ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A PROMISSORY NOTE TO PROVIDE SHORT-TERM FINANCING UNDER AMENDMENT NO. 78 TO THE ARKANSAS CONSTITUTION; PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Bryant, Arkansas (the "City") is authorized and empowered under the provisions of Amendment No. 78 to the Arkansas Constitution ("Amendment No. 78") and Title 14, Chapter 78 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation") to issue notes and to expend the proceeds thereof to finance all or a portion of the costs of acquiring and constructing real property or tangible personal property having an expected useful life of more than one (1) year; and

WHEREAS, the City proposes to acquire an animal control transport vehicle (the "Animal Control Vehicle"), to acquire, construct and equip improvements to the City's park and recreational facilities, including particularly, without limitation, improvements to the City's tennis courts (the "Park Improvements"), and to acquire, construct and equip a police training facility (the "Police Training Facility"); and

WHEREAS, it is proposed that the City issue its promissory note in the principal amount of $925,000 (the "Note") under Amendment No. 78 and the Authorizing Legislation for the purpose of financing all or a portion of the costs of the Animal Control Vehicle, the Park Improvements and the Police Training Facility (collectively, the "Financed Property"); and

WHEREAS, the City has received an offer for the purchase of the Note from Regions Equipment Finance Corporation (the "Lender"), at a price of par (the "Purchase Price"), pursuant to a Letter of Offer and Representations (the "Offer"), which has been presented to and is before this meeting;

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

Section 1. The City Council hereby finds that the Animal Control Vehicle, the Park Improvement and the Police Training Facility will each have a useful life of more than one (1) year and that the aggregate principal amount of the Note and any other outstanding indebtedness of the City issued pursuant to Amendment No. 78 and the Authorizing Legislation 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. The Offer of the Lender for the purchase of the Note from the City at the Purchase Price is hereby accepted, and the Note is hereby sold to the Lender. The Mayor is hereby authorized and directed to execute and deliver the Offer on behalf of the City.

Section 3. The issuance of the Note in the principal amount of $925,000 is hereby authorized under Amendment No. 78 and the Authorizing Legislation in order to finance all or a portion of the costs of the Financed Property. The Note shall be dated the date of issuance and shall bear interest on the outstanding principal amount at the rate of 2.06% per annum. The Note shall be subject to prepayment in whole or in part at any time.

Section 4. The Note shall be repaid in monthly amortized installments of principal and interest, commencing one (1) month from the date of the Note and continuing monthly thereafter on the same day, with the final installment due five (5) years from the date of the Note.

Section 5. As provided in Amendment No. 78, the monthly 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 monthly debt service payments there is hereby appropriated to pay the Note, an amount of general revenues of the City sufficient for such purposes. The Finance Director is hereby authorized and directed to withdraw general revenues in the amounts and at the times necessary to make the monthly debt service payments on the Note.

Section 6. (a) The City covenants with the Lender 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 Lender 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 Lender that it will not use or permit the use of the Financed 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) The City covenants with the Lender 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 Lender 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.

Section 7. Upon the occurrence of an Event of Default (as hereinafter defined), the Lender may (a) upon written notice to the City, declare the unpaid principal of the Note to be, and the Note, together with the accrued interest thereon, shall forthwith become, due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived or (b) compel the performance of the duties of the City under the Constitution and laws of the State of Arkansas.

"Event of Default" shall mean the following:

(i) A failure by the City to make any payment of principal of or interest on the Note;

(ii) The existence of an incorrect representation or warranty made by the City to the Lender in this Ordinance or the Offer and continuance thereof for a period of thirty (30) days after delivery of written notice by the Lender to the City specifying the incorrect representation or warranty and requesting that it be remedied, unless the Lender agrees in writing to an extension of such period prior to expiration;

(iii) A violation of any covenant or agreement found in this Ordinance or the Offer and continuance thereof for a period of thirty (30) days after delivery of written notice by the Lender to the City specifying the violation and requesting that it be remedied, unless the Lender agrees in writing to an extension of such period prior to expiration;

(iv) The commencement of an involuntary case or other proceeding against the City, which seeks liquidation, reorganization or other relief with respect to it, or its debts or other liabilities under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of sixty (60) days; or an order for relief against the City shall be entered in any such case under the federal Bankruptcy Code;

(v) The filing by the City of a voluntary petition in bankruptcy, seeking reorganization or rearrangement or taking advantage of any debtor relief laws, or an answer by the City admitting the material allegations of a petition filed against the City in any bankruptcy, reorganization, insolvency, conservatorship or similar proceeding, or an admission by the City in writing of an inability to pay its debts as they become due;

(vi) The making by the City of a general assignment for the benefit of creditors;

(vii) A default in the payment of any other indebtedness or the performance of any other obligation of the City to the Lender entitling the Lender to accelerate the maturity thereof or enforce its remedies with respect thereto; or

(viii) The dissolution or termination of existence of the City.\

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, execution, sale 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, agreements, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

Section 9. The provisions of this 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 10. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 11. It is hereby ascertained and declared that the Financed Property is immediately needed for the preservation of the public peace, health and safety and to remove existing hazards thereto. The acquisition, construction and equipping of the Financed Property cannot be accomplished without the issuance of the Note, which cannot be sold at the interest rate specified herein unless this Ordinance is immediately effective. Therefore, it is declared that an emergency exists and this Ordinance being necessary for the preservation of the public peace, health and safety shall be in force and take effect immediately upon and after its passage.

PASSED: January 25, 2022.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

CERTIFICATE

The undersigned, City Clerk of the City of Bryant, Arkansas (the "City"), hereby certifies that the foregoing pages are a true and perfect copy of Ordinance No. _____, adopted at a regular session of the City Council at 6:30 p.m., on the 25th day of January, 2022, and that the Ordinance is of record in Ordinance Record Book No. ____, Page ____, now in my possession.

GIVEN under my hand and seal on this 25th day of January, 2022.

_____
City Clerk

(SEAL)