

**City of Fayetteville Staff Review Form**

**2022-0355**

\_\_\_\_\_  
Legistar File ID

**5/3/2022**

\_\_\_\_\_  
City Council Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

Paul Becker

4/14/2022

CHIEF FINANCIAL OFFICER (110)

\_\_\_\_\_  
Submitted By

\_\_\_\_\_  
Submitted Date

\_\_\_\_\_  
Division / Department

**Action Recommendation:**

Council Authorization of the issuance and sale of Not To Exceed \$74,340,000 Sales and Use Tax Capital Improvement Bonds, Series 2022, for various purposes.

**Budget Impact:**

Various		Various	
_____ Account Number		_____ Fund	
Various		Various	
_____ Project Number		_____ Project Title	
<b>Budgeted Item?</b>	<u>No</u>	<b>Current Budget</b>	\$ -
		<b>Funds Obligated</b>	
		<b>Current Balance</b>	\$ -
<b>Does item have a cost?</b>	<u>No</u>	<b>Item Cost</b>	
<b>Budget Adjustment Attached?</b>	<u>No</u>	<b>Budget Adjustment</b>	
		<b>Remaining Budget</b>	\$ -

V20210527

Purchase Order Number: \_\_\_\_\_

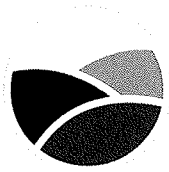
Previous Ordinance or Resolution # \_\_\_\_\_

Change Order Number: \_\_\_\_\_

Approval Date: \_\_\_\_\_

Original Contract Number: \_\_\_\_\_

Comments:



**MEETING OF May 3, 2022**

**TO:** Mayor and City Council

**FROM:** Paul A. Becker, Chief Financial Officer

**DATE:** April 14, 2022

**SUBJECT:** Council Authorization of Phase Two of the 2019 Sales Tax Bond Program Designated AS Sales and Use Tax Capital Improvement Bonds, Series 2022

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**RECOMMENDATION:**

This request is for the City to Issue up to \$74,340,000 in bonds for phase two of the 2019 Sales Tax Bond Issue which represents a portion of the bonds authorized by the voters of Fayetteville. This issue is designated Sales and Use Tax Capital Improvement Bonds, Series 2022.

**DISCUSSION:**

On April 9, 2019, the Citizens voted to authorize Sales Tax Bonds of up to \$226,065,000 for various purposes as specified in Ordinance 6126 approved by the City Council. The funds generated by these nontaxable bonds must be spent in 3 years and this request represents the second phase issue of these bonds. This request is for up to \$74,340,000. This will allow for flexibility to adjust to interest rates in effect at the time and make decisions regarding the purchase of a surety bond or actually using bond proceeds to meet the reserve requirements, and to determine cost effectiveness of bond insurance and the cost of having the bonds rated.

Amounts anticipated to actually spend per bond ballot question are as follows:

Question Two	Transportation Improvements	\$	29,490,000
Question Three	Trail Improvements	\$	4,570,000
Question Four	Drainage Improvements	\$	8,210,000
Question Five	Park Improvements	\$	10,950,000
Question Seven	City Facilities Improvements	\$	2,690,000
Question Eight	Construction of an Arts Corridor	\$	12,615,000
Question Ten	Firefighting Facilities Improvements	\$	5,815,000
		\$	74,340,000

**BUDGET/STAFF IMPACT:**

The approval of this ordinance will allow the City to sell bonds to generate the funding for approximately \$74,340,000 in total of projects to be completed in Fayetteville. The bond issue will be paid off from the proceeds of a one cent sales tax as approved by the voters for the purposes specified in the 7 questions presented to the voters on the election ballot as identified above.

After this issue \$15,000,000 in bonds will remain to be issued in the future.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY'S NOT TO EXCEED \$74,340,000 SALES AND USE TAX CAPITAL IMPROVEMENT BONDS, SERIES 2022, FOR THE PURPOSE OF FINANCING ALL OR A PORTION OF THE COSTS OF CERTAIN STREET, TRAIL, DRAINAGE, PARK, CITY FACILITIES, ARTS CORRIDOR AND FIREFIGHTING FACILITIES AND IMPROVEMENTS; AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL TRUST INDENTURE PURSUANT TO WHICH THE SERIES 2022 BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE SERIES 2022 BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE SERIES 2022 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AND PRESCRIBING OTHER MATTERS RELATING THERETO.**

**WHEREAS**, the City Council of the City of Fayetteville, Arkansas (the "City") has previously determined that there is a need for a source of revenues to finance all or a portion of the costs of critical capital improvement projects, including (1) streets and related improvements (the "Streets Project"), (2) trail system and related improvements (the "Trails Project"), (3) drainage and related improvements (the "Drainage Project"); (4) parks system and related improvements (the "Parks Project"); (5) City facilities and related improvements (the "City Facilities Project"); (6) Arts Corridor and related improvements (the "Arts Corridor Project"); and (7) firefighting facilities and related improvements (the "Firefighting Facilities 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 62 to the Constitution of the State of Arkansas ("Amendment 62") and Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Local Government Bond Act"), to issue and sell its capital improvement bonds to finance and refinance the costs of various capital improvements such as those comprising the Streets Project, the Trails Project, the Drainage Project, the Parks Project, the City Facilities Project, the Arts Corridor Project and the Firefighting Facilities Project (collectively, the "Projects"), which capital improvement bonds may be secured by and payable from the receipts of the special city-wide sales and use tax authorized by the Local Government Bond Act; and

**WHEREAS**, pursuant to Amendment 62 and the Local Government Bond Act and the provisions of Ordinance No. 6216 of the City, adopted and approved on December 18, 2018 (the "Election Ordinance"), there was submitted to the qualified electors of the City various questions regarding the issuance of an aggregate of not to exceed \$213,865,000 in principal amount of capital improvement bonds for the purpose of financing all or a portion of the costs of the various capital improvements, including the Projects, said bonds to be secured by a pledge of and

lien upon all of the receipts of a special city-wide sales and use tax levied at the rate of one percent (1.00%) pursuant to the Local Government Bond Act (the "Sales and Use Tax"); and

**WHEREAS**, at a special election held April 9, 2019, a majority of the qualified electors of the City voting on each of the questions approved the issuance of capital improvement bonds in the principal amounts and for each of the specific purposes set forth on the ballot (and the corresponding levy of the Sales and Use Tax, and the pledge of the receipts thereof to the payment of the bonds); and

**WHEREAS**, pursuant to Amendment 62 and the Local Government Bond Act, as approved by the qualified electors of the City, and as authorized by Ordinance No. 6194 of the City, adopted and approved on June 4, 2019, the City has previously issued (i) its \$124,425,000 Sales and Use Tax Capital Improvement and Refunding Bonds, Series 2019A (the "Series 2019A Bonds"), and (ii) its \$3,170,000 Sales and Use Tax Capital Improvement Bonds, Taxable Series 2019B (the "Series 2019B Bonds");

**WHEREAS**, the Series 2019B Bonds have been paid in full; and

**WHEREAS**, as authorized under the provisions of Amendment 62 and the Local Government Bond Act and as approved by the qualified electors of the City, the City has now determined to issue and sell its Sales and Use Tax Capital Improvement Bonds, Series 2022, in the aggregate principal amount of not to exceed \$74,340,000 (the "Series 2022 Bonds"), in order to provide funding for all or a portion of the costs of the Projects; and

**WHEREAS**, as authorized by the provisions of the Election Ordinance, the City has previously made arrangements for the sale of the Series 2022 Bonds to Stephens Inc., Fayetteville, Arkansas (the "Underwriter"), pursuant to the terms of a Bond Purchase Agreement between the City and the Underwriter (the "Bond Purchase Agreement") in substantially the form presented to and before this meeting;

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

**Section 1.** Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas and the Local Government Bond Act, there is hereby authorized the issuance of bonds of the City to be designated as "Sales and Use Tax Capital Improvement and Refunding Bonds, Series 2022" (the "Series 2022 Bonds"). The Series 2022 Bonds shall be issued in the original aggregate principal amount of not to exceed Seventy-Four Million Three Hundred Forty Thousand Dollars (\$74,340,000) and shall mature not later than November 1, 2035, in the principal amounts and bearing interest at the rates to be specified in the Bond Purchase Agreement. The average yield on the Series 2022 Bonds as a whole shall not exceed 4.500% per annum. Of the \$74,340,000 maximum aggregate principal amount of Series 2022 Bonds hereby authorized, (i) not to exceed \$29,490,000 shall be deemed to apply to the Streets Project (Question 2 on the ballot), (ii) not to exceed \$4,570,000 shall be deemed to apply to the Trails Project (Question 3 on the ballot), (iii) not to exceed \$8,210,000 shall be deemed to apply to the Drainage Project (Question 4 on the ballot), (iv) not to exceed \$10,950,000 shall be deemed to apply to the Parks Project (Question 5

on the ballot), (v) not to exceed \$2,690,000 shall be deemed to apply to the City Facilities Project (Question 7 on the ballot), (vi) not to exceed \$12,615,000 shall be deemed to apply to the Arts Corridor Project (Question 8 on the ballot), and (vii) not to exceed \$5,815,000 shall be deemed to apply to the Firefighting Facilities Project (Question 10 on the ballot), and the proceeds of the Series 2022 Bonds shall be allocated accordingly. The proceeds of the Series 2022 Bonds will be utilized to finance all or a portion of the costs of the Projects described above, and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Series 2022 Bonds.

The Series 2022 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 First Supplemental Trust Indenture submitted to this meeting. The Mayor is hereby authorized and directed to execute and deliver the Series 2022 Bonds in substantially the form thereof contained in the First Supplemental Trust Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Series 2022 Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Series 2022 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 Series 2022 Bonds in substantially the form contained in the First Supplemental Trust Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Series 2022 Bonds, their execution to constitute conclusive evidence of such approval.

**Section 2.** In order to pay the principal of and interest on the Series 2022 Bonds as they mature or are called for redemption prior to maturity, there is hereby pledged all of the receipts of an existing one percent (1.00%) Sales and Use Tax levied by the Election Ordinance. Such pledge securing the Series 2022 Bonds shall be made on a parity basis with the existing pledge of such receipts in favor of the Series 2019A Bonds. The levy and collection of the Sales and Use Tax shall continue until such time as the Series 2019A Bonds and the Series 2022 Bonds are no longer outstanding or sufficient funds are on deposit with the Trustee under the Trust Indenture to redeem the Series 2019A Bonds and the Series 2022 Bonds in full. The City covenants and agrees that all receipts from the Sales and Use Tax will be accounted for separately as special funds on the books of the City, and receipts of said Sales and Use Tax will be deposited and will be used solely as provided in the Trust Indenture (defined below).

**Section 3.** To prescribe the terms and conditions upon which the Series 2022 Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge a First Supplemental Trust Indenture (the “First Supplemental Trust Indenture”), by and between the City and Simmons Bank, Pine Bluff, Arkansas, as trustee (the “Trustee”), and the City Clerk is hereby authorized and directed to execute and acknowledge the First Supplemental 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 First Supplemental Trust Indenture to be accepted, executed and acknowledged by the Trustee. The First Supplemental Trust Indenture supplements and amends a Trust Indenture dated as of August 1, 2019, by and between the City and the Trustee (the “Original Indenture,” and collectively with the First Supplemental Trust Indenture, the “Trust Indenture”). The First

Supplemental Trust Indenture is hereby approved in substantially the form submitted to this meeting, including, without limitation, the provisions thereof pertaining to the pledge of the Sales and Use Tax receipts and the terms of the Series 2022 Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the First Supplemental Trust Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the First Supplemental Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the First Supplemental 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 Series 2022 Bonds. 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 Series 2022 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 Sales and Use Tax and the City 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 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 Series 2022 Bonds and to effect the execution and delivery of the First Supplemental Trust Indenture, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement and a Tax Compliance Agreement relating to the tax exemption of interest on the Series 2022 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 8.** As previously provided in the Election Ordinance, Kutak Rock LLP, Little Rock, Arkansas, is hereby confirmed as Bond Counsel on behalf of the City in connection with the issuance and sale of the Series 2022 Bonds.

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

ADOPTED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

( S E A L )