



STATE OF ARKANSAS
City of Brookland

ORDINANCE NO. 2019-07

AN ORDINANCE TO AUTHORIZE THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS UNDER THE MUNICIPALITIES AND COUNTIES INDUSTRIAL DEVELOPMENT REVENUE BOND LAW FOR THE PURPOSE OF SECURING AND DEVELOPING INDUSTRY; TO AUTHORIZE THE SALE OF THE BONDS AND THE APPROVAL OF A BOND PURCHASE AGREEMENT AND A PAYMENT IN LIEU OF TAXES AGREEMENT IN CONNECTION THEREWITH; TO AUTHORIZE THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE BONDS; TO AUTHORIZE AND PRESCRIBE CERTAIN MATTERS PERTAINING TO THE PROJECT, THE ACQUISITION, CONSTRUCTION, AND EQUIPPING THEREOF, AND THE FINANCING THEREOF; TO AUTHORIZE THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT RELATING TO THE PROJECT; AND FOR OTHER PURPOSES.

WHEREAS, the City of Brookland, Arkansas (the “City”) is authorized under the provisions of Amendment 65 to the Arkansas Constitution and the Municipalities and Counties Industrial Development Revenue Bond Law, Ark. Code Ann. §§ 14-164-201 *et seq.* and Ark. Code Ann. §§ 14-164-701 *et seq.*, each as amended from time to time (collectively, the “Act”),

to own, acquire, construct, equip, and lease 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, Today's Power, Inc. (the "Company") has evidenced its interest in acquiring, constructing, and equipping a facility useful in securing and developing industry within or near the City if permanent financing can be provided through the issuance of bonds under the authority of the Act; and

WHEREAS, the City has agreed to cooperate with the Company in the acquisition, construction, and equipping of a facility within the City, consisting of the construction of infrastructure and improvements and acquisition and installation of equipment, including solar panels, utilized in environmentally sustainable generation of electricity on approximately 11 acres of land owned by Craighead Electric Cooperative located in the Southwest Quarter of Section 16, Township 15 North, Range 5 East near where the Union Pacific Railroad track intersects Highway 230 (the "Project") related to the operations of the Company; and

WHEREAS, to provide permanent financing of the Project costs, necessary costs and expenditures incidental thereto, and the cost of the issuance of Bonds, the City will issue its taxable industrial development revenue bonds under the provisions of the Act designated "City of Brookland, Arkansas Taxable Industrial Development Revenue Bonds TPI-Craighead Electric Cooperative Solar Project), Series 2019," in the principal amount of not to exceed Two Million One Hundred Seventy-Five Thousand and 00/100 Dollars (\$2,175,000.00) (the "Bonds"); and

WHEREAS, the Bonds will be issued pursuant to the provisions of a Trust Indenture, (the "Trust Indenture") to be entered into between the City and Regions Bank, as trustee (the "Trustee"); and

WHEREAS, the City and the Company intend to enter into a Lease Agreement (the “Lease Agreement”) relating to leasehold rights and the real and personal property constituting the Project, which contemplates that the Project will be leased to the Company, with an option to purchase for a nominal price, and the rental payments therefor together with other available moneys shall be sufficient to pay debt service on the Bonds and all related costs; and

WHEREAS, to induce the City to proceed with the issuance of the Bonds for the purpose indicated, which will inure to the benefit of the Company, the City and the Company will enter into a Payment in Lieu of Taxes Agreement (“PILOT Agreement”) in substantially the form presented at this meeting; and

WHEREAS, an open public hearing on the question of the issuance of the Bonds was held before the City Council on March 11, 2019, following publication of notice of the hearing on March 1, 2019 and that having heard all persons desiring to be heard in the matter, the City has taken under advisement the comments and statements of such persons and declared the public hearing duly closed; and

WHEREAS, the City proposes to sell the Bonds to an affiliate of the Company (the “Purchaser”) pursuant to a Bond Purchase Agreement by and between the City and the Purchaser; and

WHEREAS, the City believes the completion of the Project will be useful in the future in securing and developing industry within or near the City and will furnish other benefits to and be in the best interest of the City and its residents;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BROOKLAND, ARKANSAS:

Section 1. There be, and there is hereby authorized and directed the following:

(a) The Bonds shall be issued in one or more series in an aggregate principal amount of not to exceed Two Million One Hundred Seventy-Five Thousand and 00/100 Dollars (\$2,175,000.00), and the Bonds shall be sold to the Purchaser for a price of par plus costs of issuance upon the terms and conditions set forth in the Bond Purchase Agreement.

(b) The execution and delivery of the PILOT Agreement by the Mayor on behalf of the City, in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, its execution to constitute conclusive evidence of such approval, is hereby authorized and directed. An executed copy of the PILOT Agreement shall be filed in the City Clerk's Office.

(c) The acquisition, construction, and equipping of the Project, and, in connection therewith, to the extent necessary or convenient, 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 construction and equipping of the Project on behalf of the City is hereby authorized and directed.

Section 2. The issuance of the Bonds in the total principal amount of not to exceed Two Million One Hundred Seventy-Five Thousand and 00/100 Dollars (\$2,175,000.00) in one or more series is hereby authorized. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall bear interest (at a rate or rates) and shall be subject to redemption prior to maturity, all upon the terms and conditions to be set forth in the Trust Indenture.

That to further prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed (when requested to do so by the Company) to execute and acknowledge the Trust

Indenture, and the City Clerk is hereby authorized and directed to execute and acknowledge the Trust Indenture and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Trust Indenture to be accepted, executed and acknowledged by the Trustee. The Trust Indenture is hereby approved in substantially the form submitted to this meeting (and a copy of such Trust Indenture is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Trustee and the Company in order to complete the Trust 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.

Section 3. There be, and there is hereby, authorized and directed the execution and delivery of the Lease Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Lease Agreement for and on behalf of the City. The Lease Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such Lease Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company 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.

Section 4. There be, and there is hereby, authorized and directed the execution and delivery of the Bond Purchase Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Bond Purchase Agreement for and on behalf of the City. The Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Purchaser in order to

complete the Bond Purchase Agreement in substantially the form submitted to this meeting (and a copy of such Bond Purchase Agreement is on file with the City Clerk and available for inspection by any interested person), with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

Section 5. 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 (i) the execution of the Lease Agreement, (ii) the performance of the City's obligations under the Lease Agreement, (iii) the execution and delivery of the Trust Indenture, (iv) the performance of all obligations of the City under and pursuant to the Trust Indenture, (v) the execution and delivery of the Bonds, (vi) the execution and delivery of the PILOT Agreement, (vii) the performance of the City's obligations under the PILOT Agreement, (viii) the execution and delivery of the Bond Purchase Agreement, (ix) the performance of the City's obligations under the Bond Purchase Agreement, and (x) the performance of all other acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, in connection with the issuance of the Bonds and in connection with on-going rights and obligations that arise after issuance and prior to maturity of the Bonds, 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, including, but not limited to, the execution of one or more Home Office Payment Agreements, Memorandums of Lease, Delivery Instructions and other closing certificates.

Section 6. Since the City is involved with the acquisition, constructing, and equipping of a complex project, requiring highly specialized work and specialized types of machinery and equipment, it has been and is hereby determined by the City Council in

compliance with Ark. Code. Ann. § 14-164-204, that competitive bidding be, and the same is hereby, waived as to this particular project. This action is taken by the City Council pursuant to applicable laws of the State of Arkansas, including particularly the Act.

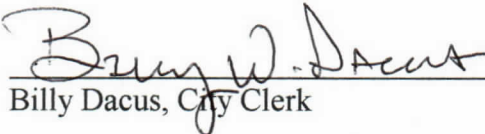
Section 7. All actions heretofore taken by the City, the Company, and the Purchaser in connection with the issuance, offer and sale of the Bonds and the development and completion of the Project are hereby in all respects ratified and approved.

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.

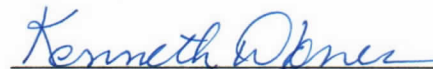
Section 9. *Repealer.* All ordinances or resolutions of the City in conflict herewith are hereby repealed to the extent of such conflict.

PASSED: March 11, 2019

ATTEST:


Billy Dacus, City Clerk

APPROVED:


Kenneth Jones, Mayor

APPROVED AS TO LEGAL FORM:


Kevin J. Orr, City Attorney

