

**City Council Agenda Items
and
Contracts, Leases or Agreements**

November 1, 2011

City Council Meeting Date
Agenda Items Only

Paul A Becker
Submitted By

Finance and Internal Services
Division

Finance and Internal Services
Department

Action Required:

This is a request to approve a bond ordinance authorizing the issuance of Parking Revenue Improvement Bonds, in a face amount not to exceed \$6,500,000, the proceeds of which would be used to finance the construction of a parking facility in the Entertainment District.

<u>N/A</u> Cost of this request	<u>\$ -</u> Category / Project Budget	<u></u> Program Category / Project Name
<u></u> Account Number	<u>\$ -</u> Funds Used to Date	<u></u> Program / Project Category Name
<u></u> Project Number	<u>\$ -</u> Remaining Balance	<u></u> Fund Name

Budgeted Item

Budget Adjustment Attached

Paul A. Becker
Department Director

10-18-2011
Date

Previous Ordinance or Resolution #

[Signature]
City Attorney

10-20-2011
Date

Original Contract Date:

Original Contract Number:

Paul A. Becker
Finance and Internal Services Director

10-20-2011
Date

Received in City Clerk's Office 10-20-11 11:09 RCVD
[Signature]

[Signature]
Chief of Staff

10-20-11
Date

Received in Mayor's Office
ENTERED
10/20/11
[Signature]

[Signature]
Mayor

Date

Comments:



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CITY COUNCIL AGENDA MEMO

To: Mayor Jordan and Members of the Fayetteville City Council

Thru: Don Marr, Chief of Staff

From: Paul A Becker, Finance Director

Date: October 13, 2011

Subject: Request Approval of a Bond Ordinance Authorizing the Issuance of Parking Revenue Bonds

Recommendation:

Staff recommends the approval of a Parking Revenue Bond Ordinance in an amount not to exceed a face value of \$6,500,000. Sale of the bonds authorized will be repaid with net parking revenues which will be pledged for that purpose. The coverage for calculation for these bonds will be 1.25% average debt service required per year. In order to secure the bonds, it will be necessary for the City to covenant that fees, rents fines, and charges generating Net Parking Revenue, if and when necessary, from time to time, be increased in such a manner as to produce Net Parking Revenue sufficient to equal 1.25% of the annual debt service on bonds outstanding and any amount, if any, required to maintain the debt service reserve requirement. The initial coverage for the amount required is calculated to be 1.7% coverage which should be more than adequate for the near future.

Issues:

The need for additional parking in the Entertainment District has been recognized and discussed for many years. However, no revenue stream was available to the City to provide additional parking space or build a parking facility to accommodate the need for parking. Mayor Jordan brought forward the paid parking program, which the Council subsequently adopted, to address that need. Adoption of this ordinance will provide the necessary funding to proceed with the parking facility project.

BUDGET IMPACT:

Again, the sale of the bonds authorized by this resolution will provide the funding necessary to move forward with the project. The bond sale is expected to net approximately \$5,500,000 for the project. The balance of the Amount generated will be needed to meet reserve requirements and pay issuance costs.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$6,500,000 OF PARKING REVENUE IMPROVEMENT BONDS BY THE CITY OF FAYETTEVILLE, ARKANSAS FOR THE PURPOSE OF FINANCING ALL OR A PORTION OF THE COSTS OF ACQUISITION, CONSTRUCTION AND EQUIPPING OF A PARKING DECK FACILITY; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE PURSUANT TO WHICH THE BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Fayetteville, Arkansas (the “City”), has determined that there is a need for increased parking capacity in the City’s Entertainment District and desires to provide such capacity through the acquisition, construction and equipping of parking deck facilities and related roadway and other improvements, such facilities and improvements to be located within the Entertainment District Parking Zone (the “Project”); and

WHEREAS, the City is authorized and empowered under the provisions of the Constitution and laws of the State of Arkansas, including particularly Amendment 65 to the Constitution and Arkansas Code Annotated (1998 Repl. & 2011 Supp.) Sections 14-164-401 *et seq.* (as from time to time amended, the “Act”), to issue and sell its revenue bonds and to expend the proceeds thereof to finance the costs of “capital improvements” (as defined in the Act), such as those improvements comprising the Project; and

WHEREAS, in accordance with the provisions of Amendment 65 and the Act, the City has determined to issue its Parking Revenue Improvement Bonds (the “Bonds”) in the aggregate principal amount of not to exceed \$6,500,000 for the purpose of (i) financing some or all of the costs of acquisition, construction and equipping of the Project, (ii) establishing a debt service reserve for the Bonds, and (iii) paying printing, underwriting, legal and other expenses incidental to the issuance of the Bonds; and

WHEREAS, the Bonds will be secured by and payable from net revenues (after provision for operation and maintenance expenses, including previous debt for parking equipment) attributable to parking fees, leases, rents, fines, charges and other revenues collected by the City with respect to its meters, lots and other parking facilities, and including net revenues to be generated by the Project and net revenues with respect to City management of parking facilities owned by third parties (the “Net Parking Revenues”); and

WHEREAS, an open public hearing on the question of the issuance of the Bonds has been held before the City Council on November 1, 2011, following publication of notice thereof in the *Northwest Arkansas Times* on October 21, 2011; and

WHEREAS, the City has determined to issue and secure the Bonds pursuant to a Trust Indenture (the "Trust Indenture"), by and between the City and Simmons First Trust Company, N.A., as trustee (the "Trustee"), a form of which has been presented to and is before this meeting; and

WHEREAS, the City proposes to enter into a Bond Purchase Agreement (the "Bond Purchase Agreement") in substantially the form presented to and before this meeting, with Stephens Inc., Fayetteville, Arkansas (the "Underwriter"), providing for the sale of the Bonds.

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

Section 1. The City Council hereby finds and declares that the acquisition, construction and equipping of the Project is in the best interest of the City and its residents.

Section 2. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 65 to the Constitution of Arkansas and the Act, there is hereby authorized the issuance of bonds of the City to be designated as "Parking Revenue Improvement Bonds" (the "Bonds"). The Bonds shall be issued in the original aggregate principal amount of not to exceed Six Million Five Hundred Thousand Dollars (\$6,500,000), shall mature not later than June 1, 2037, and shall bear interest at the rates specified in the Bond Purchase Agreement. The average yield on the Bonds as a whole shall not exceed 5.00% per annum. The proceeds of the Bonds will be utilized, along with other available moneys, to finance the costs of the Project, to establish a debt service reserve for the Bonds, and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Bonds. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall be subject to redemption prior to maturity, and shall contain such other terms, covenants and conditions, all as set forth in the Trust Indenture. The Bonds shall not be secured by general revenues of the City, but shall be payable from and secured by Net Parking Revenues.

The Mayor is hereby authorized and directed to execute and deliver the Bonds in substantially the form thereof contained in the Trust Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Bonds to be accepted and authenticated by the Trustee. The Mayor is hereby authorized to confer with the Trustee, the Underwriter, and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete the Bonds in substantially the form contained in the Trust Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Bonds, their execution to constitute conclusive evidence of such approval.

Section 3. To 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 to execute and acknowledge the Trust Indenture (the "Trust Indenture"), by and between the City and the Trustee, 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 the 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, including, without limitation, the provisions

thereof pertaining to the pledge of Net Parking Revenues to the Bonds and the terms of the Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel 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 Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Trust Indenture in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 4. There is hereby authorized and approved a Preliminary Official Statement of the City, including the cover page and appendices attached thereto, relating to the Bonds. The Preliminary Official Statement is hereby “deemed final” by the City within the meaning of U.S. Securities and Exchange Commission Rule 15c2-12. The distribution of the Preliminary Official Statement is hereby approved. The Preliminary Official Statement, as amended to conform to the terms of the Bond Purchase Agreement, including Exhibit A thereto, and with such other changes and amendments as are mutually agreed to by the City and the Underwriter, is herein referred to as the “Official Statement,” and the Mayor is hereby authorized to execute the Official Statement for and on behalf of the City. The Official Statement is hereby approved in substantially the form of the Preliminary Official Statement submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Official Statement in substantially the form of the Preliminary Official Statement submitted to this meeting, with such changes as shall be approved by such persons, the Mayor’s execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Preliminary Official Statement is on file with the City Clerk and is available for inspection by any interested person.)

Section 5. In order to prescribe the terms and conditions upon which the Bonds are to be sold to the Underwriter, the Mayor is hereby authorized and directed to execute a Bond Purchase Agreement on behalf of the City, to be dated as of the date of its execution (the “Bond Purchase Agreement”), by and between the City and the Underwriter, and 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 Underwriter and Bond Counsel in order to complete the Bond Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Bond Purchase Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Bond Purchase Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 6. In order to provide for continuing disclosure of certain financial and operating information with respect to the City and the Net Parking Revenues in compliance with the provisions of Rule 15c2-12 of the U. S. Securities and Exchange Commission, the Mayor is hereby authorized and directed to execute a Continuing Disclosure Agreement to be dated as of the date of its execution (the “Continuing Disclosure Agreement”), by and between the City and the Trustee, and the Mayor is hereby authorized and directed to cause the Continuing Disclosure

Agreement to be executed by the Trustee. The Continuing Disclosure Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Continuing Disclosure Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Continuing Disclosure Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Continuing Disclosure Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 7. The various rates and amounts for the parking fees, rents, fines and charges generating the Net Parking Revenues previously enacted by the City Council are hereby ratified and confirmed.

Section 8. 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, sale, execution and delivery of the Bonds and to effect the execution and delivery of the Trust Indenture, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement and a Tax Regulatory Agreement relating to the tax exemption of interest on the Bonds, and to perform all of the obligations of the City under and pursuant thereto. The Mayor and the 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 9. The Bonds are hereby designated as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). The City hereby represents and covenants that the aggregate principal amount of its tax-exempt obligations (excluding “private activity bonds” within the meaning of Section 141 of the Code), including those of its subordinate entities, issued in calendar year 2011 will not exceed \$10,000,000.

Section 10. Kutak Rock LLP, Little Rock, Arkansas, is hereby appointed to act as Bond Counsel on behalf of the City in connection with the issuance and sale of the Bonds.

Section 11. The adoption of this Ordinance is intended as the City’s “official intent” to reimburse itself from the proceeds of the Bonds for preliminary costs of the Project and related expenses advanced by the City.

Section 12. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared to be illegal or invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Ordinance.

Section 13. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

ADOPTED AND APPROVED THIS ____ DAY OF _____, 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

(S E A L)

