O-21- 30

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, CONSTRUCTION AND INSTALLATION OF REAL PROPERTY AND TANGIBLE PERSONAL PROPERTY; AND PRESCRIBING OTHER MATTERS PERTAINING THERETO.

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 cost of acquiring, constructing and installing real property and tangible personal property having an expected useful life of more than one (1) year; and

WHEREAS, the City proposes to finance all or a portion of the costs of the acquisition, construction and installation of a new city services building (collectively, the "Property to be Financed"); and

WHEREAS, it is proposed that the City issue its promissory note in the principal amount of $9,000,000 (the "Note") under Amendment No. 78 and the Act for the purpose of financing all or a portion of the costs of the Property to be Financed; and

WHEREAS, the City intends to arrange for a loan (the "Loan") from the Lender (defined below) and to issue the Note to the Lender in consideration for the Loan; and

WHEREAS, the City Director of Finance and Budget (the "Finance Director") has taken proposals for the Loan from six banks having offices in the City and the proposal with the lowest cost to the City was provided by U.S. Bank National Association (the "Lender");

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

SECTION 1: The City Council hereby finds that the Property to be Financed is real property and tangible personal property and will have a useful life of more than one (1) year. The City Council further finds that the aggregate principal amount of the Note and the City's outstanding indebtedness issued or incurred under Amendment No. 78, does not exceed five percent (5%) of the assessed value of taxable property located within the City as determined by the last tax assessment.

SECTION 2: Under the authority of the Constitution and laws of the State of Arkansas (the "State"), including particularly Amendment No. 78 and the Act, the Note is hereby authorized and ordered issued in the principal amount of $9,000,000 for the purpose of financing all or a portion of the costs of acquiring, constructing and installing the Property to be Financed 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 the rate of 1.11% per annum. The Note shall be repaid in five substantially equal annual amortized installments of principal and interest, commencing one year from the date of the Note and on the same day of each year thereafter, with the final installment due five years from the date of the Note. The Note shall be issued in fully registered form. The Note shall be executed by the Mayor and the City Clerk and the seal of the City shall be affixed to the Note.

SECTION 3: The Mayor is hereby authorized and directed to accept the proposal of the Lender as made in the Lender's term sheet dated April 19, 2021 (the "Term Sheet"). A copy of the Term Sheet has been filed with the City Clerk and shall be available for inspection by any interested person.

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 Treasurer 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: (a) The City covenants with the owner of the Note (the "Owner") that it shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause 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 covenants with the Owner that it will not use or permit the use of the Property to be Financed 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) The City covenants with the Owner that it 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 (the "Regulation"). This Ordinance shall constitute an "official intent" for purposes of the Regulation.

(d) The City covenants with the Owner that it 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.

(e) The City covenants that it will, in compliance with the requirements of Section 148(f) of the Code, pay to the United States Government in accordance with the requirements of Section 148(f) of the Code, from time to time, an amount equal to the sum of (1) the excess of (A)

the amount earned on all Non-purpose Investments (as therein defined) attributable to the Note, other than investments attributable to such excess over (B) the amount which would have been earned if such Non-purpose Investments attributable to the Note were invested at a rate equal to the Yield (as defined in the Code) on the Note, plus (2) any income attributable to the excess described in (1), subject to the exceptions set forth in Section 148 of the Code. The City further covenants that in order to assure compliance with its covenants herein, it will employ a qualified consultant to advise the City in making the determination required to comply with this subsection.

(f) The City covenants that all documents and records related to the Note and the Property to be Financed will be retained for the life of the Note plus an additional three (3) years.

(g) The Note is hereby designated as a "qualified tax-exempt obligation" within the meaning of the Code. The City represents that the aggregate principal amount of its qualified tax-exempt obligations (excluding "private activity bonds" within the meaning of Section 141 of the Code which are not "qualified 501(c)(3) bonds" within the meaning of Section 145 of the Code), including those of its subordinate entities, issued in calendar year 2021 will not exceed $10,000,000.

SECTION 6: The Mayor and City Clerk are hereby authorized and directed to execute and deliver the Loan Agreement between the City and the Lender (the "Loan Agreement") providing for the Loan and containing terms and provisions consistent with the Term Sheet. The Loan Agreement is hereby accepted and approved in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor and the City Clerk, their execution to constitute conclusive evidence of such approval.

SECTION 7: The Mayor, City Treasurer, City Attorney, City Clerk and Finance Director are hereby authorized and directed, for and on behalf of the City, to perform all acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance and 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: 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 were not originally part of this Ordinance.

SECTION 9: All laws, ordinances, resolutions, or parts of the same which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 10: Notice of adoption of this Ordinance shall be posted at City Hall, City Services Building, Laman Library, Pat Hays Senior Center and North Little Rock Chamber of Commerce, being five of the most public places in the City.

PASSED:

APPROVED:

Mayor Terry C. Hartwick

SPONSOR:

Mayor Terry C. Hartwick

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields, City Attorney

FORMATTED BY THE OFFICE OF THE CITY ATTORNEY/kt

FILED 10:50 A.M. ___ P.M.

By A. Fields

DATE 4-20-21

Diane Whitbey, City Clerk and Collector
North Little Rock, Arkansas

RECEIVED BY S. Lissery

April 19, 2021

City of North Little Rock
North Little Rock, AR

VIA ELECTRONIC MAIL

U.S. Bank National Association (the "Bank") is pleased to offer the following preliminary terms for financing the Promissory Note (the "Note") within the Bank's loan portfolio:

Borrower: City of North Little Rock, Arkansas.

Amount: $9,000,000.

Maturity: July 1, 2026.

Closing Date: On or about June 28, 2021. The Bank reserves the right to amend, modify, or otherwise rescind the terms and conditions herein if the Closing Date is on or after July 19, 2021.

Interest Rate: 1.11%.

Principal Payments: Principal shall be payable annually, commencing on July 1, 2022. **NOTE: U.S. Bank will not consent to any amendment or modification of the amortization schedule after the Closing Date.**

Interest Payments: Interest shall be payable annually, commencing on July 1, 2022.

Prepayments: The Notes may be prepaid, at the option of the Borrower on any business day, subject to 10 business days' notice to the Bank.

Disbursement: The proceeds of the Note shall be disbursed to the Borrower only as a single disbursement at closing. **NOTE: U.S. Bank makes no representations as to the timeliness or punctuality of disbursements via wire. The Bank will not accept any liability or responsibility for subsequent related transactions on the Closing Date. The Borrower acknowledges that disbursements via wire may occur at any time during New York business hours on the Closing Date and accepts all responsibility for any subsequent related transactions scheduled for the Closing Date.**

Security: The Note shall be secured by a pledge of all legally available funds of the Borrower..

Tax Status: Interest on the Note shall be tax-exempt, and shall be designated "bank qualified" by the Borrower.

Denominations: To the extent permissible under the authorizing legislation of the Borrower, the Note shall be in a single authorized denomination of $9,000,000.

Bond Counsel: All documentation associated with the financing, with the exception of the Loan Agreement (defined below), shall be provided at the Borrower's expense and prepared by qualified counsel to the Borrower, agreeable to the Bank in the Bank's sole discretion, whom has specific public finance expertise in the State of Arkansas ("Bond Counsel").

Documentation: Documentation for the Note shall include, but is not limited to, an appropriate authorizing resolution or ordinance, duly executed instrument, and Bond Counsel opinion that the Note is tax-exempt (if applicable), and a legal, valid, binding, enforceable and properly authorized obligation of the Borrower (the "Financing Documents"). The

resolution or ordinance shall incorporate loan-type language, specifically referencing principal installments rather than maturities or sinking fund payments. The Financing Documents shall refer to the Bank as "the Bank" or "the Lender".

Loan Agreement: In addition to the Financing Documents, the Bank shall require a separate side agreement (the "Loan Agreement") with the Borrower. The Loan Agreement will contain provisions, covenants, events of default, and remedies (see: Covenants/Provisions below). In the sole discretion of the Bank, the Loan Agreement may be replaced by, with all material terms and conditions incorporated into, a bond/note purchase agreement, financing agreement or other such similar document acceptable to the Bank and its counsel.

Costs: The Borrower shall reimburse the Bank for out of pocket expenses, if any, including setup fees, subject to a limit of $500. Additionally, the Borrower shall be responsible for the fees of Bank counsel, if any, whose fees shall not exceed $2,500.

Covenants/Provisions: The Loan Agreement will include standard and customary representations and warranties by the Borrower, and shall also include the following covenants and provisions:

1. The Borrower shall covenant to provide the Bank, or provide notification of such repository where the Bank may reasonably obtain, its annual, audited financial statements within 330 days of fiscal year end.
2. The Borrower shall provide the Bank with a copy of the Borrower's final budget upon request, which request shall in no case be prior to 45 days after the end of the prior fiscal year.
3. The Borrower shall provide the Bank financial or other information as may be reasonably requested from time to time.
4. The Borrower shall promptly notify the Bank of any material adverse events related to the Note.
5. The Borrower shall promptly notify the Bank upon any event of default related to the Note or any other parity or general obligation debt (as applicable) of the Borrower.
6. The Borrower shall provide all information required for the Bank to comply with the Patriot Act, upon request.
7. In the event of an ongoing payment default, subject to the notice and cure period described in section 10 below, the Borrower shall, to the extent allowed by state law, reimburse the Bank for reasonable costs incurred for enforcement or collection of the Note, subject to a limit of $10,000.
8. The Borrower and the Bank mutually agree to waive their right to trial by jury.
9. Upon an event of default, and subject to a 30 day cure period (10 day cure period for payment default) after written notice by the Bank to the Borrower, the Bank may pursue any remedy at law or in equity including, but not limited to: charging a default rate of interest equal to the Interest Rate + 4.0%, enforcement of the obligation through court order, collection and enforcement procedures allowed by state law, and any other remedies available to the Bank. An event of default shall mean, and is limited to:
    a. Failure to pay principal or interest when due;
    b. Failure to fulfill duties of the Loan Agreement, the authorizing legislation or the bond/note instrument; or
    c. Material misrepresentation under any Financing Document that results in pecuniary damages to the Bank.

10. The Note shall be registered in the name of the Bank, and shall not be registered with the Depository Trust Company or any other securities depository.
11. The obligation shall not be:
    (i) assigned a separate rating by any rating agency;
    (ii) issued pursuant to any type of offering document or official statement; and,
    (iii) assigned a CUSIP number by Standard & Poor's CUSIP service.

Expiration: Unless otherwise accepted by the Borrower, this proposal shall expire on May 15, 2021 with no further notice required.

Reliance: The terms and conditions of this proposal letter are not subject to change except as explicitly provided for herein. However, this offer for financing is a preliminary indication of interest subject to: i) credit approval pending review of the final documentation; and ii) acceptance of all terms and conditions contained herein by the Borrower. This offer for financing should not be construed as an unconditional commitment to lend.

Please feel free to contact me at 513.449.7186, or Will Hogg at 501.688.1281, if you have any questions regarding this or any other banking matter. Thank you for the opportunity to provide financing for your borrowing needs.

Regards,

Cameron M. Parker
Vice President

Cc: Scott Ferguson, U.S. Bank, NA
Roberta Miller, U.S. Bank, NA