- (i) Disbursements shall only be made based upon actual work completed;
- (ii) The Company may request reimbursements for costs not more often than monthly, provided, however, during the Project performance period requests for reimbursements shall be limited to quarterly; and
- (iii) All requests for Disbursements shall be made by forwarding a completed copy of a disbursement request in a form acceptable to the Purchaser to the Purchaser, along with the documentation for eligible Project costs incurred since the last disbursement request and not previously submitted.

Each advance shall bear interest from the date of issuance (the “Advance Date”). Interest accrued during the Construction Period shall be paid monthly. Thereafter, the final total principal amount equal to the amount advanced in accordance with the terms of the Bond Purchase Agreement, an amount not to exceed the Purchase Price, plus interest at the Agreed Rate, shall be payable in equal monthly payments beginning on the first day of the month following the end of the Construction Period (the “Initial Payment Date”), and continuing on the first day of each month thereafter; provided that the Purchaser shall compute and set the monthly payment due for the next twenty four (24) monthly payments, commencing with the Initial Payment Date, as the amount necessary to fully amortize the outstanding principal balance as of the anniversary of the Initial Payment Date of such bi-annual period, over the remainder of the original twenty (20) year amortization period at the Agreed Rate then in effect, with the final payment due on the first day of the month prior to the anniversary of the Initial Payment Date in year 2032, in an amount equal to the outstanding principal balance plus accrued interest thereon. All installments shall be applied first against accrued interest through the date of payment and the balance of such installment shall be applied to reduce the outstanding principal balance hereunder.

If for any reason the Company does not utilize the entire amount of the Purchase Price for completion of the Project, the principal amount of the Bond shall be reduced to the amount actually advanced under the terms of this Bond Purchase Agreement. In such an event, upon the request of the Company, the Issuer agrees to execute, and the Purchaser agrees to accept, a new Bond in the actual amount of the outstanding principal amount of the debt.

(d) The principal of and interest on the Bond shall be payable in lawful money of the United States of America at the office of the Purchaser in Little Rock, Arkansas. Payment of principal of and interest on the Bond shall be paid by check or draft to the Purchaser, or in such other manner and at such other address as is furnished to the Issuer and the Company in writing by the Purchaser. In any case where the date of payment of interest on or principal of the Bond (a “Payment Date”) shall be a Saturday or Sunday or shall be in the State a legal holiday or a day on which banking institutions are authorized by law to close, then payment of interest or principal need not be made on such Payment Date but may be made on the next succeeding business day with the

same force and effect as if made on the Payment Date, and no interest shall accrue for the period after the Payment Date.

(e) The Bond shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Clerk/Treasurer and shall have impressed or imprinted thereon the seal of the City. The Bond, together with interest thereon, is secured by and are payable solely from the revenues derived from the Lease Agreement which are hereby pledged and mortgaged for the payment of the Bond.

(f) In case the Bond shall become mutilated or be destroyed, the City shall, if not then prohibited by law, cause to be executed and delivered to the Purchaser a new bond of like date, number, maturity and tenor in exchange and substitution for and upon cancellation of such mutilated bond, or in lieu of and in substitution of such bond destroyed or lost, upon the owner paying the reasonable expenses and charges of the City in connection therewith, and, in the case of a bond destroyed or lost, the filing with the City evidence satisfactory to it that such bond was destroyed or lost, and of the requestor's ownership thereof, and furnishing the City with indemnity satisfactory to it. In such event, the City may pay the new bond without the surrender thereof. Upon the issuance of a new bond under this Section 9(f), the City may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith.

(g) The Bond is transferable only in accordance with the terms and conditions of the Bond Purchase Agreement, and in compliance with the laws of the State and the laws of the United States of America.

Section 11. To prescribe additional terms and conditions upon which the Bond is to be executed, accepted, held and secured, the Mayor is hereby authorized and directed to execute the Bond Purchase Agreement, the Mortgage, and the Lease Agreement, and the City Clerk is hereby authorized and directed to acknowledge such documents and to affix the seal of the City thereto.

Section 12. The Bond shall be in substantially the following forms and the Mayor and City Clerk are hereby expressly authorized and directed to make all recitals contained therein:

(Form of Series 2010 Bond)

UNITED STATES OF AMERICA
STATE OF ARKANSAS
CITY OF CONWAY
INDUSTRIAL DEVELOPMENT REVENUE BOND
(USABLE PROJECT)
SERIES 2010
(Federally Taxable)

Interest Rate: See Below

Maturity Date: _____, 2032

Interest Commencement Date: February ____, 2010

Purchaser: Centennial Bank

Principal Amount: Thirteen Million, Two Hundred Thousand Dollars

KNOW ALL MEN BY THESE PRESENTS:

That the City of Conway, County of Faulkner, State of Arkansas (the "City"), for value received, hereby promises to pay, but solely from the source hereinafter referred to, to the order of the Purchaser the Principal Amount shown above on the Maturity Date shown above (except as the provisions hereinafter set forth with respect to redemption of this Bond prior to maturity may become applicable hereto), in any coin or currency of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts, at the office of the Purchaser in Little Rock, Arkansas, and in like manner to pay to the Purchaser, by check or draft mailed to the Purchaser at such address, interest thereon from the Interest Commencement Date shown above, payable as follows:

- (a) During the Construction Period, as hereinafter defined, the Bond shall bear interest at a fixed rate equal to five and three quarters of one percent (5.75%). The "Construction Period" shall commence at on the date of issuance of the Bond and shall end upon the earlier of (x) the last day of the month after the issuance of a certificate of occupancy by the City of Conway for building to be constructed as part of the Project, or (y) October 31, 2012.
- (b) After the Construction Period, the Bond shall bear interest at a variable rate established at the current Wall Street Journal Prime Rate plus one percent (1.0%) on the date of issuance and further adjusted by the same margin in two (2) year intervals, with a 5.75% rate floor and a 9.75 rate cap for the life of the Bond.

The Purchaser agrees to purchase the Bond from the City in installments from time to time in an amount up to the Principal Amount, and the Issuer hereby agrees to sell the Bond to the Purchaser at a price of one hundred percent (100%) of the Principal Amount of the Bond purchased from time to time. The purchase price shall be paid in a series of advances in accordance with the Bond Purchase Agreement, as hereinafter defined. The initial advance shall take place on the date of issuance and the Purchaser shall make additional periodic advances thereon as provided

in the Bond Purchase Agreement. Each advance shall bear interest from the date of issuance (the "Advance Date"). Interest accrued during the Construction Period shall be paid monthly. Thereafter, the final total principal amount equal to the amount advanced in accordance with the terms of the Bond Purchase Agreement, an amount not to exceed the Principal Amount, plus interest at the Agreed Rate, shall be payable in equal monthly payments beginning on the first day of the month following the end of the Construction Period (the "Initial Payment Date"), and continuing on the first day of each month thereafter; provided that the Purchaser shall compute and set the monthly payment due for the next twenty four (24) monthly payments, commencing with the Initial Payment Date, as the amount necessary to fully amortize the outstanding principal balance as of the anniversary of the Initial Payment Date of such bi-annual period, over the remainder of the original twenty (20) year amortization period at the Agreed Rate then in effect, with the final payment due on the first day of the month prior to the anniversary of the Initial Payment Date in year 2032, in an amount equal to the outstanding principal balance plus accrued interest thereon. All installments shall be applied first against accrued interest through the date of payment and the balance of such installment shall be applied to reduce the outstanding principal balance hereunder.

If for any reason the Purchaser does not advance the entire amount of the Principal Amount, the Principal Amount of the Bond shall be reduced to the amount actually advanced under the terms of the Bond Purchase Agreement.

This Bond is a duly authorized bond of the City designated "Industrial Development Revenue Bond (USABLE Project), Series 2010", limited in aggregate principal amount up to \$13,200,000 (the "Bond"), issued for the purpose of financing cost of the acquisition, design, construction, and equipping certain data storage and processing facilities, pursuant to the provisions of a Lease Agreement (the "Lease Agreement") dated as of February __, 2010 (the "Lease Agreement"), by and between the City and USABLE Corporation (the "Company"). The City will utilize the proceeds of the Bond as directed by the Company under the terms of the Lease Agreements by the authority of and in full compliance with the provisions, restrictions, and limitations of the Constitution and statutes of the State of Arkansas (the "State"), including 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 (Arkansas Code Annotated Title 14, Chapter 164, Subchapter 2), as amended (the "Act"), and all other laws of the State applicable thereto, and pursuant to proceedings duly held by the governing body of the City. Under the terms of the Lease Agreement, the Company is obligated to pay amounts which are sufficient to pay the principal of and interest on the Bond as the same shall become due in accordance with their terms and provisions and the terms and provisions of the Bond Purchase Agreement between the City and the Purchaser dated as of February __, 2010 (the "Bond Purchase Agreement").

The bond is issued pursuant to and in full compliance with the Constitution and laws of the State, including particularly the Act and pursuant to Ordinance No. 010-01 duly adopted on January 12, 2010 (the "Authorizing Ordinance"), and does not constitute an indebtedness of the City within any constitutional or statutory limitation.

THE BOND IS A LIMITED OBLIGATION ONLY OF THE CITY. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION OR AGENCY OF THE STATE SHALL BE OBLIGATED TO PAY THE BOND OR INTEREST THEREON. IN NO EVENT SHALL THE BOND CONSTITUTE AN INDEBTEDNESS FOR WHICH THE FAITH AND

CREDIT, THE TAXING POWER OR ANY REVENUES OF THE CITY, THE STATE OR ANY OTHER POLITICAL SUBDIVISION OR AGENCY THEREOF ARE PLEDGED.

The Bond is issuable as a single bond in the denomination of \$13,200,000.

The Bond is subject to optional redemption prior to maturity, at the option of the City, in whole or in part, at any time after issuance from any monies available to the City and deposited with the Purchaser at a redemption price of 100% of the outstanding principal amount of the Bond or portions thereof to be so redeemed plus accrued interest on the date fixed for redemption.

The City, at the direction of the Company, shall call the Bond for optional redemption only when it shall have been notified by the Company to do so. Notice of any optional redemption to the Purchaser shall specify the principal amount of the Bond to be redeemed and the redemption date. The City will give notice to the Purchaser at least fifteen (15) days prior to the day on which the City intends to redeem the Bond.

The Bond is callable for redemption by the City prior to maturity from the proceeds of any insurance or condemnation award as provided in the Lease Agreements, in part, at any time, at a redemption price of 100% of the principal amount thereof plus accrued interest to the redemption date.

On or prior to the date fixed for redemption, moneys shall be on deposit with the Purchaser to pay, and the Purchaser is hereby authorized and directed to apply such funds to the payment of principal on the Bond or portions thereof called, together with accrued interest thereon to the redemption date. Upon the deposit of moneys for redemption as provided in this paragraph, interest on the Bond or portion thereof thus called shall no longer accrue.

The Bond does not constitute a general obligation of the City, but is a limited obligation and recourse for any payment of the principal, interest and other charges with respect to the Bond and the instruments and documents executed and delivered by the City in connection therewith, including, but not limited to, the Bond Purchase Agreement, the Mortgage and the Lease Agreement, may be had solely and exclusively from the rent payments received by the City pursuant to the Lease Agreement, and any other security given to secure such indebtedness or obligations under such instruments or documents.

Pursuant to the provisions of the Lease Agreement, the Company has agreed to cause to be made monthly bond payments sufficient for the prompt payment, when due, of the principal of and interest on the Bond, which payments are to be paid directly to the Purchaser, and such monthly bond payments under the Lease Agreement have been duly pledged and assigned to the Purchaser for that purpose. In addition, the rights of the City (other than certain rights specifically retained by the City in the Lease Agreement including but not limited to indemnification rights and the right to payment of all fees and expenses of the City related to the Bond) under the Lease Agreement and the Mortgage have been assigned to the Purchaser to secure payment of such principal of and interest on the Bond under the Bond Purchase Agreement.

No recourse shall be had for the payment of the principal of or interest on the Bond or for any claim based thereon or upon any obligation, covenant, or agreement contained in the Bond, the Bond Purchase Agreement, or the Lease Agreement, against any past, present or future officer,

employee or agent of the City, either directly or through the City or any successor of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise and all such liability of any such officer, employee or agent as such is hereby expressly waived and released as a condition of and consideration for the execution of the Bond Purchase Agreement and the issuance of any of the Bond.

In certain events, on the conditions, in the manner, and with the effect set forth in the Bond Purchase Agreement, the principal of the Bond issued under the Bond Purchase Agreement and then outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. If the principal of the Bond shall have become due or declared due and payable, all moneys received by the Purchaser under the default provisions of the Bond Purchase Agreement shall be applied as provided in the Bond Purchase Agreement.

IT IS HEREBY CERTIFIED, RECITED, AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Bond Purchase Agreement, the Lease Agreement and the Mortgage, and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law; that the indebtedness represented by the bond, together with all obligations of the City, does not exceed or violate any constitutional or statutory limitation; and that the amounts payable under the Lease Agreement and pledged to the payment of the principal of and premium, if any, and interest on this Bond, as the same become due and payable, will be sufficient in amount for that purpose.

IN WITNESS WHEREOF, the City of Conway, Arkansas has caused this Bond to be executed in its name by the manual signature of its Mayor and its seal to be impressed or imprinted hereon and attested by the manual signature of its City Clerk as of the Interest Commencement Date specified above.

CITY OF CONWAY, ARKANSAS

By: *Tab Townsell*
Tab Townsell, Mayor

ATTEST:

By: *Michael O. Garrett*
Michael O. Garrett, City Clerk

Section 13. The Bond shall be subject to redemption prior to maturity in accordance with the terms set out in the bond form.

Section 14. The Mayor and the City Clerk, for and on behalf of the City, are authorized and directed to do any and all things necessary to effect the preparation, execution and delivery of the Bond Purchase Agreement, the performance of all obligations of the City under the Bond Purchase Agreement, the issuance, execution, sale and delivery of the Bond; the execution and delivery of the Lease Agreement, the Mortgage and the PILOT Agreement, the use of a portion of the proceeds from the Bond to commence acquisition and construction of the Project, and the performance of all acts enumerated in this Ordinance and all other acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and City Clerk are 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 15. In the event the office of Mayor, City Clerk, or the City Council shall be abolished, or any two or more of such offices shall be merged or consolidated, or in the event the duties of a particular office shall be transferred to another office or officer, or in the event of a vacancy in any such office by reason of death, resignation, removal from office or otherwise, or in the event any such officer shall become incapable of performing the duties of his office by reason of sickness, absence from the City or otherwise, all powers conferred and all obligations and duties imposed upon such office or officer shall be performed by the office or officer succeeding to the principal functions thereof, or by the office or officer upon whom such powers, obligations and duties shall be imposed by law.

Section 16. The City covenants that it will not sell or lease the Project, or any substantial portion thereof, except as contemplated and permitted by this Ordinance and the Bond Purchase Agreement. All revenues derived from such dispositions shall be pledged to the repayment of the Bond.

Section 17. To the extent the City is involved with the acquisition, construction and equipping of the Project, it is hereby recognized that it requires highly specialized work and specialized types of machinery and equipment, and it has been determined by the City Council that competitive bidding is not feasible or practical. Therefore, the requirements under ordinances of the City or under laws of the State of Arkansas for competitive bidding be, and the same are, hereby waived as to this particular Project. This action is take by the City Council pursuant to applicable laws of the State of Arkansas, including particularly Section 5 of Act No. 28 of the Acts of Arkansas of 1959.

Section 18. The appointment of Wright, Lindsey & Jennings LLP as Bond Counsel is hereby approved and ratified.

Section 19. The provisions of this Ordinance are hereby declared to be separable and if any provision shall for any reason be held illegal or invalid, such holding shall not affect the validity of the remainder of this Ordinance.

Section 20. All ordinances and resolutions, or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

Section 21. Emergency. It is hereby ascertained, found and declared that an immediate need exists 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 Bond authorized hereby and the taking of other action authorized herein are immediately necessary in connection with the securing and developing of 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 peace, health and safety, shall take effect immediately and be in full force upon and after its passage.

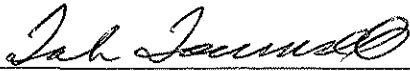
PASSED: January 12, 2010

ATTEST:




CITY CLERK

APPROVED:



MAYOR

APPROVED AS TO FORM:



CITY ATTORNEY