

ORDINANCE NO. 8182-40

ORDINANCE authorizing the issuance of \$500,000 principal amount Industrial Project Revenue Bonds, Series A (Digital Technology Incorporated Project); authorizing the execution and delivery of a Loan Agreement by the City of Urbana, Illinois; authorizing execution and delivery of an Indenture of Trust securing said bonds; and confirming sale of said bonds to the purchasers thereof, and related matters (the "Bond Ordinance").

WHEREAS, the City of Urbana, Champaign County, Illinois (the "Municipality") is authorized pursuant to Ordinance No. 7475-3, Ordinance Authorizing Acquisition, Construction, and Financing Pollution Control Facilities and Economic Development Projects and the Lease, Sale and Financing thereof to or for any Person, and Providing for the Issuance of Revenue Bonds and Establishing Procedures in Respect thereto, passed May 20, 1974 and approved May 21, 1974, and Ordinance No. 8081-37, An Ordinance Amending and Supplementing Ordinance No. 7475-3, passed October 6, 1980 and approved October 14, 1980, as from time to time supplemented and amended (collectively the "Enabling Ordinance" or the "Act") to issue revenue bonds to defray and finance in whole or in part the costs of industrial projects and to enter into leases, loan agreements, or other agreements with any person in order to secure the municipality's revenue bonds; provided, however, that any such lease, loan agreement or other agreement must provide that such person shall pay to, for or on behalf of the Municipality an amount sufficient to pay principal, interest, redemption premiums and

all other costs in connection with the Municipality's revenue bonds; and

WHEREAS, one of the purposes of the Enabling Ordinance is to provide a financing device which will aid in financing the cost of industrial projects, as defined in the Enabling Ordinance, in order to relieve conditions of unemployment and to encourage the increase and retention of industry and commerce within the Municipality, thereby reducing the evils attendant upon unemployment and to provide for the increased welfare and prosperity of the residents of the Municipality; and

WHEREAS, the municipality has made the necessary arrangements with American National Bank of Champaign, Champaign, Illinois, as trustee under a Trust Agreement dated October 27, 1981, and known as Trust Number 01-1092 (the "Borrower") for the acquisition and construction of a facility for computer research and computer software research and development, including all necessary land, buildings, and equipment in the City of Urbana, Illinois (the "Project"), which Project will be leased during the term that the Bonds issued hereunder are outstanding to Digital Technology Incorporated, a Delaware corporation (the "Lessee"), pursuant to a Lease Agreement dated November 1, 1981, (the "Lease Agreement"); and

WHEREAS in order to promote the aforesaid purposes of the Enabling Ordinance, the Lessee (sub nom. Digital Technology Corporation) entered into a Memorandum of Intent, dated

October 19, 1981 (the "Memorandum of Intent") with the Municipality in connection with the Project; and

WHEREAS the location of the Project near the City of Urbana, Illinois will promote the aforesaid purposes of the Enabling Ordinance; and

WHEREAS, it is proposed to pay the costs of the Project through the issuance of revenue bonds pursuant to the provisions of the Enabling Ordinance; and

WHEREAS, in order to expedite the anticipated public benefits and avoid the delays which would otherwise occur pending the completion of the procedures necessary to be carried out by the Municipality to make the required funds available, the Borrower has caused contracts to be entered into for the construction of the Project; and

WHEREAS, the aggregate cost of the Project has been determined to be not less than \$500,000 and it is necessary and advisable that provisions be made for the issuance of \$500,000 aggregate principal amount Industrial Project Revenue Bonds, Series A (Digital Technology Incorporated Project) (the "Bonds") of the Municipality, as authorized and permitted by the Enabling Ordinance; and

WHEREAS, the Municipality proposes to lend the proceeds of the Bonds to the Borrower pursuant to a Loan Agreement dated as of November 1, 1981 (the "Loan Agreement"); and

WHEREAS, the loan of the proceeds of the Bonds will be further evidenced by a Note in the amount of \$500,000 from the Borrower to the Municipality, dated as of the date of the

Bonds (the "Note"), the form of which is set forth as an exhibit to the Loan Agreement; and

WHEREAS, the Bonds will be further secured by a mortgage on the Project dated as of November 1, 1981 (the "Mortgage") from the Borrower, as Mortgagor, to the Municipality, as Mortgagee; and

WHEREAS, the Municipality proposes to issue and sell the Bonds in order to pay the costs incurred in connection with the acquisition and construction of the Project as aforesaid, and the Bonds will be issued under the terms of an Indenture of Trust dated as of November 1, 1981 (the "Indenture"), between the Municipality and Busey First National Bank, Urbana, Illinois (the "Trustee"); and

WHEREAS, pursuant to the Indenture, the Municipality shall assign to the Trustee all of the Municipality's right, title and interest in and to the Loan Agreement, the Note and the Mortgage, as security for the Bonds; and

WHEREAS, the Municipality has caused to be prepared and presented to this meeting the following documents, which the Municipality proposes to enter into:

1. The form of the Loan Agreement (including the form of Note attached as an exhibit thereto);

2. The form of the Indenture setting forth terms and conditions of the Bonds; and

3. The form of the Mortgage by which the Borrower has mortgaged the Project to the Municipality to secure the Borrower's obligations under the Loan Agreement; and

WHEREAS, it appears that each of the instruments above referred to, which are now before this meeting, is in appropriate form and is an appropriate instrument to be executed and delivered by the Mayor and the City Clerk for the purposes intended:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS, AS FOLLOWS:

Section 1. The Memorandum of Intent by and between the Municipality and the Lessee, for the Borrower, is hereby found to be in the best interests of the Municipality and is in all respects approved, ratified and confirmed.

Section 2. The acquisition and construction of the Project by the Borrower, the lending of the proceeds of the Bonds to the Borrower, and the leasing by the Borrower of the Project to the Lessee as hereinafter provided is hereby authorized and determined to be in the public interest and for a public purpose, namely, to relieve conditions of unemployment and to encourage the increase and retention of industry and commerce in the Municipality, thereby reducing the evils attendant upon unemployment and to provide for the increased welfare and prosperity of the residents of the Municipality.

Section 3. For the purpose of paying the costs incurred by the Borrower in connection with the acquisition and construction of the Project, including necessary expenses incidental thereto, there is hereby authorized to be issued the revenue bonds of the Municipality in the aggregate principal amount of \$500,000 which bonds shall be designated "Indus-

trial Project Revenue Bonds, Series A (Digital Technology Incorporated Project)" (the "Bonds"), in the denomination of \$5,000 or integral multiples thereof, and shall be payable as to principal and interest in lawful money of the United States of America at the principal office of the Trustee under the provisions of the Indenture. A single Bond in the amount of \$500,000 is hereby authorized to be issued, which single Bond may be exchanged for Bonds in the denomination of \$5,000 (or integral multiples thereof), as set forth in the Indenture.

The Bonds shall be issued as fully registered bonds in the denomination of \$5,000 or integral multiples thereof, or a single \$500,000 Bond as aforesaid, shall be executed on behalf of the Municipality by the Mayor and attested by the City Clerk by their respective manual signatures; shall have the official seal of the Municipality impressed thereon; and shall be authenticated by the Trustee.

The Bonds shall be dated on or after November 1, 1981 and not later than the date of purchase by and delivery to the original purchaser thereof; and shall bear interest on the unpaid principal amount at a rate calculated and determined as follows:

$$\text{Interest Rate} = \text{Base Interest Rate} \times \left[1 + \left[\frac{46\% - \text{Marginal Tax Rate}}{46\%} \right] \right]$$

where the "Base Interest Rate" shall mean and is hereby defined as the rate per annum equal to seventy percent (70%) of the sum of the interest rate established and determined by the auction average on a discount basis for United States Treasury Bills

having maturities of twenty-six (26) weeks, issued on or immediately prior to (date of Bonds), 1981 and on or immediately prior to any interest payment date, plus four and one-half percent (4.5%) such rate to be effective until the next occurring May 1 or November 1, as the case may be; and where the "Marginal Tax Rate" shall mean and is hereby defined as the maximum marginal rate of Federal income taxation applicable to corporate income under Section 11 of the Internal Revenue Code or any successor provision [as of this date the maximum marginal rate of Federal income taxation applicable to corporate income is forty-six percent (46%)] (in any event, the Marginal Tax Rate for purposes of this definition shall not exceed 60% nor be less than 30% except with respect to the hereinafter defined Overdue Rate), until said principal sum is paid, and at a rate equal to the Overdue Rate as hereinafter defined, but in no event more than the interest rate allowed by law, or by the hereinafter mentioned Act, until paid on any overdue principal and premium and (to the extent that the payment of such interest shall be legally enforceable) on any overdue installment of interest, except as the provisions hereinafter set forth with respect to redemption or prepayment prior to maturity may become applicable hereto, both principal of and interest on this Bond being payable in lawful money of the United States of America at the principal corporate trust office of Busey First National Bank, Urbana, Illinois, as Trustee, or its successor in trust ("Trustee") under the Indenture of Trust dated November 1, 1981 (the "Indenture") from the Issuer to the Trustee. Payments of principal shall come due or mature

in semiannual installments on November 1 and May 1 of such years and in such amounts as set forth in the Indenture. In connection herewith interest on any overdue principal or any overdue interest shall be at the hereinafter defined Overdue Rate, but in no event more than the highest percentage allowed by law. The "Overdue Rate" shall be calculated and determined in the manner provided hereinabove in connection with the interest on this Bond with the Marginal Tax Rate being equal to twenty-three percent (23%) in such calculation and determination.

Section 4. The Bonds shall be limited obligations of the Municipality payable solely out of the revenues and receipts to be derived from the Loan Agreement, the Mortgage, the Note, the Lease Agreement, and any guaranty in connection therewith. No holder of any Bond shall ever have the right to compel any exercise of the taxing power of the Municipality to pay any Bond or the interest or premium, if any, thereon and such Bonds shall not constitute an indebtedness of the Municipality or a loan of credit thereof within the meaning of any constitutional or statutory provision. It shall be plainly stated on the face of the Bonds that they have been issued under the provisions of the Enabling Ordinance and that they do not constitute an indebtedness of the Municipality or a loan of credit thereof within the meaning of any constitutional or statutory provisions.

Nothing in this Bond Ordinance, the Loan Agreement, the Note, the Mortgage, the Lease Agreement, the Indenture, or other document executed in connection therewith shall be construed as an obligation or commitment by the Municipality to

expend any of its funds other than (i) the proceeds of the sale of the Bonds, (ii) the revenues and receipts to be derived from the Loan Agreement, the Mortgage, the Note, the Lease Agreement, or any guaranty in connection therewith, and (iii) any moneys arising out of the investment or reinvestment of said proceeds, rents, revenues or moneys.

Section 5. The Bonds and the Trustee's endorsement and the registration provisions thereon shall be in substantially the form set forth in the Indenture, with necessary or appropriate variation, omissions and insertions as permitted or required by the Indenture.

Section 6. The Bonds shall be issued in compliance with and under the authority of the provisions of the Enabling Ordinance, this Bond Ordinance and the Indenture.

Section 7. While the Bonds shall remain outstanding and unpaid, the Municipality hereby covenants and agrees with the holders from time to time of the Bonds that it will not issue any Additional Bonds or incur any obligations of any sort secured by a lien prior to or on a parity with the lien of the Bonds, except as expressly permitted under the provisions of the Indenture.

Section 8. It is hereby found, determined and declared by the City Council that the amounts payable under the Loan Agreement and the Note are the amounts necessary in each year to pay the principal of and interest on the Bonds and that the payments and other monetary obligations undertaken by the Borrower in the Loan Agreement and the Note are sufficient to

satisfy the obligations required by the Act to be undertaken by the Borrower. No reserve funds or depreciation accounts are required to be established by the Municipality in connection with the retirement of the Bonds and the operation and maintenance of the Project. The Loan Agreement provides that the Borrower shall own, operate and maintain the Project.

Section 9. The form, terms and provisions of the proposed Indenture be, and they hereby are, in all respects approved, and the Mayor and the City Clerk be, and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the Indenture in the name and on behalf of the Municipality, and thereupon to cause the Indenture to be executed, acknowledged and delivered to the Trustee therein named, and the Indenture shall constitute a lien on and an assignment of the amounts payable by the Borrower under the Loan Agreement, the Note, the Lease Agreement, the Mortgage and any guaranty in connection therewith. The Indenture, as executed and delivered, shall be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the officers of the Municipality executing the same, the execution by the Mayor and City Clerk thereof to constitute conclusive evidence of their approval and of the Municipality's approval of any and all changes or revisions therein from the form of Indenture now before this meeting; and from and after the execution and delivery of the Indenture, the officers, agents and employees of the Municipality are hereby authorized, empowered and directed to do all such acts and things and to execute

all such documents as may be necessary to carry out and comply with the provisions of the Indenture as executed.

Section 10. The form, terms and provisions of the proposed Loan Agreement and Mortgage be, and they hereby are, in all respects approved, and the Mayor and the City Clerk be, and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the Loan Agreement, and to accept the Mortgage, in the name and on behalf of the Municipality. The Loan Agreement and the Mortgage as executed and delivered, shall be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the officers of the Municipality executing the same, their execution thereof to constitute conclusive evidence of their approval and the Municipality's approval of any and all changes or revisions therein from the form of Loan Agreement or Mortgage now before this meeting; and from and after the execution and delivery of the Loan Agreement and the Mortgage the officers, agents and employees of the Municipality are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Loan Agreement as executed.

Section 11. The sale of the Bonds to the original purchaser thereof, at a price of 100% of the principal amount thereof plus any accrued interest from the date thereof to the date of sale and delivery, is hereby approved. The purchase of the Bonds by Busey First National Bank, Urbana, Illinois is hereby approved.

Section 12. The Mayor and City Clerk, for and on behalf of the Municipality, be and they are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Loan Agreement, the Mortgage, the Lease Agreement and the Note by the Borrower, the execution and delivery of the Indenture and acceptance thereof by the Trustee, the performance of all other obligations of the Municipality under and pursuant to the Loan Agreement, the Note, the Mortgage, and the Indenture, the execution and delivery of the Bonds, and the performance of all other acts of whatever nature necessary to effect and carry out the authority conferred by the Enabling Ordinance, this Bond Ordinance, the Loan Agreement, the Note, the Mortgage and the Indenture. The Mayor and City Clerk be, and they are hereby, further authorized and directed for and on behalf of the Municipality, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of the authority conferred by and the transaction contemplated by the Enabling Ordinance, this Bond Ordinance, the Loan Agreement, the Note, the Mortgage and the Indenture, or to evidence the said authority and its exercise.

Section 13. The provisions of this Bond Ordinance are hereby declared to be separable 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 and provisions.

Section 14. All resolutions and ordinances and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 15. This Bond Ordinance shall take effect immediately upon its adoption.

PASSED by the City Council this 7th day of December, 1981.

(SEAL)

Ruth S. Brookens
Ruth S. Brookens, City Clerk

APPROVED by the Mayor this 9th day of December, 1981.

Jeffrey T. Markland
Jeffrey T. Markland, Mayor