O-10-27

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A PROMISSORY NOTE TO PROVIDE SHORT-TERM FINANCING UNDER AMENDMENT NO. 78 TO THE ARKANSAS CONSTITUTION FOR THE ACQUISITION OF TANGIBLE PERSONAL PROPERTY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTE; AND PRESCRIBING OTHER MATTERS PERTAINING THERETO; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, the City of North Little Rock, Arkansas (the "City") is authorized and empowered under the provisions of Amendment No. 78 to the Arkansas Constitution ("Amendment No. 78") and Act No. 1808 of 2001 (codified as Title 14, Chapter 78 of the Arkansas Code of 1987 Annotated) (the "Act"), to issue notes and to expend the proceeds thereof to finance all or a portion of the costs of acquiring, constructing, installing and renting real property or tangible personal property having an expected useful life of more than one year; and

WHEREAS, it is proposed that the City issue its promissory Note in the principal amount not to exceed $2,000,000.00 (the "Note") under Amendment No. 78 and the Act for the purpose of acquiring equipment and vehicles and making capital improvements to City parks and recreation areas (the "Property"); and

WHEREAS, the City intends to arrange for a loan (the "Loan") from a financial institution (the "Lender") and to issue the Note to the Lender at a price of par in consideration for the Loan;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS, THAT:

SECTION 1: The North Little Rock City Council (the "City Council") hereby finds that the Property is real or tangible personal property having a useful life of more than one year. The City Council further finds that the sum of the principal amount of the Note and the outstanding principal amount of the City's other outstanding promissory notes do not exceed five percent (5%) of the assessed value of taxable property located within the City as determined by the last tax assessment completed before the issuance of the Note.

SECTION 2: Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment No. 78 and the Act, the Note is hereby authorized and ordered issued in the principal amount not to exceed $2,000,000.00 for the purpose of financing all or a portion of the cost for acquisition of the Property and paying expenses of issuing the Note. The Note shall be dated the date of issuance and

shall bear interest on the outstanding principal amount at a fixed rate not to exceed 3.0% per annum (calculated on the basis of a 30/360 day year). The Note shall be repaid interest only annually for two (2) years and thereafter principal and accrued interest shall be amortized in three (3) annual installments with all remaining principal and accrued interest due until a date five (5) years from the date of the Note at which time all unpaid principal and accrued interest shall be due and payable. The Note shall be issued in fully registered form and may be prepaid at the times and in the manner permitted in the Note.

SECTION 3: The Note shall be issued to the Lender in consideration for the Loan. The Lender shall be selected by the Mayor based upon the commitment or proposal for the Loan that the Mayor determines to have the lowest cost to the City. The City's Director of Finance has solicited proposals or commitments for the Loan from at least three (3) financial institutions having offices in Pulaski County or having requested to be solicited in such manner as shall be approved by the Mayor. The Mayor shall have the right to reject any and all proposals and commitments.

SECTION 4: As provided in Amendment No. 78, the annual debt service payments on the Note in each fiscal year shall be charged against and paid from the general revenues of the City for such fiscal year. For the purpose of making the annual debt service payments, there is hereby, and shall be, appropriated to pay the Note, an amount of general revenues of the City sufficient for such purposes. The City's Director of Finance is hereby authorized and directed to withdraw from the General Fund of the City the amounts and at the times necessary to make the annual debt service payments on the Note.

SECTION 5: The City covenants with the owner of the Note (the "Owner") from time to time as follows:

(a) The City shall not take any action or suffer or permit any action to be taken or condition to exist which causes the interest payable on the Note to be included in gross income for federal income tax purposes. Without limiting the generality of the foregoing, the City covenants with the Owner that the proceeds of the sale of the Note will not be used directly or indirectly in such manner as to cause the Note to be treated as an "arbitrage bond" within the meaning of section 148 of the Internal Revenue Code of 1986, as amended (the "Code").

(b) The City will not use or permit the use of the Property or the proceeds of the Note in such manner as to cause the Note to be a "private activity bond" within the meaning of section 141 of the Code.

(c) None of the gross proceeds of the Note will be used (directly or indirectly) either (i) to make or finance loans to persons other than state or local government units or (ii) in any trade or business carried on by any person other than a state or local governmental unit or other than as a member of the general public.

(d) The City will take no action which would cause the Note to be "federally guaranteed" within the meaning of the Code.

(e) The City will not reimburse itself from Note proceeds for any costs paid prior to the date the Note is issued except in compliance with United States Treasury Regulation § 1.150-2. This Ordinance shall constitute "official intent" for the purposes of the Regulation.

(f) The City will submit to the Secretary of the Treasury of the United States, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Note is issued, a statement concerning the Note which contains the information required by section 149(e) of the Code.

SECTION 6: The City shall provide such financial information to the Lender as the Lender may reasonably request.

SECTION 7: The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the issuance, execution, and delivery of the Note, and the performance of all acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and City Clerk 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 8: Severability. In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this Ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this Ordinance.

SECTION 9: All ordinances or resolutions of the City in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 10: It is hereby found and determined that the acquisition of property and construction of improvements to be financed by the issuance of the Note as provided for herein is immediately necessary in order to insure the proper and orderly growth of this land and of the City of North Little Rock, and being necessary for the immediate preservation of the public health, safety and welfare; THEREFORE, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage and approval.

PASSED: APPROVED:

_____ _____

Mayor Patrick H. Hays

SPONSOR:

Mayor Patrick H. Hays

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

C. Jason Carter, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/b

FILED 11:22 A.M. _____ P.M.
BY City atty - Carter
DATE 4-6-10
Diane Whitbey, City Clerk and Collector
North Little Rock, Arkansas
RECEIVED by Bobbie Dudley